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BUDGET ISSUES

Effects of Budget Uncertainty from Continuing Resolutions on Agency Operations

Statement for the Record by Michelle Sager, Director
Strategic Issues

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Highlights

Highlights of GAO-13-464T, a statement for the record to the Committee on Homeland Security and Governmental Affairs, U.S. Senate

March 2013

BUDGET ISSUES

Effects of Budget Uncertainty From Continuing Resolutions on Agency Operations

Why GAO Did This Study

Congress annually faces difficult decisions on what to fund among competing priorities and interests with available resources. Continuing resolutions (CRs) can create budget uncertainty, complicating agency operations and causing inefficiencies. In all but 3 of the last 30 years, Congress has passed CRs to provide funding for agencies to continue operating until agreement is reached on final appropriations.

GAO was asked to provide a statement based on findings from its 2009 report on managing under CRs (GAO-09-879). This statement focuses on (1) a history of CRs and the provisions that Congress includes within them and (2) the effects of CRs on agency operations and actions that federal agencies have taken to manage these effects. GAO's 2009 report reviewed six federal agencies within three cabinet-level departments selected based on factors such as the length of time spent managing under CRs and the types of services they provided. These six case study agencies were the Administration for Children and Families and the Food and Drug Administration within the Department of Health and Human Services; Veterans Health Administration and Veterans Benefits Administration within the Department of Veterans Affairs; and Bureau of Prisons and Federal Bureau of Investigation within the Department of Justice. Under CRs that provide funding for the remainder of a fiscal year, agencies obtain certainty about funding. Therefore, CRs that spanned the months remaining in a fiscal year were not the focus of GAO's report.

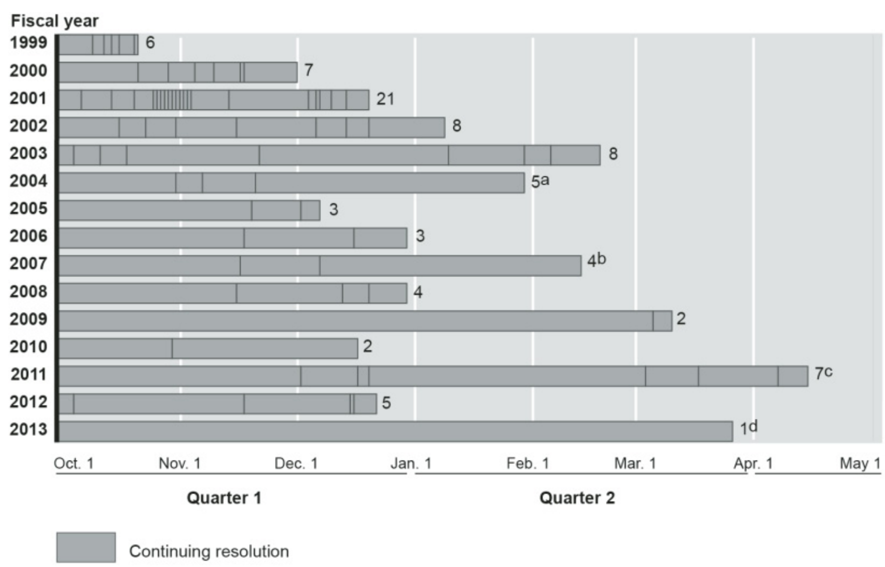
GAO did not make recommendations in the 2009 report.

View GAO-13-464T. For more information, contact Michelle Sager at (202) 512-6806 or sagerm@gao.gov

What GAO Found

Because CRs only provide funding until agreement is reached on final appropriations, they create uncertainty for agencies about both when they will receive their final appropriation and what level of funding ultimately will be available. Effects of CRs on federal agencies differ based in part on the duration and number of CRs and may vary by agency and program. CRs include provisions that prohibit agencies from beginning new activities and projects and direct agencies to take only the most limited funding actions. Congress can provide flexibility for certain programs and initiatives through the use of legislative anomalies, which provide funding and authorities different from the standard CR provisions.

Figure 1: Duration and Number of Continuing Resolutions (Fiscal Years 1999–2013)



Source: GAO.

[a]The fifth CR, P.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 the figure.
[c]In April 2011, Congress enacted a 168-day CR that provided funding for the remainder of the fiscal year. This CR is not included in the figure.
[d]The figure is as of March 11, 2013.

Officials from all six case study agencies reported that they delayed hiring or contracts during the CR period, potentially reducing the level of services agencies provided and increasing costs. After operating under CRs for a prolonged time, agencies faced additional challenges executing their final budget as they rushed to spend funds in a compressed timeframe. All case study agencies reported performing additional work to manage within CR constraints, such as issuing shorter term grants and contracts multiple times. Agency officials reported taking varied actions to manage inefficiencies resulting from CRs, including shifting contract and grant cycles to later in the fiscal year to avoid repetitive work, and providing guidance on spending rather than allotting specific dollar amounts during CRs to provide more flexibility and reduce the workload associated with changes in funding levels.

Chairman Carper, Ranking Member Coburn, and Members of the Committee:

I am pleased to submit this statement on our work on continuing resolutions and the costs of budget uncertainty. As you know, Congress annually faces difficult decisions on what to fund among competing priorities and interests with available resources. Frequently, final funding decisions are postponed to allow additional time for deliberations. In all but 3 of the last 30 years Congress has passed continuing resolutions (CRs) to provide funding for agencies to continue operating when their regular appropriation bills have not been enacted before the beginning of the new fiscal year. While CRs provide funding that allows agencies to continue operations until agreement is reached on their final appropriations, they also create uncertainty for agencies about both when they will receive their final appropriation and what level of funding will ultimately be available. This presents challenges for federal agencies continuing to execute their missions and plan for the future.

Uncertainty is further created in years when it is unclear whether disagreements can be resolved before a CR expires. For example, in 2011, agencies prepared for a potential funding gap and an orderly shutdown of government operations. The shutdown was averted in the final hours through the April 9 passage of a continuing resolution.[1] Such a funding gap last occurred in fiscal year 1996. Budget uncertainty is not new and not only the result of CRs. Most recently, agencies are managing and planning around the uncertainty associated with the automatic, across-the-board reductions (sequester) to their budget scheduled under the Budget Control Act (BCA) of 2011.[2] While there was extensive discussion earlier this year about if and to what extent such reductions would take place, a sequestration of discretionary and direct spending was ultimately ordered earlier this month—reducing federal agencies' 2013 budgets five months into the fiscal year.

This statement will focus on: (1) A history of CRs and provisions Congress includes within them and (2) the effects that CRs have had on agency operations and actions that federal agencies have taken to

[1] P.L. 112-8

[2] P.L. 112-25

manage effects of CRs. This statement is primarily based on a 2009 GAO report that reviewed six federal agencies within three cabinet-level departments selected based on factors such as the length of time spent managing under CRs and the types of services they provided.[3] The agencies were Administration for Children and Families (ACF) and the Food and Drug Administration (FDA) within the Department of Health and Human Services (HHS); Veterans Health Administration (VHA) and Veterans Benefits Administration (VBA) within the Department of Veterans Affairs (VA); and Bureau of Prisons (BOP) and Federal Bureau of Investigation (FBI) within the Department of Justice (DOJ). Although it is difficult to isolate the effects of CRs and none of the agencies we spoke to said they tracked the time or resources explicitly devoted to CRs, we asked agencies to discuss, quantify where possible and provide examples of the effects of regular appropriations being enacted after the start of the fiscal year—October 1. Under CRs that provide funding for the remainder of a fiscal year, agencies obtain certainty about funding. Therefore, CRs that spanned the months remaining in a fiscal year were not the focus of our report.

We conducted our work in accordance with generally accepted government auditing standards.[4] Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings based on our audit objectives.

CRs Provide Interim Funding for Agencies and Programs

Federal departments and agencies receive funding through regular annual appropriations acts. 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. To prevent funding gaps, Congress enacts CRs to maintain a level of service in government operations and programs until Congress and the President reach agreement on regular appropriations. Because CRs only provide funding

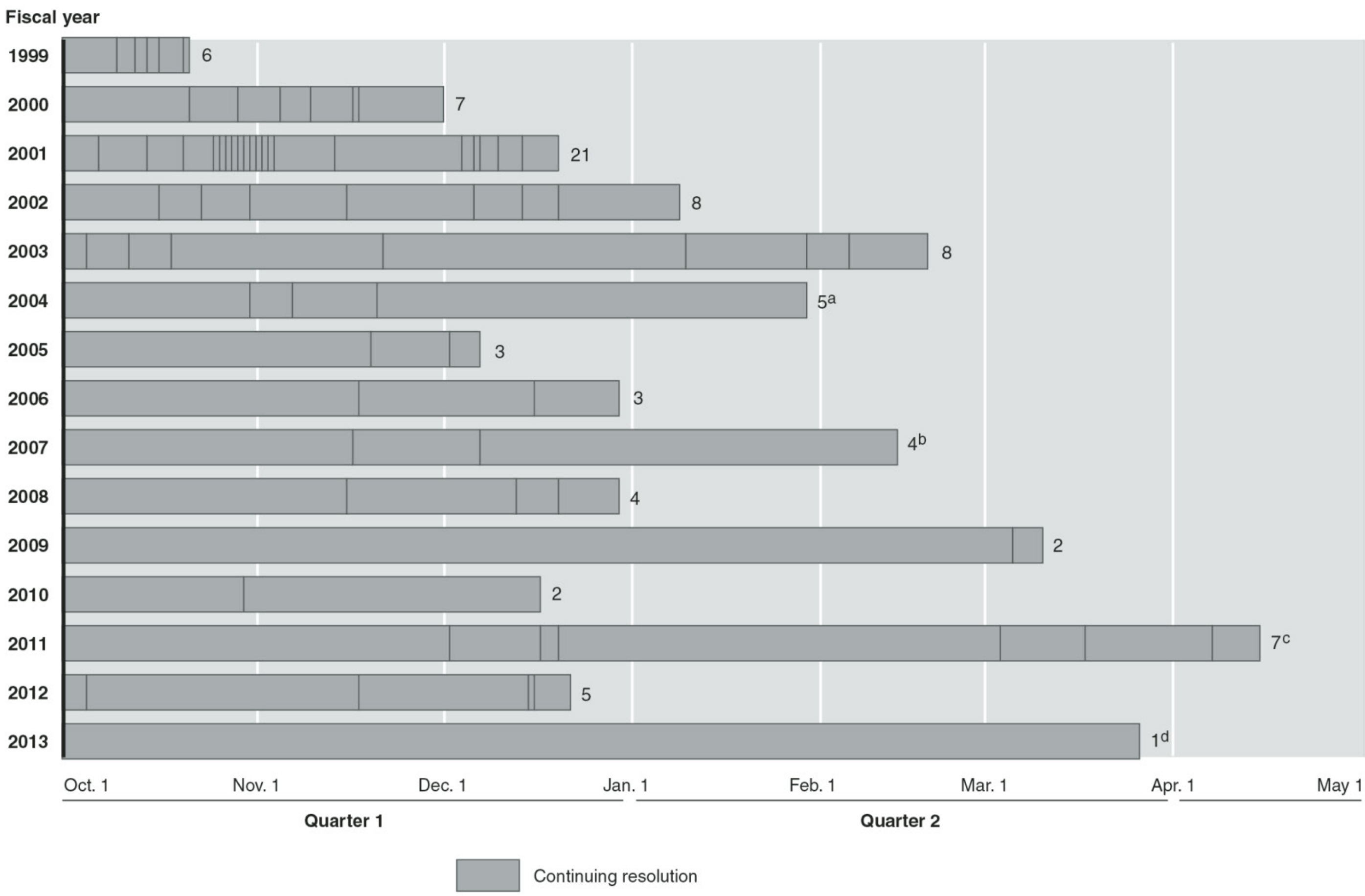
[3]See GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879 (Washington, D.C.: Sept. 24, 2009).

[4]We conducted our work for GAO-09-879 from September 2008 to September 2009 and updated the analysis of the number and duration of continuing resolutions from February to March 2013.

until agreement is reached on final appropriations, they create uncertainty for agencies about both when they will receive their final appropriation and what level of funding ultimately will be available.

The effects of CRs on federal agencies differ in part on the duration and number of CRs. As the examples in my statement will illustrate, shorter and more numerous CRs can lead to repetitive work. Longer-term CRs allowed for better planning in the near term, however, operating under the level of funding and other restrictions in the CR for a prolonged period also limited agencies' decision-making options and made tradeoffs more difficult. As shown in figure 1, the duration and number of CRs has varied greatly between fiscal years 1999-2013, ranging from 1 to 197 days. The number of CRs enacted in each year also varied considerably ranging from 2 to 21, excluding the current fiscal year.

Figure 1: Duration and Number of Continuing Resolutions (Fiscal Years 1999-2013)



Source: GAO.

[a]The fifth CR, P.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 the figure.

[c]In April 2011, Congress enacted a 168-day CR that provided funding for the remainder of the fiscal year. This CR is not included in the figure.

[d]The figure is as of March 11, 2013.

The effects of CRs also vary by agency and program. Not all federal agencies, for example, are under CRs for the same amount of time. In our 2009 report we found that 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. More recently, for fiscal year 2013, all federal agencies are operating under a CR scheduled to expire on March 27, 2013.

Congress includes provisions applicable to the funding of most agencies and programs under a CR. These provisions provide direction regarding the availability of funding within a CR 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 of 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 may operate under different rates. 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 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 during the CR. 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, or distribute amounts available for obligation, 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.

Recognizing the constraints inherent in a CR, Congress has at times provided flexibility for certain programs and initiatives through the use of legislative anomalies, which provide funding and authorities different from the standard CR provisions.[5] While uncommon, the majority of the anomalies provided either (1) a different amount than that provided by the

[5]In our previous work, we identified 11 standard provisions applicable to the funding of most agencies and programs under a CR. These include the provisions that provide the rate for operations during the CR period, the termination date of the CR, and the prohibition on new activities and projects for which appropriations, funds, or other authority were not available in the prior fiscal year. In contrast, anomalies are nonstandard provisions that provide specific directives to particular agencies. See GAO-09-879 for more information.

standard rate of operations or (2) an extension of expiring program authority. In some cases, CRs provide full-year appropriations for a program or activity, to help agencies manage funds. 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.[6] In addition to the anomalies, multiyear appropriations and advance appropriations can help agencies manage the effects of CRs. For example, agency officials stated that multiyear appropriations, which provide the authority to carry over funds into the next fiscal year, can be 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.

Delays and Increased Workload Affected Agencies' Ability to Carry Out their Missions Efficiently and Effectively

Continuing Resolutions Affected the Level, Cost, and Quality of Services

Case study agency officials contacted for our 2009 report said that, absent a CR, they would have hired additional staff sooner for government services 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. While agency officials said that it was difficult to quantify the effect that hiring delays related to CRs had on specific agency activities given the number of variables involved,

[6] Since 2009, an anomaly in a CR has provided LIHEAP an amount to cover the entire year twice, in fiscal years 2011 and 2013. In both of these years, the CR period extended into the second quarter.

agencies provided examples that illustrated the potential adverse effects including:

- An FDA official 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 and that routine surveillance activities (e.g., inspections, sample collections, field examinations, etc.) were some of the first to be affected.
- BOP officials said that deferring hiring during CRs had made it difficult for BOP to maintain the ratio of corrections officers to inmates as the prison population increased.
- 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 were not immediate, but reduced service delivery in subsequent years.

Several case study agencies also reported delaying contracts during the CR period, which could reduce the level of services agencies provided and increased costs. 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 available for more immediate needs. According to BOP, these delays in the availability of additional prison capacity occurred at a time when prison facilities were already overcrowded. BOP officials also said that 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 and increases in the cost of supplies. 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. In some instances, delaying contracts resulted in additional costs in terms of time and resources. For example, 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.

Some agency officials said that contracting delays resulting from longer CRs also affected their ability to fully compete and award contracts in the limited time remaining in the fiscal year after the agency had received its regular appropriation. VHA and ACF reported that the application time available for discretionary grants may also be compressed by a longer CR. Further, VA stated that this compressed application time adversely affected the quality of submitted applications. Similarly, 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.

According to some representatives of nonprofit organizations and state and local governments, federal grant recipients could temporarily support programs with funds from other sources until agencies' regular appropriations are passed; however, it was more difficult to do so during periods of economic downturn such as the one they recently experienced. 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.

Case study agencies reported that they continued to feel the effects of the delays caused by CRs even after the agencies had received their full year appropriations. In general, longer CRs can make it more difficult to implement unexpected changes in agencies' regular appropriations, because agencies have a limited time to do so. In addition, longer CRs can contribute to distortions in agencies' spending as agencies rush to obligate funds late in the fiscal year. For example, agency officials said that if hiring was delayed during the CR period, it was particularly difficult to fill positions by the end of the fiscal year after a longer CR period. Agency officials said that if the agency does not have enough time to spend its funding on high-priority needs (such as hiring new staff) because of a lengthy CR, the agency ultimately may spend funds on a lower priority item that can be procured quickly.

Increased Workload Stemming from Continuing Resolutions Diverted Resources from Competing Priorities

In addition to delays, all case study agencies reported having to perform additional work to manage within the constraints of the CR—potentially resulting in hundreds of hours of lost productivity. The most common type of additional work that agencies reported was having to enter into shorter term contracts or grants multiple times to reflect the duration of the CR. Agencies often made contract or grant 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. In 2009, agencies reported that the time needed for these tasks may be minimal and vary depending on the complexity of a 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. For example, at the time of our study, VHA estimated that it awarded 20,000 to 30,000 contracts a year; ACF's Head Start program awarded grants to over 1,600 different recipients each year; and FBI placed over 7,500 different purchase orders a year. While none of the agencies reported tracking these costs, VHA estimated that a 1-month CR resulted 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. These estimates were based on agency officials' rough approximations of the hours spent on specific activities related to CRs multiplied by average cost of the salary of the federal employee performing the task.[7]

In addition to adjusting contract and grant awards, all agencies also reported having to perform a variety of administrative tasks multiple times, including issuing guidance to various programs and offices; creating, disseminating, and revising spending plans; responding to questions and requests for additional funding above what the agency allotted to different programs or offices within the agency; and providing information to Congress and the Office of Management and Budget (OMB). These tasks, which agencies said that they would otherwise not have done or would have done only once had they received their regular appropriation on October 1, diverted resources from competing priorities. ACF estimated that for each CR its Division of Budget and program offices spent approximately 80 hours of additional staff time issuing guidance, allotting funds, creating and revising spending tables, and performing other administrative tasks.[8] FBI estimated that the Accounting, Budget, and Procurement Sections spent more than 600 hours in 2009 on

[7]Agencies, including VHA, ACF, and FBI, provided estimates of the additional or lost production costs at our request. 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.

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

activities related to managing during the CR such as weekly planning meetings and monitoring agency resources and requisitions.[9]

In general, numerous shorter CRs led to more repetitive work for agencies managing contracts than longer CRs. 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 and could result in increased costs. For example, absent a CR, BOP officials said that prison facilities routinely contracted for a 60- to 90-day supply of food. In addition to reducing work, this allowed the prison facilities to negotiate better terms in delivery order contracts by taking advantage of economies of scale. However, under shorter CRs, these facilities generally limited their purchases to correspond with the length and funding provided by the CR. Thus, the prison made smaller, more frequent purchases, which BOP officials said could result in increased costs.

Agencies' Strategies to Manage Inefficiencies Resulting from CRs Varied

Agency officials told us they took various actions to manage inefficiencies resulting from CRs, including delays and increased workload. For example, to avoid the types of hiring delays often associated with a CR, during the CR period in 2009 FBI proceeded with its hiring activities based on a staffing plan supported by the President's Budget. This helped FBI avoid a backlog in hiring later in the year and cumulatively over time, but the agency assumed some risk because it could have received a regular appropriation that did not support the hiring plan it had implemented. Had this happened, FBI officials stated that FBI likely would have had to suspend hiring for the remainder of the fiscal year and make difficult cuts to other nonpersonnel expenses.

To reduce the amount of additional work required to modify contracts and award grants in multiple installments, ACF and FDA reported shifting contract and grant cycles to later in the fiscal year. An agency's ability to shift its contract cycle depends on a number of factors, including the type

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

of services being acquired.[10] An agency can shift its contract cycle so that annual contracts for severable services, such as recurring janitorial services, are executed in the third and fourth quarters of the fiscal year when agencies are less likely to be operating under a CR. Further, FBI reported it generally entered 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, the Finance Division committed enough funds to cover a full-year contract at the beginning of the fiscal year.

To reduce the administrative work required to subdivide funds from each CR to different offices, programs, or both, 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. 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.

We have not reviewed agency operations under CRs since we issued our 2009 report. However, studies issued after our report was released have highlighted similar themes.

This concludes my statement for the record.

[10] 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.

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