United States Government Accountability Office

GAO

Report to the Ranking Member, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

September 2009

# CONTINUING RESOLUTIONS

# Uncertainty Limited Management Options and Increased Workload in Selected Agencies

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GAO-09-879

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# Highlights

Highlights of GAO-09-879, a report to the Ranking Member, Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, Committee on Homeland Security and Governmental Affairs, U.S. Senate

## Why GAO Did This Study

In all but 3 of the last 30 years, Congress enacted a continuing resolution (CR) allowing federal agencies to continue operating when their regular appropriations had not been passed. CRs appropriate funds generally through rates for operations—funding formulas frequently referenced to the previous years' appropriations acts or a bill that has passed either the House or Senate—instead of a specific amount. GAO was asked to examine how CRs have changed over time, the effect CRs have had on selected agency operations, and actions that have been taken to mitigate the effects. Accordingly, GAO analyzed CR provisions enacted over the past 10 years and did a case study review of selected agencies that have considerable experience with CRs, represent different ways of providing services, and have different operational capabilities. Case study agencies were the Administration for Children and Families, Bureau of Prisons, Federal Bureau of Investigation, Food and Drug Administration, Veterans Benefits Administration, and Veterans Health Administration.

## What GAO Recommends

GAO is not making any recommendations. Departments responsible for case study agencies provided comments that were clarifying or technical in nature and were incorporated as appropriate.

View GAO-09-879 or key components.
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September 2009

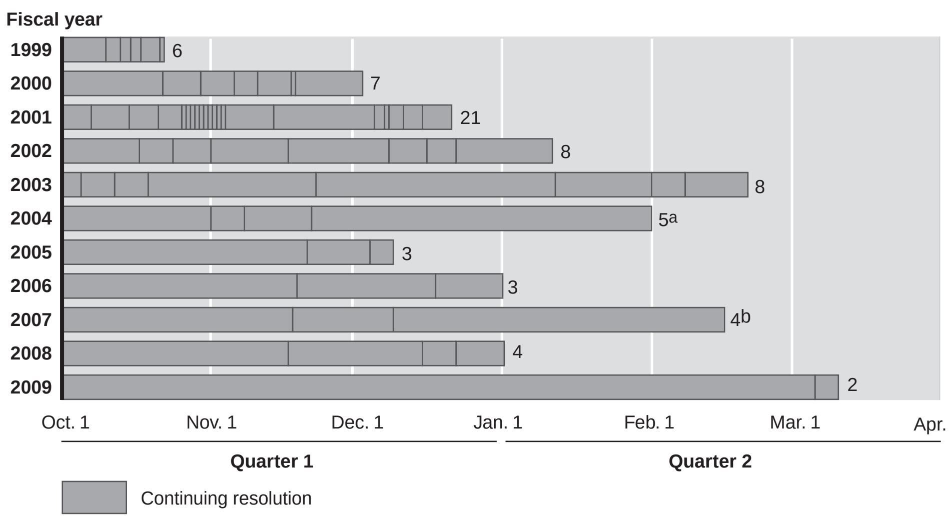
# CONTINUING RESOLUTIONS

## Uncertainty Limited Management Options and Increased Workload in Selected Agencies

## What GAO Found

Since 1999, all agencies operated under a CR for some period of time. The CRs included 11 standard provisions that provided direction on the availability of funding and demonstrated the temporary nature of CRs. During CR periods, these standard provisions required most agencies to operate under a conservative rate of spending and imposed limitations on certain activities. However, CRs provided some agencies or programs funding or direction different from what was provided by the standard provisions, especially under longer-term CRs. These specific provisions—called legislative anomalies—may alleviate some challenges of operating during the CR period. Over the last decade, the duration of individual CRs ranged from 1 to 157 days and the CR period lasted 3 months on average (see figure).

**Number and Duration of Continuing Resolutions, Fiscal Years 1999–2009**




Source: GAO.

[a]The fifth CR amended the original CR with substantive provisions but did not extend the CR period.

[b]The CR passed in February 2007 provided funding for the remainder of the fiscal year and is not included above.

All six case study agencies reported that operating within the limitations of the CR resulted in inefficiencies. The most common inefficiencies reported were delays to certain activities, such as hiring, and repetitive work, including issuing multiple grants or contracts. Case study agencies also reported that CRs limited management options, making trade-offs more difficult. Both the limitations in planning and amount of additional work varied by agency and activity and depended in large part on the number and duration of CRs. After operating under CRs for a prolonged period, agencies faced additional challenges executing their budget in a compressed time frame. Officials from three agencies said that multiyear budget authority was helpful for managing funds in these circumstances. CRs enabled agencies to continue to carry out their missions until their regular appropriations were enacted.

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**Abbreviations**

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| ACF | Administration for Children and Families |
| AFI | Assets for Independence |
| BOP | Bureau of Prisons |
| CFO | Chief Financial Officers |
| CR | continuing resolution |
| CRS | Congressional Research Service |
| DOJ | Department of Justice |
| FDA | Food and Drug Administration |
| FBI | Federal Bureau of Investigation |
| HHS | Department of Health and Human Services |
| LIHEAP | Low Income Home Energy Assistance Program |
| OMB | Office of Management and Budget |
| VA | Department of Veterans Affairs |
| VBA | Veterans Benefits Administration |
| VHA | Veterans Health Administration |

**United States Government Accountability Office**
**Washington, DC 20548**

September 24, 2009

The Honorable George V. Voinovich
Ranking Member
Subcommittee on Oversight of Government Management,
the Federal Workforce, and the District of Columbia
Committee on Homeland Security and Governmental Affairs
United States Senate

Dear Senator Voinovich:

Congress enacted continuing resolutions (CR)—that is, funding for agencies to continue operating when their regular appropriation bills have not been enacted before the beginning of the new fiscal year—in all but 3 of the last 30 fiscal years.[1] Federal departments and agencies receive funding through regular annual appropriations acts, and in their absence, CRs prevent a funding gap. However, they only provide funding for the period of the CR and thereby create uncertainty about both the timing and level of funding that ultimately will be available. The Congressional Research Service (CRS) recently reported on the potential impacts of CRs on agency operations. Besides imposing some paperwork burden on agencies, CRS said that CRs may lead agencies to reduce or delay a variety of activities and alter their operations and spending patterns over time.[2] However, no systematic review has been done to identify factors that may influence how agencies manage during CRs and what steps agencies take to mitigate the effects of uncertainty.

In response to your request that we evaluate the effects of CRs on federal agency operations, this report examines (1) the history and characteristics of CRs, and (2) for selected case study agencies, how CRs have affected agency operations and what actions have been taken to mitigate the effects of CRs.

[1]Appropriations were enacted on time in fiscal years 1989, 1995, and 1997. See Congressional Research Service, *Duration of Continuing Resolutions in Recent Years* (Washington, D.C.: Mar. 9, 2009) for more information on the history of CRs.

[2]See Congressional Research Service, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations* (Washington, D.C.: Oct. 6, 2008).

To accomplish the first objective, we analyzed provisions in CRs enacted from 1999-2009. We described how they direct agencies to operate during the period and how the provisions changed over time. We also analyzed nonstandard provisions called legislative anomalies that provide specific directives to particular agencies. To accomplish our second objective, we conducted a case study review of six agencies within three cabinet-level departments. We selected departments and agencies based on a number of factors discussed with a panel of federal departmental Chief Financial Officers (CFO) that we convened in November 2008. Factors included such things as the average number of days an agency operated under a CR between 1999 and 2008 and the way they provide services (e.g., directly by federal personnel, through contracts or grants to third parties, and through the use of federal facilities).[3] Our case study agencies were:

Department of Health and Human Services (HHS)

- Administration for Children and Families (ACF)
- Food and Drug Administration (FDA)

Department of Veterans Affairs (VA)

- Veterans Health Administration (VHA)
- Veterans Benefits Administration (VBA)

Department of Justice (DOJ)

- Bureau of Prisons (BOP)
- Federal Bureau of Investigation (FBI)

In our selected agencies, we interviewed officials from budget, program, and procurement offices about the effects of CRs on program delivery, management support, and revenue collection. We asked agencies to demonstrate the effects of regular appropriations being enacted after the start of the fiscal year—October 1st—and identify associated costs where possible. However, it is difficult to isolate the effects of CRs and none of the agencies said they tracked the time or resources explicitly devoted to CRs.

We conducted this performance audit from September 2008 to September 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to

[3]Appendix I contains more information on how we selected agencies for review.

obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. For additional details on our scope and methodology, see appendix I.

## Background

Federal departments and agencies receive funding through regular annual appropriations acts.[4] However, in the years covered in this study, all appropriations acts were not enacted before the beginning of the new fiscal year. If one or more of the regular appropriations acts are not enacted, a funding gap may result and agencies may lack sufficient funding to continue operations.[5] The last such occurrence was in fiscal year 1996 during which unusually difficult budget negotiations led to two funding gaps with a widespread shutdown of government operations and the furlough of an estimated 800,000 federal government employees. To prevent similar results, Congress enacts CRs to maintain a level of service in government operations and programs until Congress and the President reach agreement on regular appropriations.

CRs are temporary appropriations acts. Once the regular appropriation act is enacted it supersedes the CR. CRs generally do not specify an amount for programs and activities but permit agencies to continue operations at a certain "rate for operations."[6] They typically incorporate by reference the conditions and restrictions contained in prior years' appropriations acts or the appropriations bills currently under consideration.

The Office of Management and Budget (OMB) is responsible for apportioning executive branch appropriations, including amounts made available under CRs. An apportionment divides appropriations by specific time periods (usually quarters), projects, activities, objects, or

[4]Fundamental to Congress' constitutional spending power is that federal programs may only expend federal funds to the extent appropriated by an act of Congress. For a discussion and history of the congressional "power of the purse" see GAO, *Principles of Federal Appropriations Law*, 3 ed., vol. 1, ch. 1 (GAO-04-261SP, January 2004).

[5]The Antideficiency Act generally restricts agencies from continuing operations during a funding gap.

[6]The rate for operations has varied over time and may be based on such things as the previous year's appropriation, an amount provided in a House or Senate bill, or the amount requested in the President's budget submission. See app. II for more information.

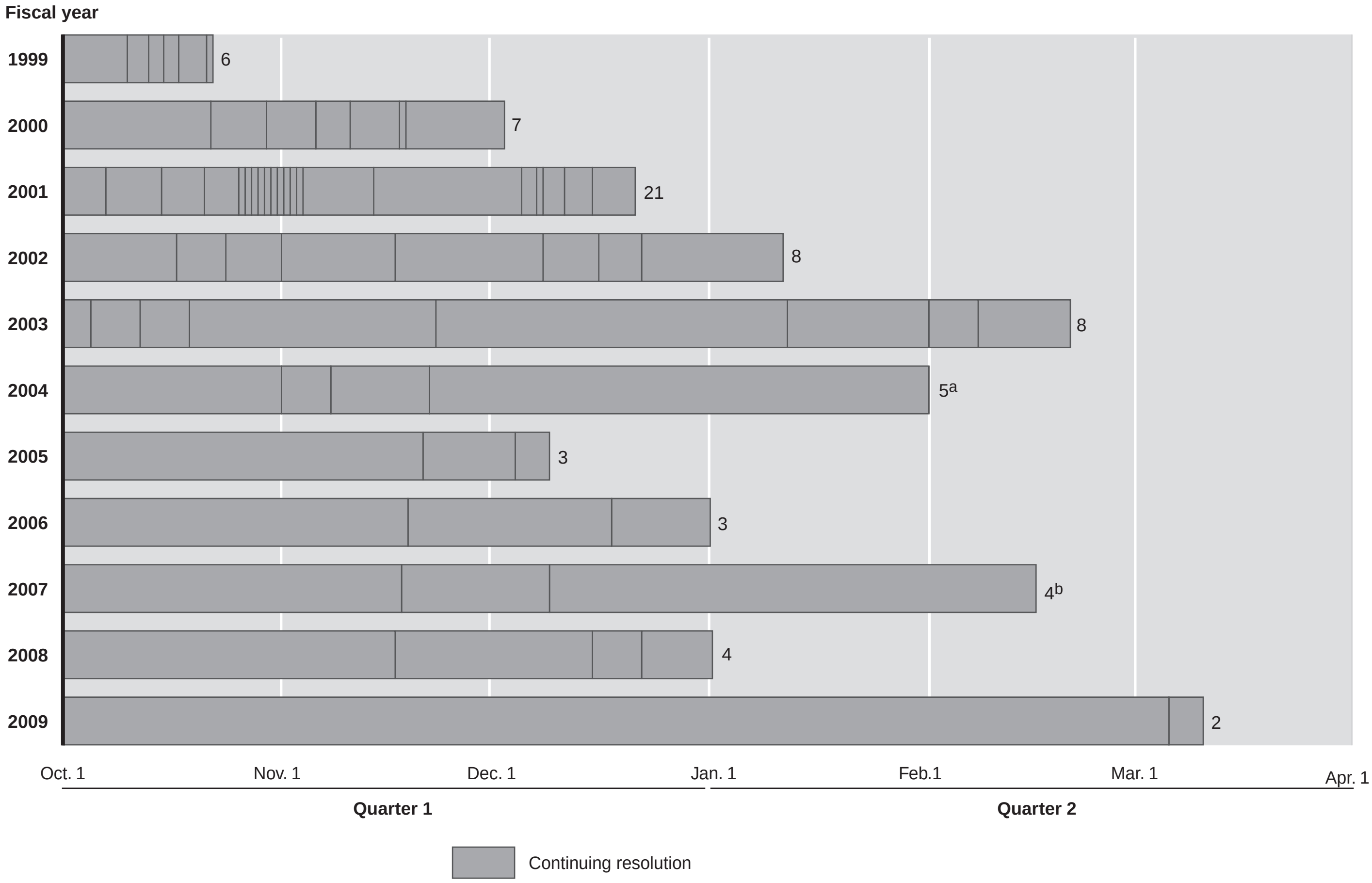
combinations thereof, in part to ensure agencies have resources throughout the fiscal year. OMB automatically apportions amounts made available under a CR.[7]

## Duration of CRs

The duration of CRs varied during the period covered in this study, fiscal years 1999-2009. Figure 1 shows that the duration of individual CRs enacted from 1999 to 2009 ranged from 1 to 157 days and the number of CRs enacted in each year ranged from 2 to 21. The average length of the CR period was about 3 months and in several years—fiscal years 2002-2004, 2007, and 2009—agencies' regular appropriations were not enacted until the second quarter of the fiscal year. This figure also shows that the duration of initial CRs was less than 1 month from 1999-2003, but since then the duration has been about 1 month or more.

[7]The apportionment is equal to the annualized amount (or rate) for each appropriation account funded by the CR multiplied by the *lower of* the percentage of the year covered by the CR, or the historical seasonal rate of obligations for the period of the year covered by the CR. An agency may request a different amount than what is automatically apportioned, i.e., an exception apportionment, but according to OMB staff, OMB rarely approves exception apportionments. We discuss OMB guidance in app. II.

**Figure 1: Number and Duration of CRs (Fiscal Years 1999–2009)**




Source: GAO.

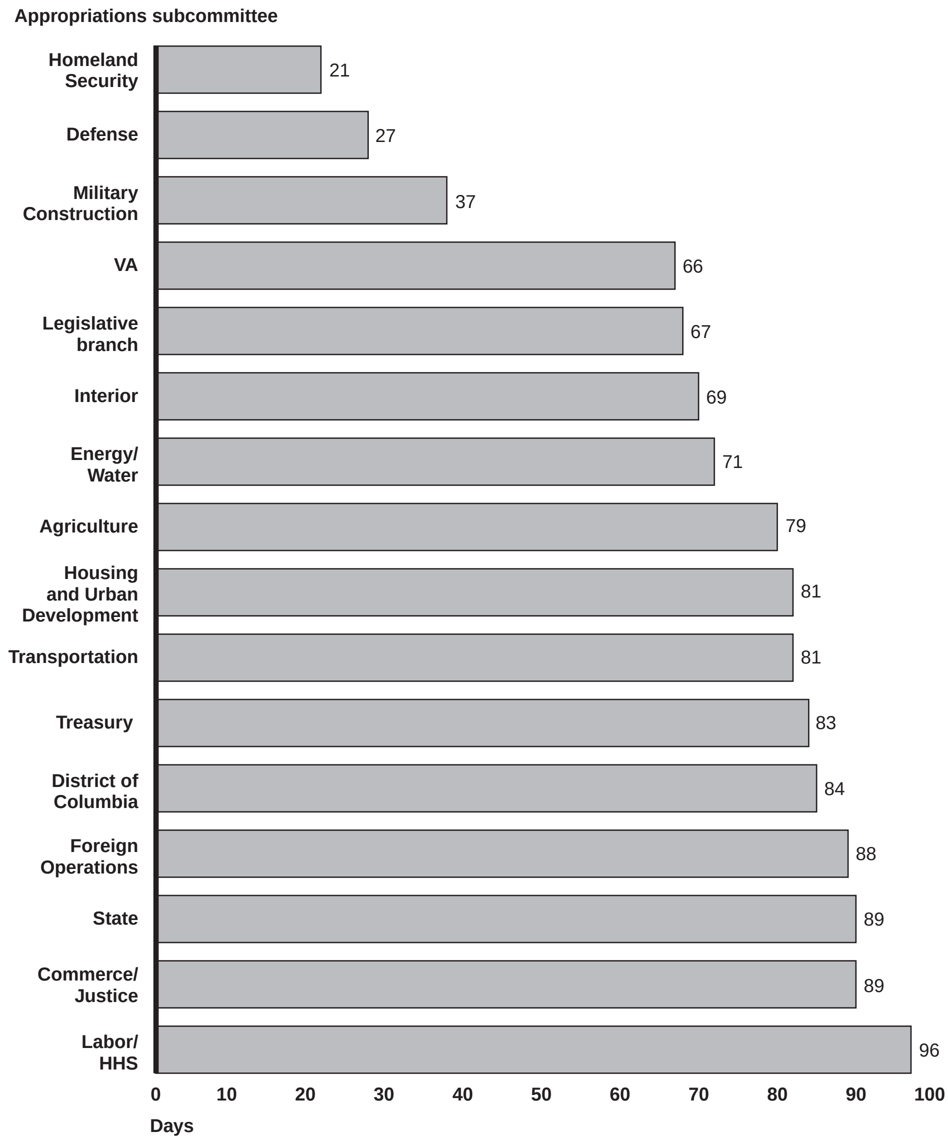
[a]The fifth CR, Pub. L. 108-185, amended the original CR with substantive provisions but did not extend the CR period.

[b]In February 2007, Congress enacted a 227-day CR that provided funding for the remainder of the fiscal year; this CR is not included in fig. 1.

Between fiscal year 1999 and 2009, most agencies operated under a CR at the beginning of the fiscal year, uncertain if there would be subsequent CRs and if so, how many and how long before receiving regular appropriations. In fiscal year 2001, for example, there were 20 extensions of the initial CR, each ranging from 1 to 21 days, and the total period when one or more agencies operated under a CR was 83 days. There is no discernable pattern for the duration or number of extensions and not all federal agencies are under CRs for the entire duration. As shown in figure

2, agencies covered by the Defense, Military Construction, and Homeland Security Appropriations Subcommittees operated under CRs for about 1 month on average during fiscal years 1999-2009, whereas other agencies operated under CRs for at least 2 months on average.

**Figure 2: Average Annual Duration of CRs by Appropriations Subcommittee (Fiscal Years 1999–2009)**




Source: GAO.

Notes: The number and jurisdiction of appropriations subcommittees changed over time. Adjustments were made to account for changing appropriations subcommittee jurisdictions. Currently, Congress considers 12 regular appropriations acts organized around one or more major departments. The 227-day CR passed in February 2007 provided funding for the remainder of the fiscal year and is excluded above.

## CRs Provide Interim Funding for Agencies and Programs

During the period studied, fiscal years 1999-2009, every agency operated under a CR for some period of time. For most, this meant temporarily operating under a conservative rate of spending and limitations on certain activities, as required by the standard provisions. However, in some circumstances, Congress increased amounts available to some programs and activities, extended authorities, or provided greater direction than what was provided by the standard provisions, especially in longer CRs. These specific provisions—called legislative anomalies—may alleviate some challenges during the CR period.

### Standard Provisions Govern Most Agencies and Programs Funded under a CR

We identified 11 standard provisions applicable to the funding of most agencies and programs under a CR.[8] These provisions provide direction regarding the availability of funding and demonstrate the temporary nature of the legislation. For example, one standard provision provides for an amount to be available to continue operations at a designated rate for operations. Since fiscal year 1999, different formulas have been enacted for determining the rate for operations during the CR period. The amount often is based on the prior fiscal year's funding level or the "current rate" but may also be based on a bill that has passed either the House or Senate. Depending on the language of the CR, different agencies operate under different rates.[9] The amount is available until a specified date or until the agency's regular appropriations act is enacted, whichever is sooner. In general, CRs prohibit new activities and projects for which appropriations, funds, or other authority were not available in the prior fiscal year. Also, so the agency action does not impinge upon final funding prerogatives, agencies are directed to take only the most limited funding actions and CRs limit the ability of an agency to obligate all, or a large share, of its available appropriation.

Congress added two new standard provisions since 1999. At the beginning of fiscal year 2004, Congress standardized a provision that makes funding available under CRs to allow for entitlements and mandatory payments funded through the regular appropriations acts to be paid at the current

[8]The standard provisions are listed in app. II.

[9]See app. II for an explanation of the differences in the various rates for operations.

fiscal year level.[10] In 2007, Congress enacted the furlough provision in the CR for the first time. This provision permits OMB and other authorized government officials to apportion up to the full amount of the rate for operations to avoid a furlough of civilian employees. This authority may not be used until after an agency has taken all necessary action to defer or reduce nonpersonnel-related administrative expenses. The problem of covering salary and personnel expenses with limited funding may be exacerbated when a CR crosses the calendar year and a mandatory salary increase becomes effective.[11] For example, in fiscal year 2009, the CR enacted a 3.9 percent pay increase for certain civilian employees to begin on the first full pay period of the calendar year. However, the CR did not provide additional funding beyond the enacted rates for operations. Accordingly, most agencies were expected to cover the salary increase and related personnel costs at fiscal year 2008 funding levels.

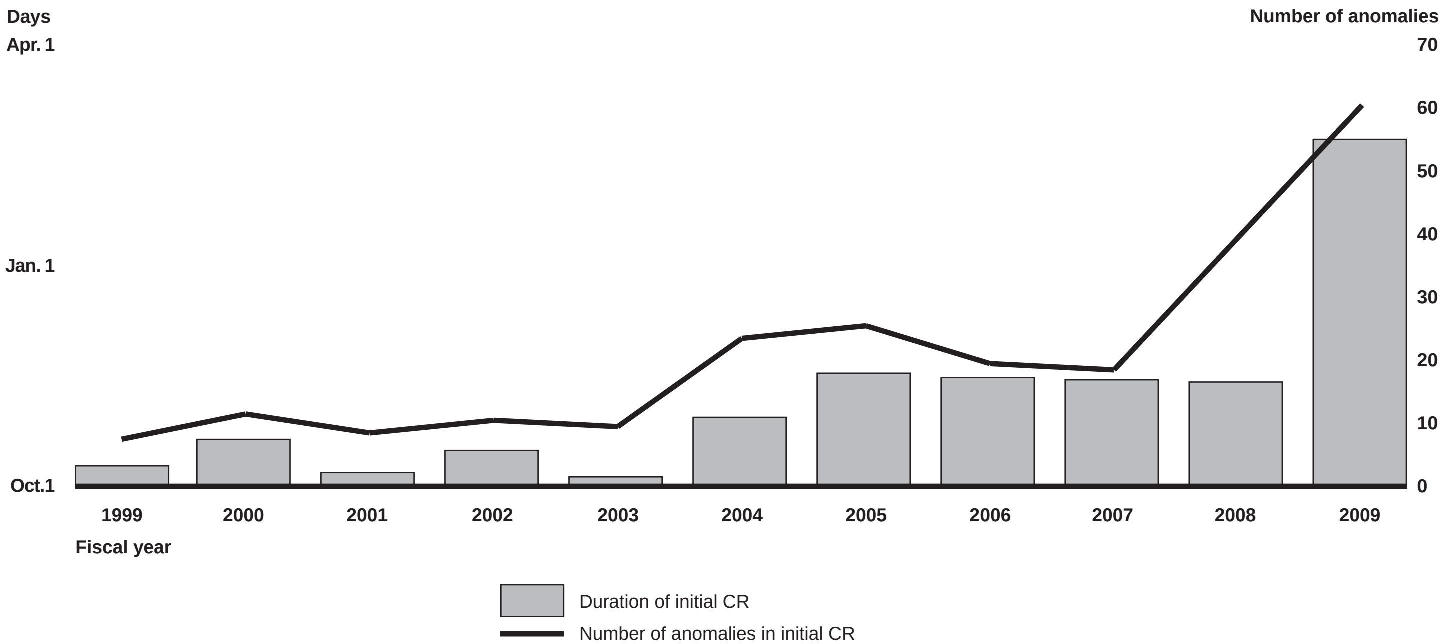
## Legislative Anomalies May Alleviate Some Challenges of Operating during the CR Period

In addition to the standard provisions, CRs contained legislative anomalies that provided funding and authorities that were different from the standard provisions. We identified approximately 280 anomalies enacted in CRs since fiscal year 1999. The number of anomalies generally increased as the duration of initial CRs increased in recent years (see fig. 3). Despite the growing number, legislative anomalies covered a small share of the agencies, programs, and activities covered by the CR in each year. Most agencies operated under the more conservative funding levels and limitations provided by the standard provisions for the duration of the CR.

[10]Mandatory programs, such as Social Security, that are funded through permanent, indefinite appropriations are not subject to the annual appropriations process. However, under programs such as Food Stamps, Medicaid, and certain VA programs, beneficiaries who meet eligibility criteria are entitled to certain payments or other benefits under federal law and funding is provided through the annual appropriations process.

[11]The rates of pay for most executive branch civilian and foreign service employees increase at the beginning of the new calendar year pursuant to statute. 5 U.S.C. §§ 5303 – 5304a.

**Figure 3: Duration of Initial CR and Number of Anomalies (Fiscal Years 1999–2009)**




Source: GAO.

Over two-thirds of the anomalies enacted since 1999 fell into two categories:

- a different amount than that provided by the standard rate for operations, and
- extensions of expiring program authority.

Over one-third of the legislative anomalies enacted since 1999 provided an agency, program, or activity an amount different from that provided in the standard provisions. Programs that received a specific or additional amount or a different rate for operations under a CR include the decennial census, wildfire management, disaster relief, veterans healthcare and benefits, and presidential transition activities. An anomaly in the 2009 CR provided BOP with funding equal to the amount requested to cover costs for the current services level in the President's fiscal year 2009 budget request.[12] The previous year, BOP had received more than $296 million in supplemental appropriations and amounts made available from other DOJ

[12]Current services estimates are based on the continuation of existing levels of service.

appropriation accounts that were not included in the standard rate for operations in the 2009 CR. According to BOP officials, the anomaly in the 2009 CR helped ensure BOP could continue to pay salaries and expenses of the existing staff and costs of the growing inmate population. In any one of the years we studied prior to 2009, CRs only included up to 18 provisions that provided a different amount than what was provided in the standard provisions. However, in 2009 over 30 such provisions were included in the 157-day CR.

In some cases, CRs provided full-year appropriations for a program or activity. Under these circumstances, agencies have funding certainty during the CR period. For example, in fiscal year 2009, the CR appropriated an amount to cover the entire year for Low Income Home Energy Assistance Program (LIHEAP) payments. LIHEAP provides assistance for low-income families in meeting their home energy needs and typically 90 percent of LIHEAP funding is obligated in the first quarter to cover winter heating costs. For several years prior to 2009, OMB provided LIHEAP a seasonal apportionment allowing the program to operate at a higher rate than would have been allowed under OMB's automatic apportionment. However, by receiving a full-year appropriation in the CR, the LIHEAP program could operate with certainty about its final funding level making an exception apportionment unnecessary. However, these circumstances are rare; most federal programs and activities faced uncertainty during the CR period about when and how much funding would be provided in their regular appropriations.

Another large share of legislative anomalies enacted since fiscal year 1999 extended expiring authorities through the specified termination date of the CR. The types of programs extended during the years of our review are diverse, including the National Flood Insurance Program, affordable housing, free lunch, and food service programs. CRs also have extended the authority to collect and obligate fees, such as for mining, or to collect certain copayments from veterans for medications. The fiscal year 2008 CR, for example, included an extension of VA's authority to collect certain amounts from veterans and third parties, including insurance providers. If the authorization had not been extended, VA would have had to operate with less funding.

In some cases, Congress lifted or added restrictions on the authorized purpose for which funds could be used during the CR period or amended other laws. Also, there have been a few legislative anomalies for activities not funded in the prior year, such as a presidential transition. In sum, the number and range of anomalies demonstrate that while CRs are temporary measures, Congress has chosen to include provisions to address specific issues.

## Selected Agencies' Experiences Varied but All Reported That CRs Limited Management Options and Resulted in Inefficiencies

All six case study agencies reported that the most common inefficiencies were delays to certain activities, such as hiring, and repetitive work, including having to enter into several short-term contracts or issuing multiple grants to the same recipient. The effects of the delays and the amount of additional work varied by agency and by activity and depended in large part on the number and duration of CRs.

All case study agencies reported not filling some new or existing positions during the CR period because they were uncertain how many positions their regular appropriation would support or to meet more immediate funding needs during the CR period. For example, according to FBI officials, rates for operations provided in CRs based on the previous year's appropriations acts do not include annual pay raises, the annualization of pay for the previous year's hiring increases, or the increased costs of retirement, health insurance, and other employee benefits. To cover these costs, FBI delayed filling existing positions during CRs. In addition, officials from ACF and FDA said they were reluctant to begin the hiring process during the CR period for fear that the time invested would be wasted if the certificate of eligibles listing qualified applicants expired or the agency received insufficient funding to support the additional staff. Agency officials said that if hiring was delayed during the CR period, it was particularly difficult to fill positions by the end of the year after a longer CR period. Overall, case study agency officials said that, absent a CR, they would have hired additional staff sooner for activities such as grant processing and oversight, food and drug inspections, intelligence analysis, prison security, claims processing for veterans' benefits, or general administrative tasks, such as financial management and budget execution.

Agency officials said that given the number of variables involved, it is difficult to quantify the effect that hiring delays related to CRs had on specific agency activities. Agencies were also largely unable to identify any specific foregone opportunities that may have resulted from a delay in hiring related to CRs. However, they did describe some general effects.

- An FDA official from the Office of Regulatory Affairs said that deferring the hiring and training of staff during a CR affected the agency's ability to conduct the targeted number of inspections negotiated with FDA's product centers in areas such as food and medical devices. Another FDA official said that routine surveillance activities (e.g., inspections, sample collections, field examinations, etc.) are some of the first to be affected.

- BOP officials said that deferring hiring during CRs has made it difficult for BOP to maintain or improve the ratio of corrections officers to inmates as the prison population increases.
- VBA officials cited missed opportunities in processing additional benefits claims and completing other tasks. Because newly hired claims processors require as much as 24 months of training to reach full performance, a VBA official said that the effects of hiring delays related to CRs are not immediate, but reduce service delivery in subsequent years. However, VBA was able to achieve its hiring goals by the end of the fiscal year in each of the past 4 years.[13]

The effects of CRs on hiring at other departments as described by departmental CFOs and others who participated in our panel discussion were similar to those identified by officials at case study agencies. To avoid these types of hiring delays, FBI proceeded with its hiring activities based on a staffing plan supported by the President's Budget during the CR period in 2009. This helped FBI avoid a backlog in hiring later in the year and cumulatively over time. However, FBI assumed some risk that the regular appropriation for the year would not support the hiring plan. According to FBI officials, if the agency had not received a regular appropriation equal to or greater than the President's fiscal year 2009 budget request, it likely would have had to suspend hiring for the remainder of the fiscal year and make difficult cuts to other nonpersonnel expenses.

In addition to delays in hiring, case study agencies also reported delaying contracts during the CR period. For example, VHA medical facilities did not start nonrecurring maintenance projects designed to improve and maintain the quality of VA Medical Centers (e.g., repairs to electrical or sewage systems) but instead waited until the agency received its regular appropriation to fund these projects. BOP reported that it frequently postponed awarding some contracts during a CR. For example, BOP reported delaying the activation of its Butner and Tucson Prison facilities and two other federal prisons in 2007 during the CR period to make $65.6 million in additional resources available for more immediate needs. According to BOP, delays resulting from CRs contributed to delays in the availability of additional prison capacity at a time when prison facilities

[13]VBA operated under a CR for almost 3 months on average in fiscal years 2005-2008 but 43 days into the CR period in fiscal year 2008 it received funding above the current rate.

were already overcrowded. A recent BOP study found that overcrowding is an important factor affecting the rate of serious inmate assault.[14] As of July 9, 2009, BOP facilities were 37 percent over capacity systemwide.

As a result of delaying contracts during CRs, officials from BOP, VHA, and VBA said that they sometimes had to solicit bids a second time or have environmental, architectural, or engineering analyses redone resulting in additional costs in time and resources for the agency. According to BOP, delaying contract awards for new BOP prisons and renovations to existing facilities prevented the agency from locking in prices and resulted in higher construction costs. Based on numbers provided by BOP, a delay in awarding a contract for the McDowell Prison Facility resulted in about $5.4 million in additional costs. However, in general, case study agencies were unable to provide documents confirming cost increases resulting from a CR.

Some agency officials said that contracting delays resulting from longer CRs have also affected their ability to fully compete and award contracts in the limited time remaining in the fiscal year after the agency has received its regular appropriation. Federal law and regulations require federal contracts to be competed unless they fall under specific exceptions to full and open competition.[15] Depending on the type of contract, to fully compete a contract an agency must solicit proposals from contractors, evaluate the proposals received, and negotiate and award the contract to the firm with the best proposal. BOP's Field Acquisition Office, which is responsible for acquisitions over $100,000, said that trying to complete all of its contracts by the end of the fiscal year when a CR lasts longer than 3 to 4 months negatively affects the quality of competition.

Longer CRs also have contributed to distortions in agencies' spending, adding to the rush to obligate funds late in the fiscal year before they expire. For example, VHA reported that it has often delayed contracts for nonrecurring maintenance projects, as described above, until the agency receives its regular appropriation. Although other factors contributed to delays, in 2006 VHA obligated 60 percent (about $248 million) of its $424

[14]Department of Justice, Federal Bureau of Prisons, *The Effects of Changing Crowding, and Staffing Levels in Federal Prisons on Inmate Violence Rates* (Washington, D.C.: 2005).

[15]Competition in Contracting Act of 1984, Pub. L. No. 98-369; 48 C.F.R. § 6.101(b).

million nonrecurring maintenance budget in September, the last month of the fiscal year.[16]

Officials from ACF and VHA said that, in general, most of the discretionary grants that they award are not delayed by shorter-term CRs because these grants are typically awarded later in the fiscal year after the agencies have received their regular appropriation. However, an ACF official said that lengthy CR periods—particularly those that extend beyond mid-February, like the ones that ACF operated under in 2003 and 2009—delay discretionary grant announcements. The official said the delay causes a shift in the grant cycles, pushing back the application review period, which in turn pushes back the final award date.

A longer CR period also may compress the application time available for discretionary grants. For example, VHA reported that CR periods that extend several months into the fiscal year have delayed notification to nonprofit, state, or local governments of possible grant opportunities for constructing, acquiring, or renovating housing and nursing home care for veterans. These delays reduce the time available for potential grant recipients to meet the program's application deadlines, which can affect the quality of applications submitted. The application time available for ACF's discretionary grants may also be compressed by a longer CR. We reviewed the application times for 277 grants awarded by four ACF discretionary grant programs between 2005 and 2008. We found that while application times varied considerably—from 13 to 89 days—they were on average 11 days more in fiscal years when the agency's regular appropriation was enacted before the end of the first quarter than when the agency's appropriation was enacted in the second quarter.[17] However, we could not isolate the effect on application times that resulted from a longer CR period from other factors.

The effect of CRs on grants described by case study agencies was consistent with what we heard from departmental CFOs and others who

[16]See GAO, *Department of Veterans Affairs' Lack of Timely and Accurate Information on Unexpended Balances Limits Effective Management and Congressional Oversight*, GAO-07-410R (Washington, D.C.: May 16, 2007). Congress added language to VA's 2009 appropriation act prohibiting it from obligating more than 20 percent of nonrecurring maintenance funds in the last 2 months of the fiscal year.

[17]The four grants were Administration for Native Americans Social and Economic Development grants, Head Start grants (including Early Head Start), Transitional Living, and Unaccompanied Alien Children Services grants.

participated in our panel discussion. Specifically, panel participants said that discretionary grant awards are generally put on hold at their departments during a CR to avoid having to solicit proposals multiple times. If the amount of funding provided by a formula grant is based on a certain percentage of the total amount appropriated, the grant may be delayed until the department has received its final funding.

According to some representatives of nonprofit organizations and state and local governments, in the past, federal grant recipients have been able to temporarily support programs with funds from other sources until agencies' regular appropriations are passed; however, it is more difficult to do so during periods of economic downturn such as the one they are currently experiencing. An ACF official told us that nonprofit organizations providing shelter to unaccompanied alien children have used lines of credit to bridge gaps in federal funding during a CR. However, in March 2009, a shelter in Texas informed ACF's Office of Refugee Resettlement that its credit was at its limit and it was in immediate need of additional funds to sustain operations for the next 45 to 60 days. The Office of Refugee Resettlement made an emergency grant to this organization to maintain operations with the CR funding remaining.

In addition to the delays described above, some agency officials told us that they delayed making program enhancements because of funding constraints related to the CR. For example, FBI officials said that over $440 million in enhancements to existing programs and activities were delayed in 2009 because the CR instructs agencies to implement only the most limited funding actions to continue operating at the enacted rate. These include improvements to the Data Loading and Analysis System, which FBI said was designed to improve its ability to analyze and share data for counterterrorism, counterintelligence, and cyber intrusion investigations.

## All Case Study Agencies Reported That CRs Increased Workload

In addition to delays, all case study agencies reported having to perform additional work to manage within the constraints of the CR. The most common type of additional work that agencies reported was having to enter into new contracts or exercise contract options to reflect the duration of the CR. Agencies often made contract awards monthly or in direct proportion to the amount and timing of funds provided by the CR. In other words, if a CR lasted 30 days, an agency would award a 30-day contract for goods or services. Then, each time legislation extended the CR, the agency would enter into another short-term contract to make use of the newly available funding.

For example, a BOP-administered federal prison contracted for an optometrist to provide care for the period between October 1, 2007, and November 16, 2007, the dates of the initial CR in 2008. When the CR was extended, the prison awarded a second contract to the optometrist covering November 19, 2007, to December 14, 2007, and a third contract covering December 17, 2007, to December 21, 2007, roughly corresponding to the duration of the CRs in that fiscal year. The prison also entered into contracts for medical services, fuel and utility purchases, and program services such as parenting instructions in a similar manner during CR periods. According to BOP officials, these contracts would have been awarded for the entire fiscal year had there not been a CR. BOP said that personnel perform this type of additional work at each of BOP's 115 institutions to manage funds during a CR.

Other case study agencies reported similar experiences. FBI reported that it undertakes contract actions, including renewals and options, at a specific percentage based on the rate for operations for the period covered by the CR. For example, during the CR in 2009 that covered 43 percent of the fiscal year, FBI said it executed no more than 40 percent of the value of contract renewals. The FBI adjusts over 7,550 purchase orders each time a CR is extended. VHA reported that to conserve funding, the agency enters into contracts that run month to month or the length of the CR rather than annual contracts covering the agency's needs for the entire fiscal year. Also, VHA's 153 medical facilities and roughly 800 clinics order supplies to maintain only the minimum levels needed. Agency officials said that if the agencies had received their regular appropriations at the start of the fiscal year, they would have entered into fewer contracts for longer periods of performance or placed purchase orders less frequently, making this additional work unnecessary.

In general, shorter and more numerous CRs led to more repetitive work for agencies managing contracts than longer CRs did. Numerous shorter CRs were particularly challenging for agencies, such as VHA and BOP, that have to maintain an inventory of food, medicine, and other essential supplies. For example, under longer CRs—or with their regular appropriation—BOP officials said that prison facilities routinely contract for a 60- to 90-day supply of food. In addition to reducing work, this allows the prison facilities to negotiate better terms through a delivery order contract by taking advantage of economies of scale. However, under shorter CRs, these facilities generally limit their purchases to correspond with the length and funding provided by the CR. Thus, the prison makes smaller, more frequent purchases, which BOP officials said can result in increased costs.

To reduce some of the additional work required to manage contracts in years when there are multiple CRs, FBI changed its requisition process to reduce the amount of work its Finance Division spends creating requisitions for contracts when a CR is extended (see fig. 4).

**Figure 4: FBI Streamlined Its Requisition Process during a CR**

FBI generally enters into contracts based on the rate for operations for the period covered by the CR. Previously, each time Congress extended a CR, FBI renewed its contracts to make use of the additional funds that became available, and FBI's Finance Division provided a requisition for the renewal. Under FBI's new streamlined process, at the beginning of the fiscal year, the Finance Division commits enough funds to cover a full-year contract, thus relieving FBI of the need to create a new requisition for each renewal every time a CR is extended.

Source: GAO analysis.

CRs had a similar effect on grant awards. Officials from ACF said that they issue multiple grants to the same grant recipient during the CR period instead of making annual or quarterly awards, resulting in additional work for program managers and/or personnel in the Office of Grants Management.[18] For example, a Head Start official said that if the program received its regular appropriation at the start of the fiscal year, it would likely be able to fund more grant recipients with a single award covering a 12-month period. However, during a CR, Head Start receives funding based on the duration of the CR, and the amount is usually not sufficient to fund all grant recipients for a full year. Rather than delay any individual grants, a Head Start official said that the program has provided some of its grant recipients with a smaller, initial award during the CR period. Then, once the regular appropriation was enacted, Head Start awarded an additional grant to the same recipient, providing the remainder of their annual funding. A Head Start official estimated that issuing an additional grant to the same recipient could take as much as 1 hour per award. The longer the CR period lasts, a Head Start official said, the greater the number of grants they have to award and thus the greater the workload increase.

We examined data from ACF's Grants Administration, Tracking and Evaluation System. Though we could not establish a clear causal link

[18]ACF was selected for case study review in part because of the volume of grants the agency awards. For more information on case study selection, see app. I. FDA and VHA also award a small number of grants but did not report issuing multiple grants to the same recipient because of a CR.

between CRs and specific instances where a grant recipient received multiple awards, we found that in 2008, 185 (about 35 percent) of Head Start Project grants administered to recipients through Head Start's 10 regional offices received a grant during the CR period and a second grant award shortly after ACF's regular appropriation for the year was enacted.[19] For example, one childhood development center received a grant for roughly $1.1 million on December 10, 2007, while ACF was operating under a CR, and a second grant for roughly $1.7 million 51 days later, after ACF's regular appropriation was enacted.

To reduce the amount of additional work required to modify contracts and award grants in multiple installments, two case study agencies reported shifting contract and grant cycles to later in the fiscal year (see fig. 5). An agency's ability to shift its contract cycle depends on a number of factors, including the type of services being acquired. The Federal Acquisition Streamlining Act of 1994 allows agencies to enter into 1-year contracts for severable services that cross fiscal years, so long as the contract period does not exceed 1 year and agencies have sufficient funds to enter into the annual contract. Severable service contracts are for services, such as janitorial services, that are recurring in nature. Using this contract flexibility, an agency can shift its contract cycle so that annual contracts for severable services are executed in the third and fourth quarters of the fiscal year when agencies are less likely to be under a CR.

**Figure 5: Agencies Shifted Contract and Grant Cycles**

Two case study agencies said they had shifted their contracts and grant cycles later in the year to avoid having to delay awards or make multiple, smaller awards during the CR period. FDA reported that over the past several years it has shifted from awarding most of its contract and grant awards at the beginning of the fiscal year to awarding them later in the fiscal year and having them run across fiscal years (e.g., from January to January). Similarly, an ACF official who administers the Assets for Independence (AFI) program—which helps low-income households save earned income in special-purpose, matched savings accounts—said that AFI has scheduled grant awards and new contracts in the second half of the year to reduce the amount of administrative work that the agency performs during a CR.

Source: GAO analysis.

[19] CRs are not the only reason that Head Start made multiple grant awards to the same recipients.

However, some agencies' ability to shift their contract cycle to mitigate the effects of CRs was limited. A VHA official, for example, said that the agency's contract workload is so large that it is difficult for the agency to delay work on certain contracts for even short periods of time. VHA officials also said that the agency makes acquisitions based on immediate needs identified by officials in the field rather than centrally managing the timing of contracts.

All agencies also reported having to perform a variety of administrative tasks multiple times that they would otherwise not have done or would have needed to do only once had they received their regular appropriation on October 1st. For example, FDA reported that CRs increased the amount of administrative work required to allot funds. Agencies generally subdivide the funds that they are apportioned by OMB into allotments, which are distributed to different offices and/or programs within the agency. FDA typically makes allotments from its total apportioned funds to each of the agency's six centers. When FDA receives its regular appropriation, it generally makes these allotments on a quarterly basis. But when it is operating under a CR, FDA officials reported that the agency has made allotments for each CR. Conversely, VBA and VHA reported that they did not allot specific dollar amounts during a CR but rather provided guidance that all offices operate at a certain percentage of the previous year's appropriations (see fig. 6).

**Figure 6: Practice Used to Streamline VA's Allotment Process during a CR**

During a CR, VA's Central Office provides broad funding guidance to its components, including VBA and VHA, rather than allotting funds through its financial management system. According to agency officials, this provides the agency with more flexibility during the CR period and reduces the workload associated with changes in funding levels. VHA officials said that this also allows each facility to manage its funds to meet priorities identified at the local level. Agencies monitor the spending levels to ensure that the amount obligated does not exceed the funding available to each organization.

Source: GAO analysis.

The types of administrative tasks affected by CRs varied by agency but included the following:

- issuing guidance to various programs and offices;
- providing information to Congress and OMB;
- creating, disseminating, and revising spending plans; and
- responding to questions and requests for additional funding above what the agency allotted to different programs or offices within the agency.

Departmental CFOs and others who participated in our panel discussion said that CRs led to similar repetitive work activities at their agencies.

While case study agencies all agreed that performing repetitive activities involved additional time and resources—potentially resulting in hundreds of hours of lost productivity—none of the agencies reported tracking these costs. The time needed to enter into a contract or issue a grant award may be minimal and vary depending on the complexity of the contract or grant, but the time spent is meaningful when multiplied across VHA's 153 medical facilities and roughly 800 clinics, FBI's 56 field offices, BOP's 115 institutions, and the thousands of grants and contracts awarded by our case study agencies. VHA, for example, estimated that it awards 20,000 to 30,000 contracts a year; ACF's Head Start program awards grants to over 1,600 different recipients each year; and FBI places over 7,500 different purchase orders a year. Some agencies provided estimates of the additional or lost production costs at our request for selected work activities for illustrative purposes. These estimates are based on agency officials' rough approximations of the hours spent on specific activities related to CRs. In the case of VHA, the estimate is based on the number of employees performing the tasks multiplied by the average monthly salary.

- VHA estimated that a 1-month CR results in over $1 million in lost productivity at VA medical facilities and over $140,000 in additional work for the agency's central contracting office. The agency operated under a CR for more than 2 months per year on average between 1999 and 2009.
- FBI estimated that the Accounting, Budget, and Procurement Sections spent over 600 hours in 2009 on activities related to managing during the CR such as weekly planning meetings and monitoring agency resources and requisitions.[20]
- ACF estimated that approximately 80 hours of additional staff time is spent for each CR by the ACF's Division of Budget and program offices issuing guidance, allotting funds, creating and revising spending tables, and performing other administrative tasks.[21] In addition, ACF officials estimated that issuing block grant awards multiple times in a single quarter led to approximately 10 additional staff days of work preparing and verifying allocations for grant recipients and preparing the award notices for mailing.

[20]This time estimate does not include the additional work that personnel perform modifying contracts.

[21]This time estimate does not include the additional work required to issue multiple grants.

We did not independently verify these estimates or assess their reliability beyond a reasonableness check, which involved reviewing the related documentation for each estimate and corroborating with related interviews and other documents where possible. Moreover, agencies were not able to identify specific activities that were foregone because of the CR.

## Operating under CRs for a Prolonged Period Limited Some Agencies' Decision-making Options

While some agency officials said that a single, long-term CR allowed for better planning in the near term, reducing delays and the amount of repetitive work, others said that operating under the specified rate for operations for a prolonged period limited their decision-making options, making trade-offs more difficult. For example, FBI officials reported that the number of contract requests that it receives to address emergency situations increases the longer the CR period lasts. As a result, FBI often has to reprioritize funds from other operations to fund these contracts, placing a strain on agency operations. Also, agency officials said that if the agency is unable to spend its funding on high-priority needs, such as hiring new staff, because of the limited time available after a lengthy CR, it ultimately will spend funds on a lower priority item that can be procured quickly.

Some agency officials said that it was difficult to implement unexpected changes in their regular appropriations, including both funding increases and decreases, in the limited time available after longer CRs. For example, officials from ACF's Office of Community Services said they made cuts to planned expenditures for training and technical assistance in 2009 to adjust to an unexpected funding directive for a national initiative on community economic development training and capacity development. Officials from FBI's Criminal Investigative Division said that while funding increases were beneficial, receiving them in their regular appropriation after a longer CR period limited the division's ability to review new contract requests and make the most effective decisions. The Criminal Investigative Division received additional funding in 2009 for mortgage fraud investigations in its regular appropriation enacted on March 11. According to FBI officials, the usual budget and planning cycle, which can take several months, had be completed in just 6 weeks to meet the deadline that FBI has established for completing all of its large dollar contracts by the end of the fiscal year.

In addition, some agency officials reported that absorbing the increased personnel costs in years when the CR period extends into January creates additional challenges, particularly if personnel costs represent a large share of their total budget. This is because most federal civilian employees receive an annual pay adjustment effective in January of each year. Since 1999, the CR period has extended into January four times, and the cost of the salary increase has ranged from 1.7 percent to 4.1 percent (see table 1).

**Table 1: Annual Salary Increases for Federal Employees for Years in Which the CR Extended Beyond the First Quarter**

| Fiscal year | Percent increase | Date by which all regular appropriation acts were enacted |
|---|---:|---|
| 2003 | 4.1 | 2/20/2003 |
| 2004 | 4.1 | 1/23/2004 |
| 2007[a] | 1.7 | 2/15/2007 |
| 2009 | 3.9 | 3/11/2009 |

Source: Federal Register.

[a]The full-year CR enacted on February 15, 2007, provided funds to applicable agencies for the remainder of the fiscal year and provided 50 percent of the cost of an increase in rates of pay.

To the extent an agency's regular appropriations were constant or declined from the previous year, these costs would need to be absorbed by the agency or program regardless of CRs. However, for those agencies that ultimately receive a funding increase, absorbing the annual salary increase may strain already tight budgets during the CR period. For example, BOP reported that approximately 70 percent of operating budgets at BOP institutions are devoted to personnel costs. The 3.9 percent statutory salary increase for 2009 contributed to a $7.8 million increase in payroll requirements between December 2008 and January 2009. Departmental CFOs and others who participated in our panel discussion said that agencies across the federal government have to reduce funding for other needs, such as hiring and training, to pay for statutory salary increases.

## Multiyear Appropriations and Exception Apportionments When Granted Helped Agencies Manage during CRs

In addition to the anomalies previously described, multiyear appropriations or exception apportionments when granted helped to mitigate the effects of CRs at case study agencies. Officials from three agencies that we reviewed said that having multiyear budget authority—funds that are available for more than one fiscal year—was helpful for managing funds in the compressed time period after regular appropriations were enacted. For example, both VBA and VHA said that having the authority to carry over funds into the next fiscal year has been helpful in years with lengthy CRs because there is less pressure to obligate all of their funds before the end of the fiscal year, thus reducing the incentive to spend funds on lower priority items that can be procured more quickly. FBI also has authority to carry over a limited amount of funds into the subsequent fiscal year, and officials from FBI's central budget office said this was helpful during a CR.

OMB has also helped agencies manage during a CR by providing more than the automatic apportionment when justified. While OMB automatically apportions funds to agencies based upon the lower of the percentage of the year covered by the CR or the seasonal rate of obligations for that same time period, OMB recognizes that some programs may need more of their appropriation available at the beginning of the fiscal year during a CR period. OMB will adjust the apportionment upward in some cases, but these are rare exceptions according to OMB staff.

Two of our case study agencies—VHA and ACF—received exception apportionments during the study period—fiscal years 1999 to 2009. OMB apportioned funding for VHA's medical administration account to reflect its seasonal rate of obligations during the CR period in 2008. According to ACF officials, between 2003 and 2008, OMB also apportioned ACF's LIHEAP funding based upon its seasonal rate of obligations during the CR period.[22] The exception apportionment allowed ACF to obligate the bulk of the funds in the first quarter when heating assistance is most needed. Officials from the remaining four case study agencies—BOP, FBI, FDA, and VBA—said these agencies operated with the automatically apportioned amount during CR periods since fiscal year 1999.

## Concluding Observations

The federal budget is an inherently political process in which Congress annually faces difficult decisions on what to fund among competing priorities and interests. CRs enable federal agencies to continue carrying out their missions and delivering services until agreement is reached on their regular appropriations. While not ideal, CRs continue to be a common feature of the annual appropriations process. They provide parties additional time for deliberation and avoid gaps in funding. Agencies have experience managing programs within the funding constraints and uncertainty of CRs and use methods within their available authorities. However, there is no easy way to avoid or completely mitigate the effects of CRs on agency operations.

[22] In the first CR of 2009, LIHEAP received a legislative anomaly providing a full-year appropriation for fiscal year 2009.

The degree of difficulty that case study agencies encountered in managing under a CR varied, but all of the agencies that we reviewed expressed similar concerns about CRs and their effects on their ability to carry out their work efficiently and effectively. These concerns included the need for repetitive activities and incremental planning. Agencies reported that CRs inhibited them from hiring staff and providing a higher level of service than if they were operating under a regular appropriation. When the CR period is long, the time for planning and program execution is compressed, which can be especially challenging when trying to implement new programs or program enhancements. Although we cannot say that the case studies represent the experiences of all federal agencies, there is nothing that suggests they are atypical. Case study examples cross program types and activities and are consistent with the views of our panel of CFOs and other budget officials. Therefore, we believe that the experiences of these six agencies provide useful insights for Congress about agency operations under CRs.

## Agency Comments

We requested comments on a draft of this report from the Departments of Health and Human Services, Justice, and Veterans Affairs. The departments provided comments that were clarifying or technical in nature and we incorporated them as appropriate.

As we agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution of it until 30 days from the date of this letter. At that time, we will send copies to the Secretary of Health and Human Services, the Attorney General, the Secretary of Veterans Affairs, and interested congressional committees. This report will also be available at no charge on the GAO Web site at http://www.gao.gov.

If you or your staff have any questions about this report, please contact Denise M. Fantone at (202) 512–6806 or fantoned@gao.gov or Susan A. Poling at (202) 512–2667 or polings@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are listed in appendix III.

Sincerely yours,

Denise M. Fantone
Director, Strategic Issues

Susan A. Poling
Managing Associate General Counsel

# Appendix I: Objectives, Scope, and Methodology

The objectives of this report are to describe:

1. the history and characteristics of continuing resolutions (CR), and
2. for selected case study agencies, how CRs have affected agency operations and what actions have been taken to mitigate the effects of CRs.

## Analysis of CR Provisions

To achieve our first objective, we analyzed how provisions in CRs enacted from fiscal years 1999-2009[1] direct agencies to operate during the CR period and how the provisions changed over time. Our analysis also covered the number and type of provisions in CRs that provided specific directives or funding levels to particular departments, agencies, and programs for the CR period. We refer to these provisions in the report as "legislative anomalies."

## Case Study Selection

To achieve our second objective, we conducted a case study review analyzing the effects of CRs on select agency operations. In selecting case study agencies, we focused on agencies with (1) extensive experience managing under CRs to facilitate identification of key practices and (2) a broad range of program types, service delivery mechanisms, and operational capabilities to make the findings more useful to agencies across government. Based on the process described below, we selected the following departments and agencies:

Department of Health and Human Services (HHS)

- Administration for Children and Families (ACF)
- Food and Drug Administration (FDA)

Department of Veterans Affairs (VA)

- Veterans Health Administration (VHA)
- Veterans Benefits Administration (VBA)

Department of Justice (DOJ)

- Bureau of Prisons (BOP)
- Federal Bureau of Investigation (FBI)

[1]This time period was chosen to capture recent experiences under a range of circumstances, such as years when different parties were in control of Congress; different administrations; and election and nonelection years.

We used a multistep process to select these departments and agencies. We convened a panel of Chief Financial Officers (CFO) or their representatives from major cabinet-level departments in part to help us identify criteria for case study selection. Eleven of the 15 cabinet-level agencies were represented in our panel, including CFOs, deputy CFOs, and budget directors from the departments of Education, Energy, Homeland Security, Housing and Urban Development (HUD), Interior, Justice, Labor, State, Transportation, Treasury,[2] and Veterans Affairs. The panel was specifically asked to identify (1) factors that may make it more or less difficult to manage under a CR, (2) the activities most affected, and (3) strategies agencies use for managing under CRs. The programs, activities, and other factors identified by our panel that may make it more or less difficult to make trade-offs in a CR environment were considered in our case study selection.

To begin the selection process, we first analyzed the amount of time departments, covered by different appropriations acts, operated under CRs during fiscal years 1999-2008. We calculated the time between the beginning of the fiscal year—October 1—and the date when the regular appropriations were enacted for each appropriations subcommitee. We then selected departments (based upon the jurisdiction of each subcommittee) that were under a CR for more than the average of 847 days over the past 10 years (see table 2).[3]

[2]The Department of Treasury was represented by an official from the Internal Revenue Service.

[3]Currently, Congress considers 12 regular appropriations acts organized around one or more major departments. The number and jurisdiction of appropriations subcommittees changed overtime. Adjustments were made to account for the changes.

**Table 2: Appropriations Acts under a Continuing Resolution for More than the Average of 847 Days during Fiscal Years 1999 and 2008**

| | Appropriations act | Days under CR |
|---|---|---|
| 1 | Labor/Education/HHS | 1125 |
| 2 | Commerce/Justice | 1044 |
| 3 | State | 1044 |
| 4 | Foreign Operations | 1034 |
| 5 | District of Columbia | 995 |
| 6 | Treasury | 977 |
| 7 | Transportation | 962 |
| 8 | HUD | 955 |
| 9 | VA | 955 |
| 10 | Agriculture | 940 |

Source: GAO analysis of appropriation acts.

Notes: These numbers have been adjusted for changes in subcommittee jurisdiction.

Next, we eliminated from further consideration the District of Columbia because it receives significant amounts of funding outside of the regular appropriations process that may have mitigated the effect of CRs on its operations.[4] We also eliminated the Department of State because it received 10 percent or more of its funding from fiscal years 1999-2006 from supplemental appropriations.[5]

Third, to better understand the range of issues raised by CRs across government, we examined departments within the remaining appropriations subcommittees with the intent of selecting departments that provide services in different ways (e.g., directly by federal personnel, through contracts or grants to third parties, and through the use of federal facilities). We analyzed obligations of the remaining departments based on the following four budget object class categories that were used as proxies for different types of service delivery:

[4]The District of Columbia and activities related to the city's government received a substantial portion of funding from nonfederal sources, such as local taxes.

[5]Based on data from GAO, *Supplemental Appropriations: Opportunities Exist to Increase Transparency and Provide Additional Controls*, GAO-08-314 (Washington, D.C.: Jan. 31, 2008).

- Personnel, Compensation, and Benefits (employee salaries and benefits);
- Contractual Services and Supplies (rent, services, supplies and materials);
- Grants and Fixed Charges (grants, insurance, and interest); and
- Acquisition of Assets (equipment, land and structures, investments, and loans).

To maximize the usefulness of each department selected for review and to minimize any limitations of object class data, we selected departments that appeared in the top three for more than one object class.[6] Based on this analysis, the following departments were selected:[7]

- VA (personnel, contractual services and acquisition);
- DOJ (personnel, acquisition); and
- HHS (contractual services, grants).

Fourth, we selected two agencies for review within each of these departments (see table 3) based on a set of criteria that were developed in part from previous GAO work and what we heard from CFOs and others who participated in our panel discussion. These criteria included the number of accounts, the amount of multiyear funding, whether the appropriation provided a lump sum, and whether the agency had transfer authority. We also reviewed budget data to see if any of the selected agencies received a significant amount of their resources (defined for our purposes as 10 percent or more) from offsetting collections, which are treated differently in the regular appropriations process. We reviewed the 2008 appropriation acts for selected agencies with the goal of having representation from one or more case study agency for each of the criteria. We analyzed data at the account level, and if more than one-half of an agency's accounts met the criteria, then the agency was considered for review.

We focused our analysis primarily on discretionary funding because funding for mandatory accounts occurs outside of the annual

[6]This analysis was based on 2007 data. We limited our analysis to the top three in each category. Lower ranking departments (i.e., fourth and fifth) for each object class represent a much smaller portion of budget authority relative to other units of the federal government.

[7]Treasury appeared in the top three in two categories; however, a large percentage of funds classified as "Grants and Fixed Charges" was used to pay interest and dividends, which is a function unique to Treasury. As a result, we considered Treasury to rank highly in only one object class (Personnel, Compensation, and Benefits) and therefore eliminated it based on this criterion.

appropriations process and therefore is not directly affected by CRs. However, we included VBA because we sought to include at least one agency responsible for administering mandatory benefits with discretionary funds.

To analyze the service mechanisms that agencies use to achieve their missions, we examined object class data, program activities, and agencies' descriptions of their programs. If we found that one of the service mechanisms or factors affecting an agency's flexibility in obligating funds was not included, we examined other agencies with large discretionary accounts in each department to see if they could make up for the deficiency. We continued this process until we selected agencies that covered a variety of budget flexibilities and ways to deliver services.

Table 3 shows the agencies selected for review and how long they operated under CRs from 1999 to 2008.

**Table 3: Days Case Study Agencies Operated under a CR, Fiscal Years 1999-2008**

| Case study agency | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 | 2006 | 2007[c] | 2008 | Average[c] |
|---|---|---|---|---|---|---|---|---|---|---|---|
| BOP and FBI | 20 | 59 | 81 | 58 | 142 | 114 | 68 | 52 | 137 | 86 | 82 |
| ACF[a] | 20 | 59 | 81 | 101 | 142 | 114 | 68 | 90 | 137 | 86 | 90 |
| FDA[b] | 20 | 21 | 27 | 58 | 142 | 114 | 68 | 40 | 137 | 86 | 71 |
| VBA and VHA | 20 | 19 | 26 | 56 | 142 | 114 | 68 | 60 | 137 | 86 | 73 |
| Case study average | 20 | 40 | 54 | 68 | 142 | 114 | 68 | 61 | 137 | 86 | n/a |

Source: GAO.

[a]ACF receives its annual appropriations through the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

[b]FDA receives its annual appropriations through the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act.

[c]Excludes the final CR of fiscal year 2007, which provided funding to agencies for the remainder of the year.

Overall, our six case study agencies received more than $46 billion in discretionary budget authority in 2007, accounting for approximately 10 percent of all nondefense discretionary spending. All three of our case study departments were in the top 10 in federal contract dollars by executive department and independent agencies in 2006, and accounted for approximately 22 percent of all nondefense federal contract dollars. The HHS grant portfolio is the largest in the federal government, with approximately 60 percent of the federal government's grant dollars.

## Data Collection

To obtain a range of perspectives, we conducted semistructured interviews with officials at each department-level budget office, each agency's budget office, and at least one program office in each agency. We discussed the effects of CRs on different types of programs and activities within these agencies. We asked agency officials to demonstrate the effects of regular appropriations being enacted after the start of the fiscal year and to distinguish the effects of the CR versus other possible causes (e.g., level of funding, changes in workload).

We provided each agency a standard request for information on budget resources, activities associated with CRs, and planning documents among other things. To provide illustrative examples of the types of costs associated with CRs, we also asked for estimates of the resources needed to perform certain activities or to provide services (e.g., time, average cost of staff days) associated with CRs. In one instance, BOP provided the approximate cost of delays in awarding a contract for a new prison facility, but overall, agencies reported that they do not track these costs. However, they did provide their best estimates at our request. We have not independently verified these estimates or assessed the estimates for reliability beyond a reasonableness check but include them for illustrative purposes. Our check involved reviewing the related documentation for each estimate and corroborating the estimate with related interviews and other documents where possible.

One of the limitations of our case study analysis is that we had to rely to a large degree on testimonial evidence because case study agencies could not provide documentation showing the foregone opportunities resulting from a CR. In general, agencies do not produce planning documents—such as spending plans or monthly hiring targets—until they have received their regular appropriations. Aside from VA, all case study agencies have operated under a CR for each of the past 11 years and therefore could only speculate on how they would have operated differently or more efficiently, except anecdotally. In general, there were too many variables for agencies to isolate the effects of CRs from other factors.

Selected case studies cannot be generalized, but similarities in agency officials' accounts of operating under CRs suggest that there are broad-based commonalities in the experiences of federal agencies. When possible, we incorporated statements made by CFOs and others who participated in our panel discussion into our case study review questions and discussions with officials at case study agencies to better understand whether the effects of CRs described by case study agencies were similar to those made by our panel.

To better understand the potential effects of CRs on entities receiving federal funding, we interviewed officials representing states and contractors, including the National Association of State Budget Officers, National Conference of State Legislatures, Federal Funds Information for States, one state budget officer, the Professional Services Council, and Logistics Management Institute Government Consulting. In addition, ACF also provided us with information that it received from some grant recipients regarding difficulties managing programs during CRs.

We conducted this performance audit from September 2008 to September 2009 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

# Appendix II: Additional Information on Provisions and Funding Provided in Continuing Resolutions

Since 1999, continuing resolutions (CR) have contained the same nine standard provisions that govern most agencies, programs, and activities covered by the CR. Two new standard provisions were added during this time period, the appropriated entitlement provision and the furlough restriction. These standard provisions are listed and described in table 4.[1]

**Table 4: Standard CR Provisions**

| Provision | Description |
|---|---|
| Rate for Operations | Appropriates amounts necessary to continue projects and activities that were conducted in the prior fiscal year at a specific rate for operations. |
| Extent and Manner | Incorporates restrictions from prior year's appropriations acts or the acts currently under consideration. |
| No New Starts | Amounts appropriated under a CR are not available to initiate or resume projects or activities for which appropriations, funds, or authority were not available during the prior fiscal year. |
| Coverage of CR Obligations | Appropriations made available under the CR shall remain available to cover all properly incurred obligations and expenditures during the CR period. |
| Adjustment of Accounts | Expenditures made during the CR period are to be charged against applicable appropriations acts once they are finally enacted. |
| Apportionment Timing | Apportionment time requirements under 31 U.S.C. § 1513 are suspended during the CR period but appropriations provided under a CR must still be apportioned to comply with the Antideficiency Act and other federal laws. |
| High Rate of Operations | Programs or activities with a high rate of obligation or complete distribution of appropriations at the beginning of the prior fiscal year shall not follow the same pattern of obligation nor should any obligations be made that would impinge upon final funding prerogatives. |
| Limited Funding Actions | Agencies are directed to implement only the most limited funding action to continue operations at the enacted rate. |
| Appropriated Entitlements | Authorizes entitlements and other mandatory payments whose budget authority was provided in the prior year appropriations acts to continue at a rate to maintain program levels under current law (or to operate at present year levels). Amounts available for payments due on or about the first of each month after October are to continue to be made 30 days after the termination date of the CR. |
| Furlough Restriction | Authorizes the Office of Management and Budget (OMB) and other authorized government officials to apportion up to the full amount of the rate for operations to avoid a furlough of civilian employees. This authority may not be used until after an agency has taken all necessary action to defer or reduce nonpersonnel-related administrative expenses. |
| Termination Date | Date on which the CR expires. Usually based on the earlier of a specific date or the enactment of the annual appropriations acts. |

Source: GAO.

[1] For a broader discussion of CRs, see GAO, *Federal Principles of Appropriations Law*, vol. 2, ch. 8, (GAO-06-382SP, February 2006).

CRs are often described as continuing projects and activities at the previous year's level, but this is not always the case. The amount provided by a CR often is based on the prior fiscal year's funding level or the "current rate" but may also be based on other documents that reflect Congress' or the Administration's more current positions on funding and operations of federal agencies and programs. The amount provided is sometimes based on an appropriations bill that has passed both the House and the Senate but has not been signed by the President or other legislative or executive documents such as a conference report or the President's budget request. Often the CR will enact a rate equal to the lower of the "current rate" or not to exceed the current rate and an amount provided for in a bill, the budget request, or some other legislative document.

A CR will appropriate "such amounts as may be necessary" for continuing "projects or activities" that were conducted in the previous fiscal year at a specified rate for operations. For purposes of determining which government programs are covered by the resolution, the term "project or activity" refers to the total appropriation rather than the specific project or activities as provided by the President's budget request or a committee report. If an agency is operating at a rate based upon the prior year's funding level, or the current rate, during a CR period, the agency is operating within the limits of the resolution so long as the total of obligations under the appropriation does not exceed the level enacted in the prior year. Below we describe the differences in the various rates for operations and other considerations when determining the enacted rate.

## Current Rate

"Current rate" as used in a CR refers to the total amount of budget authority that was available for obligation for a project or activity during the fiscal year immediately prior to the one for which the CR is enacted. In general, the current rate refers to a sum of money rather than a program level. Thus, the amount of money available under the CR will be limited by that rate, even though an agency's workload and program needs may increase.

To determine the amount available under the current rate, it is necessary to determine whether the appropriation is a 1-year, multiple-year, or no-year appropriation. For programs and activities funded through a 1-year appropriation in prior years, the current rate is equal to the total funds appropriated for the program for the previous year.[2] In those instances in which the program has been funded by multiple-year or no-year appropriations in prior years, the current rate is equal to the total funds appropriated for the previous fiscal year plus any unobligated budget authority carried over into that year from prior years.[3]

## Rate Not Exceeding the Current Rate

When the CR appropriates funds to continue an activity at a rate for operations "not exceeding the current rate" or "not in excess of the current rate" the project or activity has no more funds than it had available for obligation in the prior fiscal year. Thus, if the appropriation is multiple-year or no-year funding, any unobligated balance carried over into the CR period must be deducted from the current rate in determining the amount of funds appropriated by the CR. If this were not done, the project or activity would be funded at a higher level in the present year than it was in the prior year.

## Other Rates for Operations

The CR may also appropriate funds to continue a project or activity at a rate for operations in reference to legislative documents, such as House, Senate, or Conference Reports, or executive documents, such as the President's budget request. Often, the CR will provide for the possibility of several rates for operations depending upon where the appropriations bill is in the legislative process at the beginning of the fiscal year. In such cases, for each appropriation account, the agency must compare the amounts referenced in the CR to determine the enacted rate for that particular account.

The rate for operations specified in the CR, regardless of whether it is the current rate or based on another amount in a legislative document, is an annual amount. The continuing resolution, whether lasting 1 day or 1 month, appropriates this full amount. As such, an agency may legally follow any pattern of obligating funds, so long as it is operating under a plan which enables continuation of activities through the fiscal year within

[2]Amounts transferred into the appropriation account as required by statute are included in the current rate. Transferred amounts pursuant to discretionary transfer authority are not included in the determination of the current rate. B-308773, Jan. 11, 2007.

[3]Amounts provided in supplemental acts will be included in the amount unless it is clear from the language of the CR or the supplemental legislation that such amounts were not to be considered in the current rate. For example, in fiscal year 2009, the CR stated that the amounts enacted in certain emergency supplemental appropriations acts were not to be included when determining the rate for operations.

the limits of that annual amount and is consistent with other provisions of the CR.[4] Under this principle, when operating under a CR which appropriates funds at the current rate, an agency is not necessarily limited to incurring obligations at the same rate it incurred them in the corresponding time period of the preceding year. Instead the pattern must reflect an operation that could continue activities for the fiscal year at the limits of the amounts appropriated in the previous year. OMB's apportionment of the appropriation will also affect the availability of the appropriation for obligation.

## Determining the Amounts Available for Operations

Because the rate for operations changes from year to year, it is necessary to examine the language of the CR very carefully to identify the formula that has been provided for determining amounts available during the CR period. It may be necessary to examine documents other than the CR itself. Often, different appropriations accounts will be operating at different rates depending upon the status of the appropriations bill. The following two examples illustrate different rates for operations enacted in the standard provisions during the last 10 years.

**Figure 7: Fiscal Year 2005-Rate for Operations**

SEC. 101. Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for fiscal year 2004 for continuing projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this joint resolution) which were conducted in fiscal year 2004, *at a rate for operations not exceeding the current rate*, and for which appropriations, funds, or other authority was made available in the following appropriations Acts: [List of annual appropriations acts for fiscal year 2004].

Source: Pub. L. 108-309.

[4]The obligation patterns during the CR period must also follow other provisions in the legislation. As discussed previously, standard provisions provide direction about how agencies should manage expenditures during the CR period.

**Figure 8: Fiscal Year 2006-Rates for Operations**

SEC. 101. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for fiscal year 2005 for continuing projects or activities (including the costs of direct loans and loan guarantees) that are not otherwise specifically provided for in this joint resolution, that were conducted in fiscal year 2005, and for which appropriations, funds, or other authority would be available in the following appropriations Acts:

[List of proposed fiscal year 2006 acts:]

(b) Whenever the amount that would be made available or the authority that would be granted for a project or activity under an Act listed in subsection (a) as passed by the House of Representatives as of October 1, 2005, is the same as the amount or authority that would be available or granted under the same or other pertinent Act as passed by the Senate as of October 1, 2005—

(1) the project or activity shall be continued at a rate for operations not exceeding the current rate or the rate permitted by the actions of the House and the Senate, whichever is lower, and under the authority and conditions provided in applicable appropriations Acts for fiscal year 2005; or

(2) if no amount or authority is made available or granted for the project or activity by the actions of the House and the Senate, the project or activity shall not be continued.

Source: Pub. L. 108-309.

In figure 7, all appropriations listed in section 101 would operate at the rate for operations not exceeding the current rate. In figure 8, a project or activity may operate at the lower of either the rate for operations not exceeding the current rate or the rate based upon the amounts provided by the House and Senate bills passed before October 1, 2005. So, for example, if bills passed by the House and Senate included the same amount for an activity in fiscal year 2006, the agency would have to compare the amounts passed by the House and Senate with the current rate. If the House and Senate amount is lower, the agency will continue the project or activity at a rate based upon that amount. If the current rate is lower, the project and activities will continue at a rate for operations not exceeding the current rate. Also, in 2006, if the bills passed by the House and Senate provided no amount for the project or activity, the project or activity would not continue (rate for operations is zero).

## OMB Apportionment Guidance

OMB issues apportionment guidance directing agencies how to calculate the amount of funds available to obligate and spend during the CR period. OMB automatically apportions these amounts. The formula used to determine the apportionment has generally remained the same since fiscal year 1999. To better preserve Congress' and the President's final funding prerogatives, the apportionment is equal to the annualized amount (or rate) for each appropriation account funded by the CR multiplied by the *lower* of:

- the percentage of the year covered by the CR, or
- the historical seasonal rate of obligations for the period of the year covered by the CR.

For example, assume an agency's annualized amount for an appropriation account was $100 million. If the initial CR period was 36 days or 10 percent of the fiscal year and the agency's rate of obligations during the first 10 percent of the fiscal year was 25 percent of its annual appropriations, then the automatic apportionment for that appropriation account would be $10 million during the CR period because the amount based on the percentage of the year is lower than the seasonal rate. If the rate of obligations was 5 percent, the automatic apportionment would be $5 million for the CR period.

While the automatic apportionment formula has remained the same over the last 10 years, the calculation of the annualized amount will change depending on the rate for operations provided by the CR and other provisions.

# Appendix III: GAO Contacts and Staff Acknowledgments

## GAO Contacts

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## Acknowledgments

In addition to the contacts named above, Carol Henn, Assistant Director; Julie Matta, Assistant General Counsel; Melissa Wolf, Analyst-in-Charge; Sheila Rajabiun, Senior Attorney; Aglae Cantave; Juan Cristiani; Felicia Lopez; and Tom McCabe made key contributions to this report. Leah Querimit Nash, Albert Sim, and Jessica Thomsen also contributed.

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