Federal Funding Gaps: A Brief Overview

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Summary

The Antideficiency Act (31 U.S.C. 1341-1342, 1511-1519) generally bars the obligation of funds in the absence of appropriations. Exceptions are made under the act, including for activities involving “the safety of human life or the protection of property.” The interval during the fiscal year when appropriations for a particular project or activity are not enacted into law, either in the form of a regular appropriations act or a continuing resolution (CR), is referred to as a funding gap. Although funding gaps may occur at the start of the fiscal year, they also may occur any time a CR expires and another CR (or the regular appropriations bill) is not enacted immediately thereafter. Multiple funding gaps may occur within a fiscal year.

When a funding gap occurs, federal agencies are generally required to begin a shutdown of the affected projects and activities, which includes the prompt furlough of non-excepted personnel. The general practice of the federal government after the shutdown has ended has been to retroactively pay furloughed employees for the time they missed, as well as employees who were required to come to work.

Although a shutdown may be the result of a funding gap, the two events should be distinguished. This is because a funding gap may result in a total shutdown of all affected projects or activities in some instances, but not others. For example, when funding gaps are of a short duration, agencies may not have enough time to complete a shutdown of affected projects and activities before funding is restored. In addition, the Office of Management and Budget has previously indicated that a shutdown of agency operations within the first day of the funding gap may be postponed if a resolution appears to be imminent.

Since FY1977, 18 funding gaps occurred, ranging in duration from one day to 21 full days. These funding gaps are listed in Table 1. About half of these funding gaps were brief (i.e., three days or less in duration). Notably, many of the funding gaps that occurred during this period do not appear to have resulted in a “shutdown.” Prior to the issuance of the opinions in 1980 and early 1981 by then-Attorney General Benjamin Civiletti, while agencies tended to curtail some operations in response to a funding gap, they often “continued to operate during periods of expired funding.” In addition, some of the funding gaps after the Civiletti opinions did not result in a completion of shutdown operations, due to both the funding gap’s short duration and an expectation that appropriations would soon be enacted. Some of the funding gaps during this period, however, did have a broader impact on affected government operations, even if only for a matter of hours.

Two of the three most recent funding gaps occurred in FY1996, which amounted to five days and 21 days. The chronology of regular and continuing appropriations enacted during FY1996 is illustrated in Figure 1.

The most recent funding gap commenced at the beginning of FY2014, on October 1, 2013, and concluded on October 17, 2013, for a total of 16 days. For CRS resources related to the FY2014 funding gap, see CRS Report R43250, In Brief: CRS Resources on the FY2014 Funding Gap, Shutdown, and Status of Appropriations, by Justin Murray.

For a general discussion of federal government shutdowns, see CRS Report RL34680, Shutdown of the Federal Government: Causes, Processes, and Effects, coordinated by Clinton T. Brass.
Background

The routine activities of most federal agencies are funded annually by one or more of the regular appropriations acts. When action on the regular appropriations acts is delayed, a continuing appropriations act, also sometimes referred to as a continuing resolution or CR, may be used to provide interim budget authority. Measures providing continuing appropriations usually take the form of a joint resolution, rather than a bill.\(^1\)

Since FY1952, all of the regular appropriations acts were enacted by the beginning of the fiscal year in only four instances (FY1977, FY1989, FY1995, and FY1997). No CRs were enacted for three of these fiscal years, but CRs were enacted for FY1977 to fund certain unauthorized programs whose funding had been dropped from the regular appropriations acts.\(^2\) Further, no CRs were enacted for FY1953, even though all but one of the regular appropriations was enacted after the start of the fiscal year.\(^3\)

The Antideficiency Act (31 U.S.C. 1341-1342, 1511-1519) generally bars the obligation or expenditure of federal funds in the absence of appropriations.\(^4\) Exceptions are made under the act, including for activities involving "the safety of human life or the protection of property."\(^5\) The interval during the fiscal year when appropriations for a particular project or activity are not enacted into law, either in the form of a regular appropriations act or a CR, is referred to as a funding gap.\(^6\) Although funding gaps may occur at the start of the fiscal year, they also may occur any time a CR expires, and another CR (or the relevant regular appropriations bill) is not enacted immediately thereafter. Multiple funding gaps may occur within a fiscal year.

In 1980 and early 1981, then-Attorney General Benjamin Civiletti issued opinions (hereafter, "the Civiletti opinions") clarifying the need for the federal government to begin terminating regular activities upon the occurrence of a funding gap.\(^7\) As a consequence of these more strict guidelines, when a funding gap occurs, executive agencies begin a shutdown of the affected

\(^1\) For a discussion of continuing resolutions generally, see CRS Report R42647, Continuing Resolutions: Overview of Components and Recent Practices, by Jessica Tollestrup.


\(^3\) Section 1414 of P.L. 82-547 (66 Stat. 661, which was enacted on July 15, 1952, made regular appropriations retroactively available as of July 1 (the first day of FY1953), and ratified any obligations incurred prior to the law’s enactment.


\(^5\) See 31 U.S.C. §1342. During a funding gap, personnel and related activities that are determined to be necessary for the "the safety of human life or the protection of property," or fall under other allowable exceptions, are referred to as "excepted." Under Department of Justice guidance (discussed later in this report), agencies may incur obligations ahead of appropriations for these "excepted" purposes.

\(^6\) In most cases, funding provided in regular appropriations acts is available to be obligated only in a single fiscal year, so that in the event that no subsequent budget authority is provided, agencies may not enter into further obligations. In these instances, budget authority that had previously been enacted and available for obligation for longer periods (e.g., multi-year or "no-year" appropriations) would generally remain available.

\(^7\) The text of the opinions is included in Appendices IV and VIII to the then General Accounting Office (now Government Accountability Office; GAO) report, Funding Gaps Jeopardize Federal Government Operations, PAD-81-31, March 3, 1981.
projects and activities, which includes the prompt furlough of non-excepted personnel. The general practice of the federal government after the shutdown has ended has been to retroactively pay furloughed employees for the time they missed, as well as employees who were required to come to work.

Under current practice, although a shutdown may be the result of a funding gap, the two events should be distinguished. This is because a funding gap may result in a shutdown of all affected projects or activities in some instances, but not in others. For example, when a funding gap is of a short duration, agencies may not have enough time to complete a shutdown of affected projects and activities before funding is restored. In addition, the Office of Management and Budget has previously indicated that a shutdown of agency operations within the first day of a funding gap may be postponed if it appears that an additional CR or regular appropriations is likely to be enacted that same day.

To avoid funding gaps, proposals have previously been offered to establish an “automatic continuing resolution” (ACR) that would provide a fallback source of funding for activities, at a specified formula or level, in the event the timely enactment of appropriations is disrupted. The funding would become available automatically and remain available as long as needed so that a funding gap would not occur. Although the House and Senate have considered ACR proposals in the past, none have been enacted into law on permanent basis.

Funding Gaps Since FY1977

As illustrated in Table 1, there have been 18 funding gaps since FY1977. The enactment of a CR on the day after the budget authority in the previous CR expired, which has occurred often, is not counted in this report as involving a funding gap. For example, between FY2000-FY2013, “next-day” CRs were enacted 18 times.

Almost all of the funding gaps occurred between FY1977 and FY1995. During this 19-fiscal-year period, 15 funding gaps occurred.

Multiple funding gaps occurred during a single fiscal year in four instances: (1) three gaps covering a total of 28 days in FY1978; (2) two gaps covering a total of four days in FY1983; (3)
two gaps covering a total of three days in FY1985; and (4) two gaps covering a total of 26 days in FY1996.

Seven of the funding gaps commenced with the beginning of the fiscal year on October 1. The remaining 11 funding gaps occurred at least more than one day after the fiscal year had begun. Ten of the funding gaps ended in October, four ended in November, three ended in December, and one ended in January.13

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Final Date of Budget Authoritya</th>
<th>Full Day(s) of Gapsb</th>
<th>Date Gap Terminatedc</th>
</tr>
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<td>1977</td>
<td>Thursday, 09/30/76</td>
<td>10</td>
<td>Monday, 10/11/76</td>
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<td>1978</td>
<td>Friday, 09/30/77</td>
<td>12</td>
<td>Thursday, 10/13/77</td>
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<td>Wednesday, 11/09/77</td>
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<td>21</td>
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<td>2014</td>
<td>Monday, 09/30/13</td>
<td>16</td>
<td>Thursday, 10/17/14</td>
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Source: Compiled by CRS with data from the Legislative Information System of the U.S. Congress.

a. Budget authority expired at the end of the date indicated. For example, for the first FY1996 funding gap, budget authority expired at the end of the day on Monday, November 13, 1995, and the funding gap of five full days commenced on Tuesday, November 14, 1995. The enactment of a CR on the day after the previous CR expired, which has occurred often, is not counted as involving a funding gap.

b. Full days are counted as beginning after the final day on which budget authority was available, and ending the day before the gap terminated. For example, for the first FY1996 funding gap, the full days of the gap were from November 14, 1995, through November 18, 1995, for a total of five full days.

c. Gap terminated due to the enactment of a continuing resolution, or one or more regular appropriations acts.

13 The enactment of a series of continuing resolutions for a fiscal year is discussed in CRS Report R42647, Continuing Resolutions: Overview of Components and Recent Practices, by Jessica Tollestrup.
Funding gaps have ranged in duration from one to 21 full days. Six of the eight lengthiest funding gaps, lasting between 8 days and 17 days, occurred between FY1977 and FY1980, before the Civiletti opinions were issued in 1980 and early 1981. After the issuance of these opinions, the duration of funding gaps in general shortened considerably, typically ranging from one day to three days. Of these, most occurred over a weekend.

Notably, many of the funding gaps that occurred since FY1977 do not appear to have resulted in a “shutdown.” Prior to the issuance of the Civiletti opinions, while agencies tended to curtail some operations in response to a funding gap, they often “continued to operate during periods of expired funding.”14 In addition, some of the funding gaps after the Civiletti opinions did not result in a completion of shutdown operations, due to both a funding gap’s short duration and an expectation that appropriations would soon be enacted. For example, during the three-day FY1984 funding gap, “no disruption to government services” reportedly occurred, due to both the three-day holiday weekend and the expectation that appropriations passed by the House and Senate during that weekend would soon be signed into law by the President.15

Some of the funding gaps during this period, however, did have a broader impact on affected government operations, even if only for a matter of hours. For example, in response to the one-day funding gap that occurred on October 4, 1984, a furlough of non-excepted personnel for part of that day was reportedly implemented.16 The three most recent funding gaps, two in FY1996 and one in FY2014, all resulted in a cessation of non-excepted activities and furlough of associated personnel. The legislative history and agency response to these three funding gaps are summarized below.

**FY1996**

The two FY1996 funding gaps occurred between November 13-19, 1995, and December 15, 1995, through January 6, 1996. The chronology of regular and continuing appropriations enacted during that fiscal year is illustrated in Figure 1. In the lead-up to the first funding gap, only three out of the 13 regular appropriations acts had been signed into law17 and budget authority, which


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had been provided by a CR since the start of the fiscal year, expired at the end of the day on November 13. On this same day, President Clinton vetoed a CR that would have extended budget authority through December 1, 1995, because of the Medicare premium increases contained within the measure. The ensuing funding gap reportedly resulted in the furlough of an estimated 800,000 federal workers. After five days, a deal was reached to end the shutdown and extend funding via two CRs through December 15. Agencies that had been zeroed out in pending appropriations bills were funded at a rate of 75% of FY1995 budget authority. All other agencies were funded at the lower of the House- or Senate-passed level of funding contained in the FY1996 full-year appropriations bills. The CR also contained an agreement between President Clinton and Congress regarding future negotiations to lower the budget deficit within seven years.

During the first FY1996 funding gap and prior to the second one, an additional four regular appropriations measures were enacted, and three others were vetoed. The negotiations on the six remaining bills were unsuccessful before the budget authority contained within the CR expired at the end of the day on December 15, 1995. Reportedly, about 280,000 executive branch

(...continued)

(P.L. 104-46), was enacted on November 13, 1995. The Legislative Branch Appropriations Act, H.R. 1854 (104th Cong.) was vetoed on October 12, 1995. As of the end of the day on November 13, 1995, the ten regular appropriations bills that had yet to be enacted were the (1) Department of Transportation and Related Agencies Appropriations Act, (2) Treasury, Postal Service, and General Government Appropriations Act, (3) Legislative Branch Appropriations Act, (4) Department of Defense Appropriations Act, (5) Department of Interior and Related Agencies Appropriations Act, (6) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, (7) Department of Commerce and Related Agencies Appropriations Act, (8) Foreign Operations, Export Financing, and Related Programs Appropriations Act, (9) Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, and (10) District of Columbia Appropriations Act.

19 H.J.Res. 115 (104th Cong.).
25 As of the end of the day on December 15, 1995, the six regular appropriations bills that had yet to be enacted were the (1) Department of Interior and Related Agencies Appropriations Act, (2) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, (3) Department of Commerce and Related Agencies Appropriations Act, (4) Foreign Operations, Export Financing, and Related Programs Appropriations Act, (5) Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, (continued...)

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employees were furloughed during the funding gap between December 15, 1995, and January 6, 1996. A CR to provide benefits for veterans and welfare recipients and to keep the District of Columbia government operating was passed and signed into law on December 22, 1995. The shutdown officially ended on January 6, 1996, when the first of a series of CRs to reopen federal government and provide budget authority through January 26, 1996, was enacted.

(...continued)

and (6) District of Columbia Appropriations Act.


28 H.J.Res. 134 (P.L. 104-94), H.R. 1358 (P.L. 104-91) and H.R. 1643 (P.L. 104-92) were also enacted on January 6. These two CRs provided budget authority for some federal government activities until the end of FY1996.

Figure 1. Chronology of FY1996 Appropriations

<table>
<thead>
<tr>
<th>Date</th>
<th>Military Construction</th>
<th>Agriculture</th>
<th>Energy and Water</th>
<th>Transportation</th>
<th>Treasury-Postal Service</th>
<th>Legislative Branch</th>
<th>Defense</th>
<th>Foreign Operations</th>
<th>Commerce-Justice-State</th>
<th>District of Columbia</th>
<th>Interior</th>
<th>Labor-HHS-Education</th>
<th>VA-HUD</th>
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(1) In FY1996, the annual appropriations process anticipated the enactment of 13 “regular appropriations” bills.
(2) Interim funding was provided through 13 continuing resolutions (CRs) of varying coverage and duration. For a list of these continuing resolutions and their enactment dates, see Table 4 in CRS Report R42647, Continuing Resolutions: Overview of Components and Recent Practices, by Jessica Tollestrup.
(4) The “coverage” of the funding gap refers to those regular appropriations bills that had not been enacted during all or some of the days during which the funding gap occurred. The “duration” of the funding gap is calculated here as the number of full days affected by the lapse in funding. Full days are counted as beginning after the final day on which budget authority was available, and ending the day before funding resumed.
(5) Interim funding was enacted late in the day on November 19, 1995 (P.L. 104-54). As a consequence, in many instances agency operations may not have restarted until the following day.
(6) Three interim funding measures included full-year funding for certain activities (P.L. 104-69, P.L. 104-91, and P.L. 104-92). However, this provision of agency- or program-specific, full-year funding is not reflected in the figure, which focuses on the enactment of entire regular appropriations bills.

FY2014

The most recent funding gap commenced at the beginning of FY2014, on October 1, 2013. None of the 12 regular appropriations bills for FY2014 were enacted prior to the beginning of the funding gap. In addition, as of the beginning of the fiscal year, an interim CR to provide budget authority for the projects and activities covered by those 12 bills was also not enacted. On September 30, however, an automatic continuing resolution was enacted to cover FY2014 pay and allowances for (1) certain members of the Armed Forces, (2) certain Department of Defense (DOD) civilian personnel, and (3) other specified DOD and Department of Homeland Security contractors (H.R. 3210; P.L. 113-39, 113th Congress).30

At the beginning of this 16-day funding gap, more than 800,000 executive branch employees were reportedly furloughed.31 This number was reduced during the course of the funding gap due to the implementation of P.L. 113-39 and other redeterminations of whether certain employees were excepted from furlough.32 Prior to the resolution of the funding gap, congressional action on appropriations was generally limited to a number of narrow CRs to provide funding for certain programs or classes of individuals.33 Of these, only the Department of Defense Survivor Benefits Continuing Appropriations Resolution of 2014 (H.J.Res. 91; P.L. 113-44) was enacted into law.

On October 16, 2013, the Senate passed H.R. 2775, which had been previously passed by the House on September 12, with an amendment. This amendment, in part, provided interim continuing appropriations for the previous year’s programs and activities through January 15, 2014. Later that same day, the House agreed to the Senate amendment to H.R. 2775. The CR was signed into law on October 17, 2013 (P.L. 113-46), thus terminating the funding gap.


31 See, for example, “More Than 800,000 Federal Workers Are Furloughed,” Wall Street Journal, October 1, 2013. Estimates in this and other media reports were based upon the totals provided by agencies in their contingency plans, available at http://www.whitehouse.gov/omb/contingency-plans. These totals do not include legislative or judicial branch employees.


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