



The Costs of Budget Uncertainty

Analyzing the Impact of Late Appropriations

One Hundred Twelfth Congress
of the
United States of America
AT THE FIRST SESSION

*Began and held at the City of Washington on Wednesday,
the fifth day of January, two thousand and eleven*

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Joint Resolution

Making further continuing appropriations for fiscal year 2012, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Continuing Appropriations Act, 2012 (Public Law 112-36) is further amended by striking the date specified in section 106(3) and inserting "December 23, 2011".

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The Costs of Budget Uncertainty: Analyzing the Impact of Late Appropriations

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IBM Center for
The Business of Government

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Foreword

On behalf of the IBM Center for The Business of Government, we are pleased to present this report, *The Costs of Budget Uncertainty: Analyzing the Impact of Late Appropriations*, by Philip G. Joyce, Professor of Management, Finance, and Leadership, Maryland School of Public Policy, University of Maryland.

This report comes at an especially opportune time, calling attention to the increasingly unpredictable federal budget process and the many challenges it creates for efficient and effective management of federal operations. But even in this environment, federal managers must still deliver services and programs as effectively and efficiently as possible. What steps can they take to do so?

By analyzing historical events and interviews with participants, Dr. Joyce describes the effects of late appropriations on federal operations over the last 35 years, and explains how federal managers have attempted to address increasingly greater levels of budget uncertainty. He also describes in compelling detail the effects—and costs—on government operations of the recent congressional practice of relying on continuing resolutions (CRs) to temporarily fund government for increasingly longer amounts of time.

This report is a very helpful guide for federal managers; state, local, and non-profit grant recipients; and federal contractors to understand the background behind continuing resolutions and how they operate, as well as the different impacts of CRs and government shutdowns.



Daniel J. Chenok



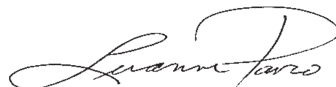
Luanne Pavco

Joyce points out that the current approach to continuing resolutions actually drives up the cost of government and reduces its effectiveness and efficiency. He offers several recommendations to the Congress, the President, and agencies on ways to ameliorate the adverse effects of continuing resolutions on agency operations.

We hope that this timely report will be read carefully by decision-makers both in Congress and the executive branch as they consider ways to address the effects of late appropriations and continuing resolutions.



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Introduction

The debacle accompanying the 2011 legislative debate to increase the federal government's debt limit highlighted the increasingly dysfunctional nature of the federal budget process. For many participants in the process, and for those affected by it, this was simply an extreme form of business as usual. Federal agencies, state and local governments, federal contractors, and other recipients of government funds planned for increased costs and disruptions as they anticipated the prospect that the federal government, for the first time in its history, would be unable to pay its bills. This was made all the worse by coming on the heels of the first credible threat of a government shutdown since 1996, which had been averted only months earlier.

Government shutdowns, or the real threat of them, have become relatively rare. Between 1996 and 2011 it was assumed that, however ugly the budget process might become, there would be no interruptions in funding. What is not rare, however, is the uncertainty surrounding the timing of the federal budget process. In only four of the last 37 years have all appropriation bills become law prior to the fiscal year. This may lead some to conclude that the costs of these funding delays are relatively low, certainly compared with the cost of government shutdowns. It is the premise of this report that funding delays, like government shutdowns, are disruptive events that carry costs, both financially and in terms of the effectiveness of federal agencies and recipients of federal funds.

When budgets are adopted late, what is the effect on the efficiency and effectiveness of government? Based on past research into federal practices and more recent interviews with key participants in various federal agencies conducted for this report, there are a number of adverse effects on agency operations, both on the cost of providing services and the quality of those services. These include effects on personnel management, including hiring delays and problems with morale, recruitment, and retention. Agencies also cut back on needed travel and training, with a resulting cost in their programs' effectiveness. Moreover, agencies often make wasteful and inefficient changes in their budget execution practices to manage through short-term appropriation. A clear example, but not the only one, is the common practice of engaging in short-term (month-to-month or even week-to-week) contracting. A final and related effect is that agencies operate less efficiently and effectively because they:

- Pay higher costs to receive some services
- Are required to continue services that have outlived their effectiveness
- Delay certain activities (such as maintenance), creating higher costs in the future

In addition to these direct agency costs, anyone who receives monies from the federal government feels the pinch of late funding. Contractors may face uncertainty about whether their operations in support of a given agency will be interrupted or halted altogether. Budget planning at the state and local government level is affected by the uncertainty surrounding the timing and continued receipt of federal funds. The delays can even be felt in the broader economy,

not only as the budget affects contractors but also as it affects funds flowing to individual recipients.

This report reviews the causes of late funding and some of the history surrounding it, especially since 1980 when a Department of Justice legal opinion raised the stakes by ruling that agencies could not continue to operate in the absence of an appropriation. Based on a review of the research and new interviews, it summarizes the effects of budget uncertainty on federal agencies, contractors, and state and local governments. Finally, it reviews some proposals for reforms to improve current practice and offer some conclusions based on the research, in an effort to mitigate the effects of this ongoing problem.

Study Methodology

The information concerning the experiences of federal agencies, contractors, and state/local governments included in this report comes from multiple sources. First, a number of reports by both the Congressional Research Service (CRS) and the Government Accountability Office (GAO) were examined. These covered the effects of funding delays and government shutdowns through approximately 2010. A 2009 GAO report, which focused on the effects of late appropriations on the management of federal agencies, was particularly helpful.¹

In addition, there were a number of journalistic accounts, particularly covering the period in 2011 when first appropriations delays, and then a potential debt default, threatened an interruption of funding for some governmental activities. These journalistic accounts were used as a source for specific examples.

Third, the author interviewed approximately 25 individuals who are current or former federal budget officials or contractors. Some of these interviews were one-on-one, while others were done in a group setting (of two to four). They included individuals from six different federal agencies and two different government contractors. Each of these individuals was promised anonymity, both for themselves and for their agencies. Therefore, they cannot be named here or in the body of the paper. These interviews were particularly important for capturing the full effects of appropriations delays and shutdowns (or potential shutdowns), and for documenting current practice and effects.

1. Government Accountability Office (2009). *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, September.

Shutdowns and Continuing Resolutions: Why, When, and How?

Under the U.S. Constitution, the Congress has what is referred to as the power of the purse. Specifically, Article I, Section 9 states that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations Made by Law.” This means, specifically, that federal employees and contractors cannot be paid if appropriations have not been enacted.

While it would be unconstitutional for the government to make payments without appropriations, it may be permissible to enter into contracts or otherwise commit the government to future spending in the absence of appropriations. According to Brass, however, “(t)he so-called Antideficiency Act ... prevents this ... The act prohibits federal officials from obligating funds before an appropriations measure has been enacted, except as authorized by law ... Therefore the Antideficiency Act generally prohibits agencies from continued operations in the absence of appropriations. Failure to comply with the act may result in criminal sanctions, fines and removal” (Brass, 2011).

While this would seem clear, federal agencies prior to 1980 would continue to operate under the assumption that the Congress did not actually intend for the government to shut down. Thus, while the Congress routinely was late in enacting appropriation bills, the consequences of late appropriations were limited. All of this changed with the Civiletti opinion, which has since been the statement of authority for closing down the government. On April 25, 1980, Attorney General Benjamin Civiletti stated that “(i)t is my opinion that, during periods of ‘lapsed appropriations,’ no funds may be expended except as necessary to bring about the orderly termination of an agency’s functions, and that the obligation or expenditure of funds for any purpose not otherwise authorized by law would be a violation of the Antideficiency Act (31 USC 665)” (McGrath, 1997).

After the Civiletti opinion, the question of exceptions first surfaced. Clearly, even in the absence of appropriations, certain functions of the government needed to continue. Soldiers in the field would not cease to defend the country and doctors in veterans’ hospitals would not refuse to save the lives of patients. But the same sense of urgency did not apply to national parks and museums, passport applications, or agricultural extension services. Therefore, some definition of services (and employees) exempt from a government shutdown had to be established.

Initially, exceptions were made for emergencies, defined as cases where there is “some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property” (Brass, 2011). This definition proved to be a bit broad and subject to a bit too much interpretation, and the definition was later tightened under a 1990 amendment to the Antideficiency Act. Under this revision, the Act was amended to clarify that the term “emergencies involving the safety of human life or the protection of property do not include ongoing regular functions of government ...” (McGrath, 1997).

While it had more or less always been true, therefore, that appropriations were necessary prior to spending, the consequences of failed budgets became much more real after 1980, and

thus continuing resolutions (CRs) to keep government operating became increasingly necessary. CRs had been around for a long time; the first one was actually enacted in 1876 (Meyers, 1997). While the failure to enact them had little practical consequence prior to the Civiletti opinion, after 1980 the failure to enact these short-term appropriations could literally bring significant portions of the government to a grinding halt.

A continuing resolution is nothing more than a short-term appropriation. Taken literally, it is the authority to continue operating, and early CRs were fairly simple and to the point, permitting agencies to continue spending at the current (prior fiscal year) level into the new fiscal year. These relatively simple CRs have given way, over the years, to more complicated ones, many quite lengthy. Among the issues now routinely addressed in CRs include:

- **Differing definitions of what constitutes the appropriate rate of spending.** This could, for example, be defined as a percentage of the current year's level (e.g., 90%), or the lowest of the House-passed or Senate-passed appropriation bill, or the level specified in a bill reported out by committee.
- **Prohibition of engaging in “new starts”—that is, activities anticipated (perhaps in the President's budget) that are not occurring in the current fiscal year.** Agencies are also typically prohibited from engaging in these new activities or from obligating funds to a greater extent, or for a longer period, than is necessary (Government Accountability Office, 2009).
- **The inclusion of legislative language as part of the CR.** Because CRs are must-pass legislation they may attract policy riders, which go far beyond just continuing funding to legislating how funds can be spent.
- **Specific allowance for anomalies, or exceptions to the general rate of spending.** For example, if the population receiving veterans' health benefits is growing, the CR may permit the Department of Veterans Affairs to spend at a level above the current level.

In a 2009 report on the effects of CRs, the Government Accountability Office (GAO) looked at the anomalies in continuing resolutions passed between fiscal year 1999 and fiscal year 2009, identifying a total of 280 anomalies enacted in that 11-year period. According to this GAO research, there appears to be a relationship between the length of CRs and the number of anomalies enacted. Exceptions, or anomalies, have also increased over time. In the five fiscal years between fiscal year 1999 and fiscal year 2003, the number of anomalies per year held constant at approximately 10. In the subsequent five fiscal years (2004 through 2008) the average per year doubled to approximately 20. The fiscal year 2009 CR, which lasted almost six months, included more than 50 anomalies. According to 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
- Extensions of expiring program authority” (GAO, 2009)

GAO found some cases where the anomaly actually provided a full year's appropriation for a program or activity. This occurred, for example, with the Low Income Home Energy Assistance Program (LIHEAP) in fiscal year 2009. This made unnecessary the prior practice of OMB providing the program a seasonal apportionment (as opposed to, for example, one that divided budget authority evenly across the four quarters).

Other examples of anomalies:

- Extension of the authorization of programs that would have expired during the period covered by the CR, including the National Flood Insurance Program, affordable housing, and the free lunch program
- Extension of authority to collect and obligate fees and copayments (such as for mining royalties or copayments from veterans)

- Permission of activities not undertaken in the current year, or restriction on activities undertaken in the current year

The more complicated CRs become, the more difficult it is to negotiate them. The House may want, for example, a CR that reflects its proposed spending level, while the Senate may prefer its own. The inclusion of policy riders (banning use of funds for abortions, or prohibiting facilities from being closed) can create controversy. It may be difficult to decide which, if any, anomalies to include. Thus, not only is it difficult to enact the appropriation bills themselves (thus making the CR necessary) but it is increasingly difficult to enact the CRs.

Failing to enact either appropriation bills or continuing resolutions can lead to a government shutdown. The term shutdown, however, is not entirely accurate for the following reasons:

- Some employees will be engaged in work that is exempted from the shutdown.
- As pointed out by the Office of Legal Counsel, Department of Justice: "... a majority of current expenditures occur under multi-year, permanent or indefinite appropriations that do not lapse on the expiration of the current fiscal year" (McGrath, 1997).
- Some agencies engage in activities permitting them to enter into obligations in advance of receiving an appropriation (Covington and Burling, LLP, 2011).
- Even when appropriation bills have not been enacted prior to the beginning of the fiscal year, often this will mean only some bills, and not all. In this case, those employees not in positions excepted from a shutdown will be on the job if the appropriation bill covering their agency has been enacted prior to the beginning of the fiscal year.

Historical Context—Fiscal Years 1977 through 2010

Until fiscal year 1977, the federal fiscal year ran July 1 to June 30. The Congressional Budget and Impoundment Control Act of 1974 changed the federal fiscal year to begin on October 1, in part to accommodate the additional demands on the calendar from the step in the budget process (the budget resolution) that had been added by that law, and (ironically, in retrospect) in part because of the difficulty that the Congress had in meeting the July 1 deadline. In fact, between fiscal year 1962 and fiscal year 1976, 96 percent of appropriation bills were enacted late, and 53 percent were enacted more than three months after the start of the fiscal year (Meyers, 1997).

The change in the timing of the fiscal year did not, however, improve the timeliness of the appropriations process. While fiscal year 1977 saw all regular appropriation bills enacted on time (there were two continuing resolutions, but they covered items outside of the regular appropriations process) this would become the last time for more than 10 years that the appropriations process operated as it was drawn up on paper, as indicated in Table 1. Not only were there continuing resolutions in each year for the 11 fiscal years between fiscal years 1978 and 1988, but (usually) short partial government shutdowns became routine. In only two years (1981 and 1986) of these 11 was there no interruption in funding. Early in the period, these funding gaps were relatively long—16 days (two separate funding gaps) in 1978, 17 days in 1979, and 11 in 1980. The six shutdowns that occurred between 1982 and 1988, however, were short (an average of three days).

After 1988, while the phenomenon of late appropriations did not change, shutdowns became more of an anomaly. In fact, between fiscal year 1989 and fiscal year 1995 (seven fiscal years) there was only one partial government shutdown—lasting three days—in fiscal year 1991 (as President Bush and the Congress engaged in the Andrews Air Force Base "budget summit" of 1990). While this was the only shutdown, fiscal years 1990 through 1994 saw annual continuing resolutions, averaging 75 days per fiscal year.

Table 1: Continuing Resolutions and Government Shutdowns: 1977–2012 (Calculated from Tollestrup, 2011)

Fiscal Year	Number of CRs	Days Covered By CRs	Length of First Funding Gap	Length of Second Funding Gap	Full YR CR?	Enact Date Full Year CR
1977	2	213	10	12	No	
1978	3	365	8	8	Yes	9-Dec
1979	1	365	17		Yes	18-Oct
1980	2	365	11		Yes	20-Nov
1981	3	365			Yes	5-Jun
1982	4	362	2	1	Yes	31-Mar
1983	2	365	3	3	Yes	21-Dec
1984	2	365	3	2	Yes	14-Nov
1985	5	365	1		Yes	12-Oct
1986	5	365			Yes	19-Dec
1987	5	365	1		Yes	30-Oct
1988	5	366	1		Yes	22-Dec
1989	0				No	
1990	3	51			No	
1991	5	36	3		No	
1992	4	240			Yes	1-Apr
1993	1	5			No	
1994	3	41			No	
1995	0				No	
1996	13	365	5	21	No	
1997	0				No	
1998	6	57			No	
1999	6	21			No	
2000	7	63			No	
2001	21	82			No	
2002	8	102			No	
2003	8	143			No	
2004	5	123			No	
2005	3	69			No	
2006	3	92			No	
2007	4	365			Yes	15-Feb
2008	4	92			No	
2009	2	162			No	
2010	2	79			No	
2011	8	365			Yes	15-Apr
2012	5	84			Yes	23-Dec

Note: Prior to the issuance of the Civiletti opinion in 1981, funding gaps did not result in full or partial government shutdowns. Rather, agencies continued to operate without an appropriation. After 1981, however, funding gaps and government shutdowns became synonymous.

For fiscal year 1995, the Congress and the presidency were both in the hands of the Democrats. This, coupled with a desire to move the appropriations process along to clear the way for President Clinton's signature health care reform, resulted in only the second time since 1977 that all appropriation bills had become law prior to the fiscal year.

The fiscal harmony was short-lived. The takeover of the Congress by the Republicans in the 1994 midterm elections ushered in an era of budgetary warfare unprecedented in the 20 years since the Congressional Budget Act was enacted. House Republicans, who had pledged in their Contract with America to make substantial changes in many entitlement programs, held appropriation bills hostage pending an agreement by President Clinton to put forth a plan to balance the budget in seven years, using economic and technical assumptions from the Congressional Budget Office (Joyce, 2011).

The ensuing fight led to two separate government shutdowns, totaling 26 days. The first lasted from November 14, 1995 to midnight on November 19, 1995. This shutdown and the accompanying furloughs occurred because of the expiration of a CR (PL 104-31) enacted on September 30, 1995 (through November 13, 1995) and by Clinton's veto of a second CR and a debt limit extension bill. The six-day shutdown resulted in the furlough of 800,000 federal employees. Four appropriation bills had been enacted prior to the November 14th shutdown; therefore there were no furloughs in departments covered by those enacted appropriation bills. This first shutdown ended when an agreement between President Clinton and GOP leaders was announced, extending government funding through December 15, 1995 while they worked out the details of other budget legislation. It also paid employees retroactively for furloughed days (McGrath, 1997).

The disagreements between President Clinton and the Republican Congress continued, however, and hopes for budgetary harmony faded. The major conflict occurred not over appropriations but over congressional plans to enact a reconciliation bill making significant reductions to mandatory spending programs. By far the largest and most high-profile of these was a plan to cut \$270 billion over 10 years from baseline levels of Medicare spending. The Congress insisted that President Clinton go along with them on this reconciliation legislation as a cost of getting the remaining appropriation bills enacted (Joyce, 2011). This did not occur, and a second, much longer, shutdown commenced on December 16th, 1995, and lasted for three weeks until January 6, 1996. This second shutdown furloughed 260,000 (later 284,000) federal employees; the number was reduced mainly because several appropriation bills had been enacted in the interim (McGrath, 1997).

Effects of the 1995–1996 shutdown. A 1997 study by the Congressional Research Service cited several effects of the shutdown. First, there was an effect on the morale and productivity of federal employees. In some agencies a significant percentage of employees were furloughed, meaning they had been officially classified as “nonessential.” An accounting of the number of furloughed employees by agency (excluding DOD) indicates that in the second shutdown, 284,621 employees were furloughed and 475,608 were excepted from furlough. For example, the Department of Veterans Affairs had almost 33,000 employees on furlough, but more than 203,000 excepted from furlough. On the other hand, almost 20,000 out of the total of approximately 22,000 NASA employees were furloughed (McGrath, 1997).

There is some indication that employees believed they were being used as pawns in the larger budgetary battles between the President and the Congress. Moreover, the self-esteem of some employees designated as nonessential reportedly took a bit of a hit as this designation did not match their own image of their job's significance (McGrath, 1997). In fact, after this shutdown the term “nonessential” ceased to be the official designation, giving way to the more benign terms “excepted” (from furlough) and “non-excepted.”

Second, and arguably more important, were the effects on the delivery of public services. Many programs were affected, including the following (McGrath, 1997):

- EPA stopped toxic waste cleanup work at 609 sites and 2,400 superfund workers were sent home.
- Each day during the shutdown, an estimated 212,000 Social Security card requests and 10,000 Medicare applications went unattended to. This was in addition to 360,000 office visits not made and 800,000 toll-free calls not answered.
- \$800 million worth of mortgage loans for moderate and low-income families were delayed.
- Unemployment assistance was suspended by 11 states and the District of Columbia because of a lack of federal funds.
- The National Park Service closed 368 sites, affecting seven million visitors.
- The State Department could not process 200,000 applications for passports, and 20,000 to 30,000 requests for visas.
- Veterans were substantially affected by the shutdown. Many experienced delays in the processing of medical, education, and insurance claims. Payments to veterans for compensation and the GI bill education loans were delayed. Medical, vocational rehabilitation, and counseling appointments were cancelled.

The federal government doesn't only provide services directly, of course. Many contracted services were also disrupted by the shutdown. Over 500,000 small companies experienced delays in federal payments. The Washington, D.C. area was particularly hard-hit, since "hundreds of local companies, whose contracts with the federal government were suspended, sent their employees home without pay." One specific example of this involved the effects that the closure of the Minerals Management Service had on oil and gas companies, and therefore production. The agency estimated that 10,000 barrels of oil a day were "shut in," and the agency was "deluged with a mountain of mail" from industry (about 32 buckets or boxes and 400 express mail packages) upon conclusion of the shutdown (McGrath, 1997).

The third type of effect was financial, although these estimates are quite imprecise and largely represent productivity losses (that is, paying people for work that was not done), as opposed to additional costs. Preliminary estimates made by John Koskinen, then deputy director for management at OMB, put the cost of the November 13–19 shutdown at \$700 to \$750 million, with \$400 to \$450 million of that representing payroll costs. Later, OMB estimated the cost of both shutdowns at "over \$1.4 billion," in addition to the various service delays and backlogs (McGrath, 1997).

This 1995–1996 shutdown was notable in retrospect as it represents the last time to date that there has been any interruption in funding. The negative political fallout from this shutdown led all sides to pledge never to let this happen again. While continuing resolutions remained the norm, there was a general consensus that funding interruptions were a thing of the past. In fact, budgetary peace returned the following year (fiscal year 1997), which represents the last year to date in which all appropriation bills have been enacted on time. Between 1998 and 2010, a span of 13 fiscal years, there were an average of six continuing resolutions per year, averaging 111 days of CRs per fiscal year. This includes fiscal year 2001, when there were 21 CRs; excluding that year, the average number of CRs falls to four per year.

The bottom line is that the era between 1977 and 2010 can be divided into two distinct periods:

- The period between 1977 and 1988 is characterized by consistent funding interruptions, and routine continuing resolutions, many of which were ultimately enacted for a full year.

- The period from 1989 to 2010 had relatively few funding interruptions (the short one in the fiscal year 1991 process and the longer, more acrimonious one in the 1996 process are the exceptions) but experienced continuing resolutions, many of which lasted well into the fiscal year.

Budget Uncertainty since the 2010 Midterm Elections

The 2010 midterm Republican takeover of Congress profoundly changed the political dynamics in Washington. The budget was front and center in this conflict. When the 112th Congress convened in January of 2011, it was faced with the unfinished business of the fiscal year 2011 appropriations process. The resolution of this presumably would have been relatively routine if one-party government had continued into 2011. Suddenly, however, all bets were off. The new Republican majority was emboldened by a large number of new members who had been elected with Tea Party support, and reducing federal spending was an article of faith for them.

FY11 Appropriations Uncertainty. Because the House and the Senate were now in the hands of different parties, it was widely assumed that the fiscal year 2011 budget process would be difficult. This expectation seemed to be confirmed when, by the end of July 2010, only two appropriation bills had passed the House and none had passed the Senate (in fact no regular appropriation bills were to pass either house after this point, either). When it became clear that the appropriations process could not be completed in time, the Congress passed a two-month CR funding the government through December 3. This was followed by two more CRs in calendar year 2010 (expiring on December 18 and December 21, respectively). This was in turn followed by another roughly two- and one-half-month CR taking the government through March 4, 2011; that CR was followed by two more, expiring on March 18 and April 8, respectively. As the April 8 deadline approached, it appeared less and less certain that there would be an agreement either on another CR or on a final omnibus appropriations bill in time to avert a government shutdown. As the deadline neared, it appeared to many observers that a shutdown was imminent (Kettl, 2011), and agencies prepared to carry out contingency plans that had been prepared at the direction of OMB.

Finally, on April 9, 2011, with two hours to spare before a shutdown of the federal government, Speaker John Boehner and President Obama reached agreement on an omnibus appropriation bill that would fund the government for the remainder of fiscal year 2011. It included a reported reduction of \$38 billion, but did not include many restrictions that had been sought by House rank-and-file members, including those covering environmental regulations and abortions (Hulse, 2011).

Debt Ceiling Uncertainty. While appropriations were approved and presumably this would result in uninterrupted funding until September 30, 2011, a second dispute over the need to raise the federal government's debt ceiling threatened to once again make federal agencies unable to pay their bills. This was a very different and unique situation that potentially affected a much broader set of activities than the typical government shutdown might. The crisis that would have been caused by failure to enact a debt ceiling increase would be one of liquidity, rather than legal capacity. As such, it would have had a number of potential differences:

- It could have affected all federal spending, not just appropriated spending.
- Even if agencies were operating under multi-year or no-year appropriations, the Treasury might have lacked the cash to make good on these obligations.
- Contractors, state and local governments, and other recipients of federal funds might have found themselves in possession of legally binding commitments that the government did not have the capacity to meet.

In practice, a failure to enact a debt ceiling increase would have required the Treasury to prioritize its payments, choosing who would be paid and who would not, and when. While the situation was often described as a debt default, in fact holders of federal debt would have been among the first to be paid. It was much more likely that federal employees, contractors, state and local governments, and individual recipients of federal payments would have seen those payments delayed, perhaps by weeks or months.

In the past, while getting there might have been an ugly process, there had never been any question about whether the government would eventually enact the debt limit increase. The failure to do so would have been seen as the ultimate act of fiscal irresponsibility—the equivalent of failing to pay a mortgage after buying a house or failing to pay the credit card bill after taking a vacation. In the summer of 2011, however, an increasing number of members of Congress began to argue that they would refuse to vote for such an increase as a way to promote spending reductions. The most charitable face that can be put on this was that it was a negotiating strategy to encourage future spending reductions, since the debt limit increase was necessary to pay for spending that had already occurred.

Ultimately a default was avoided in August 2011 by signing of the Budget Control Act (BCA) of 2011, which included an immediate increase in the debt limit and a new set of ceilings (caps) on appropriated spending through fiscal year 2022. The BCA also promised future deficit reduction, as a result of the deliberations of a new Joint Select Committee on Deficit Reduction (the “supercommittee”). This committee was to come up with \$1.5 trillion in additional deficit reduction to be enacted before the end of 2011. Perhaps predictably, this committee ultimately was a dismal failure. Under the BCA, this failure is to result in a sequestration (an across-the-board cut) of \$1.2 trillion to take effect in January 2013. Half of the savings required to meet sequestration targets are to come from defense, with the remainder coming from non-defense discretionary spending and some mandatory spending programs. The effect of the combination of the caps and the sequestration was to create limits on discretionary spending that (not counting war spending, which is excluded from the caps) would require cuts of approximately 15 percent annually from inflation-adjusted levels for both defense and nondefense spending over the 10 years. This is a reduction in real spending, meaning that it invariably would lead to substantial adjustments in overall program spending—in other words, the federal government could not meet these targets without having to stop doing—or substantially cut back on—many things that it does now.

FY12 Appropriations. The fiscal year 2012 appropriations process was a bit more typical, and featured five continuing resolutions covering various time periods and various appropriations bills. Some of these covered brief periods (October 1 through October 4, or December 17 through December 23) while others covered longer periods (the longest extended from October 5 through November 18). The House passed six of 12 appropriations bills for fiscal year 2012, while the Senate did not pass any. On December 23rd, 2011, the Consolidated Appropriations Act of 2012 (P.L. 112–74) became law. This law was an omnibus appropriations bill funding the government through the end of fiscal year 2012.

FY13 Appropriations. The fiscal year 2013 appropriations process has also been characterized by more normal delays in getting appropriation bills enacted. By the time the Congress adjourned for its August 2012 recess, not a single appropriation bill had been signed into law. The House had passed six out of 12 bills (Commerce/Justice/Science; Defense; Energy and Water; Homeland Security; Legislative Branch; and Military Construction/Veterans). The Senate had not passed any. The appropriations committees had done their work, with 11 of 12 bills being reported by the House Appropriations Committee and 11 of 12 also reported by their Senate counterparts. Just before adjourning for the August recess, however, Speaker Boehner and Senate Majority Leader Harry Reid (D-NV) announced an agreement to enact a six-month CR that would fund the government through the end of March 2013. This CR was

Table 2: Discretionary Spending in CBO's August 2012 Baseline

	2012	2013	2014	2015	2019	2022
Defense						
Inflation-Adjusted Spending	554	562	573	587	658	714
Reductions to Meet Caps		-16	-17	-21	-42	-53
Sequestration		-55	-55	-55	-55	-55
War Spending*	115	118	119	121	132	141
Total, Defense	670	609	621	633	694	746
Difference**	116	47	48	46	36	32
Nondefense						
Inflation-Adjusted Spending	506	515	525	538	605	658
Reduction to Meet Caps		-14	-15	-18	-39	-53
Sequestration		-39	-38	-38	-34	-33
Exclusions from Caps	22	23	23	23	22	25
Total, Nondefense	528	484	495	506	554	597
Difference**	22	-31	-30	-32	-51	-61

*Excluded from caps

**Total budget authority permitted, less inflation-adjusted

Source: Congressional Budget Office, *An Update to the Budget and Economic Outlook: Fiscal Years 2012 to 2022* (August 2012), p 14.

approved by the Congress in September 2012, and actually permits a small increase in appropriated spending over the fiscal year 2013 level. This increased level is consistent with the level of spending permitted by the discretionary caps in the Budget Control Act of 2011.

Threat of Sequestration Uncertainty. The FY13 budget process, however, must be considered against the backdrop of the looming threat of sequestration. If sequestration kicks in at the beginning of January as the law currently requires, it would presumably lead to an immediate adjustment by OMB to FY13 apportionments, requiring federal agencies to begin cutting back immediately on FY13 spending. Table 2 summarizes the effects of the caps included in the Budget Control Act, as well as sequestration on both defense and nondefense discretionary spending. The table shows that, while defense spending would grow slightly faster than inflation between 2014 and 2022, nondefense discretionary spending would be about 10 percent lower than inflation-adjusted levels in the same year.

For many agencies, there will be a substantial difference between spending levels permitted in a CR and those that would be permitted in a post-sequestration world. There are two options for avoiding sequestration. The first would be to enact spending cuts (more likely) or tax increases (less likely, at least in the current political environment) to substitute for sequestration. The second would be to turn off or delay sequestration, arguing in effect that “we didn’t really mean it” or at least “we didn’t mean it now.”

If sequestration is not averted, the other two options would both require substantial reductions in appropriated funding for at least some federal agencies. Thus, while the enactment of a six-month CR gives federal agencies some certainty in terms of the timing of funding,

How Does Sequestration Work?

The Budget Control Act (BCA) of 2011, enacted as part of the agreement to increase the debt limit in August 2011, established the Joint Committee on Deficit Reduction. The joint committee (the “supercommittee”), was required to recommend at least \$1.2 trillion in spending reductions, covering 10 years. In order to provide the supercommittee with an incentive to come up with these reductions, the law also created a fallback procedure, called sequestration, which directed the Office of Management and Budget (OMB) to make automatic reductions in spending if the supercommittee deliberations did not result in the required cuts. The BCA also separately established statutory limits, or caps, on discretionary spending for fiscal years 2013 to 2021.

Under the sequestration procedure, of the total of \$1.2 trillion in deficit reduction, \$984 billion represent program cuts, while the other \$216 billion consists of interest savings. Since the BCA requires that the program cuts be evenly distributed across the nine years (2013–2021), this means that \$109.3 billion will need to be cut annually in order to meet the targets. Under the law, half of this (\$54.7 billion annually) is to come from defense and half from nondefense. The nondefense portion represents a combination of mandatory and appropriated spending. In 2013, \$16.2 billion (30 percent) of the cuts are from mandatory programs, with the remaining 70 percent (\$38.5 billion) from nondefense discretionary programs.

Since the supercommittee failed to reach agreement, and no legislative action has been taken to either enact the required cuts or to modify or eliminate the sequestration requirement, sequestration will first take effect in January of 2013. The 2013 sequestration process works differently than the process for 2014 through 2021. In 2013, the law requires OMB to order across-the-board reductions of most discretionary accounts to implement sequestration. Some non-defense programs, such as most veterans funding and Pell college loan grants, are exempt from sequestration. In all, the defense budget would experience a 7.5 percent funding reduction in 2013, while non-exempt nondefense discretionary accounts would be reduced by 8.4 percent.

For 2014 and beyond, there is no across-the-board cut of all discretionary accounts. Instead, the BCA provides for a further reduction in the caps. For defense, this means that for each year (2014 to 2021) the cap would be \$54.7 billion lower than the BCA would otherwise require. This would represent a 7.5% reduction from the caps in 2014, but only 5.4 percent by 2021. For nondefense spending, because the mandatory cuts represent a percentage of projected future spending (for example, Medicare payments to providers and health insurance plans are reduced by two percent annually), the amounts to be cut differ from year to year. By 2021, the mandatory portion represents \$22.6 billion, while the discretionary portion is \$32.1 billion. Nondefense discretionary spending would also be 5.4 percent lower than the current capped level in 2021.

Source: Richard Kogan, How the Across-the-Board Cuts in the Budget Control Act Will Work, Washington: Center on Budget and Policy Priorities, April 27, 2012.

and enables them to plan more effectively within that timeframe, the threat of sequestration (or cuts to substitute for sequestration) would mean that they have less certainty than normal regarding the eventual level of funding. In many past years, the spending levels permitted by a CR represented a lower level than agencies believe they will eventually receive, since budgets often include adjustments for salary increases and inflation, if not for program expansions. For FY13, however, there is the very real possibility that appropriations will end up being lower than for FY12. With or without sequestration, this pattern seems likely to continue for the foreseeable future. The caps under the BCA do not permit appropriations to grow with inflation; any sequestration or substitute would involve even greater reductions.

Federal agencies and recipients of government funds are moving into an age of the new normal—a world in which they are much less assured of receiving a baseline or current-services level of funding than in the past. In that environment, effective planning requires decisions to be made in a timely manner. The combination of late appropriations and funding uncertainty

would create an environment in which agencies were forced to implement budget cutbacks not in an informed and deliberate manner, but in a rushed and haphazard one. This no longer appears to be a world where late appropriations are just an inconvenience to be managed around—that characterization only applies if agencies are relatively certain of a funding level, but have to guess about timing. If both timing and level are uncertain, agencies and funding recipients are placed in an untenable situation.

Budgetary Uncertainty's Impacts on Federal Agencies

Shutdowns cause their own problems. It would be wrong, however, to suggest that the budget process is only dysfunctional when it leads to a government shutdown. At this point, given the history, agencies now seem to understand that “they will probably begin most years with a CR instead of their regular appropriation” (Juszczak, 2011). While agencies by and large seem to have adjusted to a certain level of delay and uncertainty, CRs are still problematic. Government officials interviewed were unanimous in saying that normally a funding delay resolved during the first quarter of the fiscal year does not create major problems, because they have made adjustments to normal budget execution practice to account for this kind of delay. This is not to say that these have no costs, but that they have become so expected that most agencies just accommodate for them, and are pleasantly surprised when these adjustments are unnecessary.

Negative Impacts of Budget Uncertainty

- Delayed Hiring and Personnel Actions and Morale Issues
- Training and Travel Delays
- Changes in Agency Contracting Practices
- Increasing Costs
- Reduced Effectiveness and Efficiency

Two things make CRs harder to deal with for federal agencies. One is when CRs continue far into the fiscal year. The second is when there are a larger number of short-term CRs. It goes without saying that a combination of the two—for example, where there are eight to 10 CRs and they continue into the next calendar year—is particularly problematic.

Because CRs often affect some agencies and not others, it is useful to consider which agencies (or at least which appropriations subcommittees) are most likely to experience CRs. In GAO's study of CRs (GAO, 2009), the agencies under the Labor/HHS and related agencies appropriations subcommittee experienced an average of 96 days under CRs, followed by Commerce/Justice (later Commerce/Justice/Science) with 89. On the other hand, agencies under the jurisdiction of the Homeland Security and Defense subcommittees experienced less than a month (21 days and 27 days, on average) under CRs. Table 3 presents the data, by appropriations subcommittee, from this GAO report.

Delayed Hiring and Personnel Actions and Morale Issues

Because personnel costs are such a substantial portion of many agency budgets, it is difficult to manage delays in funding, particularly if CRs require agencies to spend at the prior year's level or lower without affecting personnel.

Hiring Freezes. Hiring freezes are often employed as a means of controlling personnel costs. As positions become vacant, agencies leave them unfilled anticipating the possibility of insufficient

Table 3. Average Annual Duration of CRs by Appropriations Subcommittee

Subcommittee	Average Duration (Days)
Homeland Security	21
Defense	27
Military Construction	37
Veterans Affairs	66
Legislative Branch	67
Interior	69
Energy/Water	71
Agriculture	79
Housing and Urban Development	81
Transportation	81
Treasury	83
District of Columbia	84
Foreign Operations	88
State	89
Commerce/Justice	89
Labor/HHS	96

Source: Government Accountability Office, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, p. 7.

Original note from GAO: The number and jurisdiction of appropriations subcommittees changed over time. Adjustments were made to account for changing appropriations subcommittee jurisdictions.

funding to get the agency through the entire fiscal year. These hiring freezes can be “hard” (that is, official) freezes, meaning agency subunits are prohibited from hiring without specific authorization. In early 2011, the Marine Corps, the Navy, and the Justice Department each had established hiring freezes in response to appropriations delays (Sullivan, 2011; Brannan, Cavas, and Majumdar, 2011). Separately, agencies often experience what one agency official refers to as a soft hiring freeze, where agency officials are being cautious and leaving some positions unfilled because of fear of some future funding shortfall.

At least two problems can be created by hiring freezes. First, holding back on hiring during any year in which funding is eventually received at a rate above that permitted by a CR can actually generate a surplus in personnel expenditures. In the end, this means that agencies may have held down the level of service as a result of failing to fill positions that ultimately would have been affordable. Second, vacancies do not occur uniformly across an agency and they do not necessarily occur in the areas of lowest priority. This means that a hiring freeze can end up robbing the agency of personnel working in higher priority programs, or can have an unintentional differential effect if vacancies are concentrated in particular programs, projects, or activities.

Furloughs. In cases where funding delays lead to concerns that a shutdown may follow (as occurred in 2011) agencies may be required to prepare furlough plans and to send out furlough notices to employees. This can have unintended consequences, especially in cases where the furloughs are unlikely to actually take effect. Employees may respond to furlough notices by spending otherwise productive time seeking other employment. One agency official says that,

during the shutdown of 1995 and 1996, furlough notices went out to more than one-third of his agency. Many who received these notices took other jobs. Those who end up leaving (this group may not only include those who receive furlough notices, but those who are just fed up) are those who were just hired or who have other options. In either case, they are not necessarily the ones an agency would choose to terminate if the focus was on performance considerations. At a minimum, this process creates tremendous productivity and morale challenges. One agency official notes that during the 2011 shutdown threat “people freaked out. They were not prepared.” An actual shutdown, or even a credible threat of one, can push people out the door. It can also be one factor that discourages people from wanting to work for the federal government.

Personnel Shifts. Continuing resolutions also create problems in cases where agencies are attempting to shift priorities to respond to some immediate challenge facing them. A CR freezes past priorities in place. Therefore if an agency has identified a need to shift personnel from one area to another, to address some area of immediate concern, this can delay its ability to respond. This is complicated further by the sheer amount of time that it can take to fill a position. One agency official notes that a position approved in February might not be filled until August. By that time, the fiscal year would be almost over.

The 2009 GAO report, consisting of a series of agency case studies, highlighted the personnel actions of agencies in response to CRs. GAO stated that “(a)ll of the (GAO) 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.” (GAO, 2009). Among some specific examples:

- The Federal Bureau of Investigation (FBI) delayed filling existing positions in order to fund annual pay raises, annualize pay for previous year’s hiring, or to cover increased costs of retirement, health insurance, or other employee benefits.
- The two GAO case study agencies within the Department of Health and Human Services (the Administration for Children and Families and the Food and Drug Administration) did not begin the hiring process in some years because they feared that it would result in wasted time if they were not ultimately able to fill the positions.
- It is hard to quantify the effects of these hiring delays, but they certainly affected the number of food inspections (FDA), the ability to maintain or improve the ratio of corrections officers to inmates given the increase in the inmate population (the Bureau of Prisons, with the Department of Justice) and the ability to process claims for veterans benefits in subsequent years (the Veterans Benefits Administration, within the Department of Veterans Affairs).

Other Personnel Issues. Two additional personnel issues can complicate funding even further. First, if any agency has added positions late in the prior fiscal year, funding the agency at the current rate (meaning the rate for the previous year) can leave the agency well short of what is necessary to fund personnel on board for the next fiscal year. Second, if pay increases are scheduled to take effect in the next fiscal year the current level will not accommodate these increases. In either of these cases, agencies may have to freeze or cut back on hiring to make up the difference between funds available and those needed to fund current personnel at current salary levels.

Training and Travel Delays

In addition to controlling personnel costs, agencies operating under conditions of funding uncertainty turn to other alternatives for saving funds. These options have one characteristic in common—they represent areas in which the agency has discretion to delay or forego funding.

Travel and training are perhaps the areas most likely to experience cutbacks or delays. One agency representative reports that the agency simply avoided sending staff to training in the first quarter of the calendar year. The later that the final appropriation is received, the more training budgets (and therefore training) are likely to be reduced. For example, if there is a six-month CR and training does not occur during those six months, it is unlikely that (even if funding is ultimately available) all training can be compressed into or available in the remaining six months.

While training is valuable for employees in many positions in many agencies, it is arguably as important in the Department of Defense (DOD) as it is anywhere in the government. In DOD, training and the agency's key challenge of maintaining force readiness are inexorably related. The various forms of budget uncertainty (the threatened government shutdown, the debt ceiling debacle) led to measurable reductions in DOD training. The Air Force predicted that CRs and planning for a shutdown would reduce flying training hours by 10 percent (Philpott, 2011). Active duty personnel interviewed in 2011 reported that the near-shutdown in 2011 led to the cancellation of training exercises (Company Command, 2011). Travel is a little different in that many employees need to travel to do their jobs. The FBI cannot very well tell its agents not to travel during the first quarter, or first half, of the year without severely compromising mission success.

Travel and training are also areas with substantial room for interpretation of precisely what the current spending level is. Some agency officials interpret the language very strictly to mean that if a particular training program, or a particular trip, was not taken the year before, then it is not permissible under a CR. This is probably an overly strict interpretation—the relevant question should be, “Did your agency conduct training for this purpose last year?”

Changes in Agency Contracting Practices

Because late appropriations have become the new normal for agencies, spending patterns have been adjusted to accommodate the situation. Perhaps the most significant of these adjustments is in contracting. At one time, many contracts were structured to run concurrent with the fiscal year. As late appropriations became the norm, however, it became standard practice for recurring contracts to be renewed later in the year, under the presumption that by this point it will be clear what level of funding is available. This is specifically permitted in spite of the fact that appropriations are generally available to finance *bona fide* needs of the current fiscal year; a specific exception to the *bona fide* rule permits agencies to “obligate recurring contracts for 12 months or more at any point in a given fiscal year” (Juszczak, 2011, 42).

Delays in Operations. The agencies interviewed by GAO in 2009 each reported that they delayed contracts. The Veterans Health Administration reported that it did not start nonrecurring maintenance projects, but instead waited until the regular appropriation was received. The Bureau of Prisons (BOP) delayed bringing additional prison capacity online. In 2007 specifically, BOP “reported delaying the activation of its Butner and Tucson Prison facilities and two other federal prisons ... to make \$65.6 million available for more immediate needs.” (GAO, 2009).

Less Competition. In addition to delaying operations, agencies were not able to fully compete and award contracts because of the limited time left in the fiscal year at the time the appropriation was enacted. BOP reported to GAO that a CR lasting longer than three to four months typically has a negative effect on the quality of competition. Delays can also lead to a rush to obligate at the end of the year, thus exacerbating a trend that already exists. “In 2006, VHA

obligated 60 percent (about \$248 million) of its \$424 million nonrecurring maintenance budget in September, the last month of the fiscal year” (GAO, 2009). This rush creates a greater potential for mistakes, possibly leading to adverse audit findings.

Shorter Contracts. In regard to delaying contracts, many agencies also are forced to enter into contracts for a much shorter time period, so that the duration of the contract can more or less match the duration of the CR. This creates two kinds of problems:

- There are transaction costs associated with each contract, and more contracts means more work. Thus CRs increase the administrative cost of contracting.
- The chance of an error being made, leading to an audit finding and/or a waste of funds, is greater the more transactions are involved. A series of 12 one-month contracts for \$1 million per month is not the same as a single yearly contract worth \$12 million. When audit time comes, operating under a CR is not an excuse for violations that are uncovered. Information technology (IT) contracts may be particularly good candidates for delay, since presumably the deferral of an IT system, or the replacement of personal computers for agency personnel, would not lead to disruption in service. Such a delay could, however, contribute to reductions in productivity, or opportunity costs in terms of foregone productivity gains.

Increasing Costs

In addition to these changes in spending practices (or sometimes because of them) there is the issue of CRs causing increased costs for federal agencies. Before getting into this, it is important to acknowledge that the annual appropriations process, even if it worked well, would create some uncertainty that would lead to increased costs compared to what might happen if funding were guaranteed for a longer period of time. Inefficiencies that currently exist for federal agencies because of the annual appropriations process could potentially be eliminated in a world of predictable multi-year funding.

Continuing resolutions do have a clear impact on costs. For example, some agencies reported to GAO that the delay in contract awards led to higher prices than would have occurred without the CR. BOP said that awarding contracts later prevented the agency from locking in prices and therefore increased costs. In one case (the McDowell Prison facility in West Virginia) this resulted in about \$5.4 million in additional costs (GAO, 2009). The precision of this estimate is exceptional, in that GAO case study agencies were generally not able to confirm cases of increased costs caused by CRs, although they argued such costs did exist.

A 2011 Heritage Foundation report on the effects of CR-driven funding delays at DOD makes the point that any time a procurement schedule is delayed, there are potentials for cost increases as well as decreases in effectiveness. If defense procurement plans are based on assumptions regarding the timing of acquisition, development, and manufacturing, a slippage in funding makes those milestones impossible to achieve. A defense official says that the effect of this would be that there would be “increases in cost in every year, because you have basically (broken) a program” resulting in less efficient production (essentially, a reduction in economies of scale) (Eaglen, 2011).

Cost of Foregone Maintenance. Another type of cost increase relates to the cost of foregone maintenance. There is little question that failing to properly maintain any asset reduces its useful life. This can have two possible impacts. It could simply take the asset in question out of service, thus depriving citizens of the benefits that would otherwise be received. Perhaps more likely, it will lead to future costs as the asset needs to be replaced quickly. A very clear example of this potential comes from the 2011 funding delay, when the Navy cancelled seven ship-repair

contracts at a savings of \$62 million (McCabe, 2011). Even if these repairs occurred in a later fiscal year, their deferral could clearly have operational and cost implications.

Along these same lines, it seems quite likely that many contractors dealing with the federal government include a “risk premium” in the rate that they charge for contractual services, because they cannot negotiate reliable multi-year commitments without fear of funding interruption. Moreover, this premium likely applies government-wide. In other words, federal agencies pay more for services than an equivalent private firm would pay for the same service. While many interviewees—inside government and with consulting firms—acknowledge the probable existence of such a premium, all agree that it is difficult, if not impossible, to estimate it with any precision.

Inability to Terminate Activities. In addition to increased contracting costs, CRs require ongoing activities to be continued, in spite of decisions that may have been made to discontinue them. In other words, in addition to prohibiting agencies from doing new things, CRs also prohibit them from ceasing to do old things. Recently, the Department of Justice, for example, had decided to stop funding the National Drug Intelligence Center in Johnstown, Pennsylvania. Since the Justice Department could not plan for a specific date to cease operations, the passage of a CR required it to continue operating until the regular appropriation became law.

Reduced Effectiveness and Efficiency

Aside from increasing costs, continuing resolutions and funding delays invariably create additional work and cause agencies to take actions that compromise their efficiency and effectiveness. The issue of cost, then, is much broader than is typically considered. Roy Meyers puts it well in an article in which he refers to the costs of the 1995—1996 government shutdown, but his argument could also apply to reductions in effectiveness that occur because of funding delays (Meyers, 1997):

Though it is common to focus on the outlay effects of federal budget policies, it is reasonable to wonder if the lost government revenue is properly valued at its input cost. Consider the Bureau of Economic Analysis and the Bureau of Labor Statistics, which had to postpone and reduce data collection and economic conditions and release this data later than usual. Was the cost to the government only the salaries and expenses of collecting the data, or was it greater? Did delayed IRS revenue collections cost more than the bill for paying auditors to take a long Christmas break? What were the costs to those citizens who had to delay their enrollment for benefits, or those who changed their vacation plans due to closed national parks or unavailable passports?

Preparing for Shutdowns. Understanding the reductions in effectiveness begins with understanding the process of preparing for shutdowns and for living with CRs. Staff in federal agencies, OMB, and the Congress spend a non-trivial amount of time preparing for things that usually do not happen (in the case of shutdowns) or which do happen, but which result in wasted time attempting to lessen their counterproductive effects (in the case of a CR). In 2011, which is the only time since 1996 that OMB actually asked agencies to prepare a shutdown plan, both the OMB and federal agencies spent a great deal of time developing these plans and reviewing them (they can be viewed on the OMB website), which (in retrospect) has to be seen as a waste of time. The only good news is that OMB did not (as they could have) require these every year in which appropriations were not enacted on time; the implicit assumption in these years was that a shutdown was so unlikely that such planning was unnecessary. One of the reasons that OMB did not require such a shutdown plan in these prior years was that OMB is not any more anxious to spend time in this way than agencies are.

Preparing for CRs. Preparing for CRs can also frequently be time-consuming. One of the most time-intensive processes involves dealing with anomalies. Since, by definition, these anomalies are exceptions to the general rules governing a CR, many agencies invariably think that their peculiar circumstances deserve exceptional treatment. It is often quite difficult, however, to get the Congress to go along with anomalies. This leads to lots of conversations between OMB and agencies negotiating over which things can and cannot be appropriately be included as anomalies.

Revising Budget Execution Plans. These inefficiencies do not stop the moment that the CR is enacted. Agency budget offices and OMB are involved in lots of conversations around budget execution once the CR is law. Many of these discussions are designed to determine what can and cannot be done, and when something is a continuation of a current activity and when it represents something new. As Juszczak points out, the language included in most CRs to guide federal agencies is relatively ambiguous. Section 109 of the FY11 CR included this typical language stating that “only the most limited action of that permitted in the Act shall be taken in order to provide for the continuation of projects and activities.” Some agencies take this to mean that they should not do anything that is discretionary, therefore they cancel all training and stop hiring. Others take it to mean that they cannot do anything that they didn't do last year. (Juszczak, 2011).

Agency budget officials often have to spend inordinate time responding to inquiries about what is and what is not permitted under a CR. The GAO case study agencies indicated that there were four types of administrative tasks most often affected by CRs (GAO, 2009):

- Issuing guidance to programs and offices
- Providing information to Congress and OMB
- Creating, disseminating and revising spending plans
- Responding to questions and requests for additional funding above the amount allotted

There are no precise estimates of the costs of these tasks. VHA estimated that a one-month CR results in over \$1 million in lost productivity at VA medical facilities and over \$140,000 in additional costs for the VA contracting office (GAO, 2009).

Increasing Procurement Workloads. GAO reported that the most common type of workload increase caused by CRs was the necessity to enter into new contracts or exercise contract options to reflect the duration of the CR. Agencies were often forced by CRs to enter into multiple short-term contracts (for example, of 30 days or less in duration) as opposed to one yearly contract. For example, BOP awarded a contract in 1997 to an optometrist to provide care in a prison. Under a regular appropriation, this would have been a one-year contract. Instead, there were three contracts covering only the first quarter of the year: 1) October 1 to November 16; 2) November 19 to December 14; and 3) December 17 to December 21. These roughly corresponded to the duration of the CRs for that fiscal year. This was similar to the experiences of other agencies. Generally,

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, which 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 for 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 the funding provided by the CR (GAO, 2009).

Delaying Payments. More recently, the fiscal year 2011 CR caused DOD to delay 75 projects that DOD argued would cost more when they resumed. Among these were some support and maintenance contracts not made in the usual yearly installments but instead broken down into shorter, more labor-consuming pieces. Former Deputy Defense Secretary William Lynn told the Senate Appropriations Committee in March 2011 that “(t)here’s no question that we will spending more money for the same goods if we don’t receive the money in a timely way” (Sullivan, 2011).

Shorter-Term Contracts. The problems caused by CRs and accompanying shorter-term contracts were echoed by contractors interviewed for this report. One gives an example of a contract with a federal agency that was to have a five-year term. Normally, because of the annual appropriations process, this would have resulted in a base year and four follow-on, one-year contracts. Instead, because of uncertainty associated with CRs, the agency ended up awarding contracts with a base month and 59 one-month options. The paperwork cost, for the government and the contractor, of such an arrangement is substantial. The contractor may, in this case, have to “eat” this cost—it cannot say that the cost of the total contract is x percent higher because of the funding mechanism.

Shorter-Term Grants. GAO reported that the issues for grant awards were similar. ACF said that it issued multiple grants to a single grant recipient because of the CR period, instead of making annual or quarterly awards. This resulted in additional work, and the more CRs there were, the more work was generated. Agency staff interviewed for this report also indicate that most grants have been structured so that grant funds are distributed in the third or fourth quarter. This means that there is no disruption as long as the CR does not last longer than six months, and if the eventual level of funding is known with some certainty (GAO, 2009).

This latter qualifier is necessary because if the eventual level of funding is unknown, or in serious question, it can compromise the grant process by encouraging grant applicants to apply for grants that they are unlikely to receive. The preferred practice of many agencies seems to be to proceed with the grant application process even while operating under a CR, but to wait to make grant awards until a final appropriation has been received. This is a process that has worked fairly well in a world in which only the timing of funding is at issue, not the existence or funding level of the program in question. Increasingly, it appears as if uncertainty is likely to concern both funding and timing.

Compressed Timeframes. Compressing the timeframe for the evaluation of grant proposals also has the likely effect of decreasing the quality of the evaluation of grant proposals. A May 18, 2012 memo from OMB encouraged the use of evidence and evaluation in the review of grant proposals (Office of Management and Budget, 2012). This is a much more time-intensive process, and is difficult to do for grant programs that exist on one-year money. CRs make this situation even worse.

Regardless of the duration of a CR, agencies must develop spending plans for the fiscal year, or the portion covered by the CR. Absent some kind of specific guidance, many prudent agencies base their spending plans on the President’s budget, but plan to spend less than 25 percent (perhaps significantly less, depending on how conservative they want to be) of the amount that would have been available for the whole year. In the case of multiple CRs, this may need to be done multiple times. In the case of a CR that lasts for the whole year, especially where it does not permit spending to keep pace with inflation and salary increases, it may require agencies to cut back or defer some activities. In fact, the Obama administration announced in August 2012 that it was deferring the scheduled pay increase for federal employees at least for the duration of the fiscal year 2013 CR. This action may have been, in part, politically motivated, but it presumably does have the effect of making the CR easier for agency budget officials to manage.

Targeted Reductions. If there are planned cost increases but no money to fund them, this may lead to the broader strategies (such as hiring freezes and delays in training or travel) listed above, or it could result in the cancellation of particular programs or activities. One former agency official decries the approach taken by many of cutting a small amount from many programs, describing the results as the “walking wounded.” The preference of this official is to cancel particular lower-priority activities. (This assumes, of course, the flexibility to make such cancellation decisions, which may be proscribed by statute.) Another former agency budget official agrees, arguing that there is no particular reason to believe that the most appropriate response to funding problems caused by a CR is to distribute the pain evenly across the agency.

A specific example of a targeted funding reduction in 2011 was the layoff, by the Department of the Army, of hundreds of workers performing Humvee restoration work in Pennsylvania and Texas, in direct response to the continued failure of the Congress to pass the fiscal year 2011 defense appropriations bill. The layoffs in Pennsylvania represented a reduction of 288 full-time equivalent contract positions, which represented 10 percent of the total staff for the Letterkenny Army Depot, and approximately 25 percent of all the contract staff (McGarry, 2011).

Delayed Implementation. Sometimes, in addition, officials may delay the implementation of program enhancements or need to take extraordinary actions to respond to changing emergency circumstances because of funding constraints of CRs. In the case of the FBI, the Data Loading and Analysis System was delayed. This meant that the desired improvements in data sharing for counterterrorism, counterintelligence, and cyber intrusion were not able to take place as scheduled. In addition, for agencies like the FBI that must respond to immediate law enforcement demands (such as those created by the Oklahoma City bombing in 1995 and the events of September 11, 2001), CRs make it even more difficult to free up those resources. Since these emergencies are an immediate priority this, at least in the short run, puts even more pressure on other agency activities.

The fiscal year 2011 budget delay, leading up to a final agreement that was not reached until April 2011, is illustrative of the compromised government effectiveness that can occur. Because DOD needed to raid procurement budgets in the first half of the year in order to fund pay and benefits, it resulted both in deployed troops not getting needed equipment, the cancellation of 20 ship overhauls by the Navy, deferred aircraft maintenance, and even the transition from military to civilian authority in Iraq. Such effects were not only felt in DOD; the Commerce Department deferred the purchase of satellite technology designed to assist in hurricane forecasting (Sullivan, 2011). In State College, Pennsylvania, a new air traffic control tower, built at a cost of \$7.5 million, sat empty in the spring of 2011 because the Federal Aviation Administration lacked the funding to hire the air traffic controllers necessary to staff it (Sullivan, 2011).

Short and Longer-Term Continuing Resolutions

CRs can differ substantially in duration. Many years have seen multiple short CRs, while in other years (like fiscal years 2012 and 2013) CRs have been enacted that last six months or more. Each has its own drawbacks. Multiple short CRs create substantial additional workload for agencies, which are forced to take actions such as making multiple, short-term contractual agreements instead of longer-term ones. In addition, the shorter the CR, the greater the probability that some agency official will do something that violates the letter or the spirit of the law.

Longer-term CRs do not have these problems, but they create other ones. To the extent that agencies are implementing any changes from last year's status quo, longer-term CRs (if they are followed by a regular appropriation that is not received until six months or more into the fiscal year) make it difficult to carry out these changes. Agencies are required to wait for apportionments from OMB, and many also have to wait for the approval of spending plans by Congressional appropriations committees. These processes and approvals compress the time available for actual implementation to an even greater extent. The end result is that an agency receiving its final appropriation six months into the fiscal year may only have three or four months to execute that budget. This can make it literally impossible to hire staff, negotiate contracts, process grant applications or make other changes to the status quo before the end of the fiscal year. The potential effects here are not just on the ability to get things done, but on the quality of the work itself. As contracting officials rush to get contracts in place, they are less able to focus on whether they are getting the best work for the best price (Sullivan, 2011). The failure to spend all available money has the additional effect of making it appear as if the agency did not need the money to begin with, which affects its ability to compete for resources in the future.

The 2009 GAO report stated the effect clearly: "Agencies reported that CRs inhibited them from hiring staff and providing a higher level of services 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" (GAO, 2009).

As an example of the compromise in effectiveness that can accompany delays in funding, a 2009 study by the Congressional Research Service of the effect of the fiscal year 2009 CR on federal research and development funding argued that, because "new starts" would be prohibited, agencies would have difficulty meeting R&D milestones. According to this report, this would be true even if the eventual appropriation was enacted providing a substantially larger dollar amount than the CR because of the "shortened timeframe for obligating funds for these programs." This report questioned, given the long timelines often necessary for obligation, whether some of the funds could be obligated in time for them to deliver results during fiscal year 2009 at all (Shea and Morgan, 2008). This is not an effect peculiar to 2009. The fiscal year 2011 impasse also resulted in cuts to R&D funding, which led to termination of long-term research projects with a coincident loss of institutional knowledge (Sullivan, 2011).

At least, however, no one dies (at least immediately) because of delays in research and development spending. One of the most striking characteristics, on the other hand, of the 2011 budget impasse is that it actually resulted in delays in getting resources to the troops in the field. As a specific example, the Air Force had planned to purchase 48 MQ-9 Reaper unmanned aircraft in fiscal year 2011 in order to increase the number of combat air patrols in Afghanistan to 65 patrols. Under the CR, however, they could purchase no more than 24 such aircraft, which resulted in delays in getting this capability to active war fighters (Brannan, Cavas, and Majumdar, 2011). These wartime CR effects placed the 2011 debacle in sharp contrast to what had happened in most of the prior decade, where defense appropriation bills were almost always passed on time.

Impacts of Funding Uncertainty on Other Sectors and Actors

Federal agencies are not the only ones affected by continuing resolutions and other funding delays. Those who rely on the federal government for resources—state and local governments, federal contractors, and other recipients of federal funds—also experience the effects of these delays in ways that affect their operations and the quality of service delivery for federal programs. This report will highlight two of these effects—those on state and local governments who receive federal funds and those on federal contractors.

State and Local Governments

To a certain extent, state and local governments have adjusted to chronic late appropriations in much the same way that federal agencies have. Funding delays are so normal that a prudent state or local government simply plans for them. This was certainly true of those GAO case study agencies that made grants. They reported to GAO that their grant making process was normally not delayed by CRs of relatively short duration (three months or less). The Administration for Children and Families (ACF) and the Veterans Health Administration (VHA) both said that their grants are typically awarded later in the FY after the agency had received its 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.” (GAO, 2009)

Grants are sometimes cancelled or delayed because of delays in receiving funding. A number of examples from the fiscal years 2011 and 2012 budget processes:

- Delays in funding from the U.S. Department of Agriculture (USDA) delayed the groundbreaking for a new rural hospital in Angola, Indiana (IndianaBusiness.com, 2011).
- Groundbreaking for a new tornado shelter, to be financed mostly by funds from the Federal Emergency Management Agency (FEMA) was delayed in late 2011 because of delays in the fiscal year 2012 budget process (Schultz, 2011).
- The Northeast Missouri Community Action Agency (NMCAA) decided to close five satellite offices because of concerns over the level of Community Service Block Grant funds that would ultimately be received. Even though the eventual level received was better than NMCAA had initially anticipated, the decision to close the offices had already been made (Memphis Democrat, 2011).
- Delays in passing the fiscal year 2011 federal budget were blamed for delays experienced by the Health Resources and Services Administration (HRSA) in sending out HIV/AIDS funding to be made available in the summer of 2011 under the Ryan White Act (Sun, 2011).

In addition, a longer CR period can compress the application time available. This can have the effect of decreasing the quality of applications, and can also discourage some governments

from applying for grants out of fear that they will have insufficient time to prepare grant applications, which can be complicated and time-consuming. Reduced competition can decrease the effectiveness of the grant programs, as some governments that would have been particularly good candidates for grant awards do not even apply.

Agencies awarding grants must decide, if operating on a long-term (more than three months but less than a full year) CR, whether to suspend grant application processes until an appropriation is received or to go ahead with them pending a final appropriation. In the former case, there may not be enough time available for potential recipients to prepare applications and for agencies to process them in the second half of the year. So what appears to be a delay may result in a cancellation of the grant program, at least for the current year. In the latter case, there is a risk that, if the funds are not ultimately provided, the agency could be in a position of cancelling a program after they have applications in. This occurred in fiscal year 2011 with the Department of Education's Teaching American History program, which was ultimately cancelled.

Many federal agencies have adjusted their grant making schedules, as they have already done with their contracting schedules, so that many grant competitions do not occur until the second half of the fiscal year. This means that a six-month CR (one that lasts through the end of March) does not cause much trouble for grant making, provided that agencies do not suspend the application process.

For ongoing (non-competitive) programs, the ability of agencies to continue funding to state and local governments is dependent on their ability to receive apportionments that provide sufficient flexibility to operate under a CR. The Department of Education's Impact Aid program (which provides funds to local education agencies to compensate them for a federal presence, such as military installations, in local areas) has been able to receive an apportionment that permits it to provide funds for 30 days at a time, even when there is a short CR or a series of them. A similar accommodation has been made for the Department of Health and Human Service's Low Income Home Energy Assistance (LIHEAP) program, where the nature of the program dictates that a higher percentage of funds are spent in the first half of the fiscal year.

While state and local governments may have adjusted to the reality of late federal appropriations, this does not mean that they have no effect. States have recently been attempting, with performance budgeting and other reforms, to engage in more long-term planning. The short-term, haphazard nature of the federal budget process interferes with that effort, since states and localities cannot be assured of a reliable flow of federal funds.

Federal Contractors

It is not surprising that, when stories began to emerge in 2012 that speculated about the effects of sequestration, the first effects that were discussed were the impacts on federal contractors. This is partially because contractual employees do not have the types of protections enjoyed by federal employees, and because many contractors work under much more stringent cash flow constraints than exist for federal agencies. Since many contractors are required to provide employees with 90-day notice prior to termination, the threat of sequestration will be felt, at least apparently, by those contractors first. (It must be acknowledged that there is an additional motivation for those contractors to make apparent the costs of sequestration, as it might encourage the delay or cancellation of these across-the-board cuts.)

Like federal agencies and other recipients of federal funds, contractors tend not to be affected by late appropriations of one quarter or less, since these are so typical and since many contract

renewals do not take place until the latter part of the fiscal year. A CR that goes beyond the first of the calendar year may begin to cause problems for contractors, partly depending on when contracts are up for renewal. If contractors believe that an actual shutdown, or contract cancellation, is imminent, on the other hand, they have difficult questions to address concerning whether or not to continue work, and how long they can afford to keep employees on board (McKenna, Long and Aldridge, 2011).

Whether late appropriations will ultimately lead to layoffs depends on the contractor, and particularly on the rate of turnover. For many contracting agencies, turnover is relatively high, so the effect is more likely to be that positions will not be filled in a timely fashion, rather than that layoffs will occur. There certainly are cases, especially for small contractors, where layoffs are necessary. In 2011, for example, Penn State University's Applied Research Laboratory, heavily funded by a contract with the Navy, reported having to lay off 13 engineers due to funding reductions from the Navy associated with federal budget delays (Sullivan, 2011). Contractors can face the dilemma of having to meet payroll without the assurance of a future funding stream, while at the same time not wanting to let employees go because of an assumption that the work will continue and that existing employees, with experience working on these contracts, will be necessary to deliver quality work (Corrin, 2011).

Many contractors work not only for the federal government but have substantial commercial operations as well. Those firms with a lot of commercial business are more insulated from the effects of late appropriations (and, by extension, from sequestration). The effects will be felt more acutely by firms with the following characteristics:

- Small businesses that may have less of a cushion against the delay in funding for an apparently small contract. A 2011 report (Sullivan, 2011) suggested that smaller businesses are less likely to have the capacity to “ride out the uncertainty” associated with funding delays.
- Firms that work only for the government
- Firms that are funded from agencies that have primarily one-year money
- Firms funded by agencies that are more likely to receive late appropriations (for example, given the GAO findings above, DHS contracts carry less potential for delay than HHS contracts do)
- Contractors that are (especially within DOD) in the delivery stage of a given project (as opposed to development) because delivery involves more manpower

While federal agencies (and certainly federal employees) may see government shutdowns as ultimately less damaging than delays in appropriations manifested by multiple CRs (for reasons outlined above), the same is not true for contractors. Contractors are going to see a shutdown as more costly than a CR, since if the federal government shuts down (at least historically) federal employees will be paid, but contractors have not historically been paid for work missed. (Brodsky, 2011). Companies have a responsibility to shareholders, so they can't afford to employ people who aren't working. This means that even the credible threat of a shutdown can create significant problems for contractors. For contractors preparing for a shutdown is not as simple as a division between “essential” and non-essential employees. Contractors can be fairly sure that they will not be compensated for work done during a shutdown even if they are supporting agencies that have a high percentage of essential employees.

According to contractors who deal with both sectors, the biggest difference between commercial and federal work is that for commercial work the contractual firm can make long-term commitments, whereas with a federal agency the commitment is year to year. For a commercial contract, for example, a firm might do a 10-year contract with the possibility of mutually agreed

upon changes over the course of the agreement. To the extent that there are capital costs, those can be captured with certainty over a three-to-five year timeframe. A federal contract, conversely, may be a base contract with 10 one-year options. In that case, it is necessary to have a different cost recovery structure, which invariably means that a federal agency is being charged more for an equivalent service than a private firm would be. The uncertainty of future funding makes it likely easier, and less costly, for firms to deal with agencies that have multi-year money than those with one-year appropriations.

A 2007 study regarding Department of Defense contracting delays found that nine out of 12 companies included in the study experienced a decline in company stock values as a result of contracting delays (Leskovich, 2007). More recently, a Federal Times article from 2011 reported that the existing continuing resolution had underfunded the Army's AH-64 Apache helicopter upgrade while simultaneously requiring the Army to spend \$1 billion on Humvees that it did not need and had already decided not to purchase (Brannan, Cavas, and Majumdar, 2011).

Larger firms, and firms that receive substantial funding from sources other than the government, can often afford to take a longer view when it comes to the continuation of services when there may be a delay in funding. That is, while they can choose to stop work, they may also choose to continue to provide services in order to maintain good relations with the federal agency in question. They do this even though they have no assurance of being compensated for the full value of the services provided. In addition, however, they are likely not to continue to attach their most highly valued, highly skilled employees to contracts with uncertain funding streams. Thus, the quality of service provided by the contractor, and received by the client, is reduced by budget uncertainty.

The brinkmanship over the debt ceiling created a wholly different, and unusual, situation for contractors. Contractors are used to dealing with CRs, but the notion that the government might run out of money and not be able to make legally binding payments was a completely new notion. This was no longer about how much money, or when, but about whether the government was going to pay, and pay on time. Companies have adjusted to the normal practice of CRs, but they do not like uncertainty of the type that led to the debt ceiling debacle, and they certainly don't like the uncertainty that led to sequestration. That makes them nervous. There is some chance that this nervousness will affect their later pricing structure.

The effect of budget reductions, or funding uncertainty, is likely to be felt to a much greater extent by subcontractors than by prime contractors. If a contractor takes a 10-percent cut in a contract, the cuts will likely not pass on in the same percentage to subcontractors. Instead, prime contractors may protect themselves and pass on all or most of the reductions to their subcontractors. This may be particularly true in cases when subcontractors are competitors. The subcontractors, however, are more likely to be small businesses and a funding interruption could put them out of business, as opposed to just causing some layoffs.

In the end, it is true that, in general, government work tends to be more risky than commercial work. It is made even more risky in cases where there may be some interruption in funding as a result of a shutdown or default. Since federal agencies may respond to CRs by reducing funds to some contractors, late appropriations also carry with them some risk to contractors. It is likely that contractors build that risk into their pricing structure and that, the greater the perceived risk, the greater the premium. Even without this explicit premium, it is likely that there are a significant number of contractors who are unwilling to work with the government, thus reducing competition and increasing costs.

Recommendations

Benefits of an Improved Appropriations Process

The extent to which federal agency officials have simply adjusted to the reality of late appropriations is striking. It is, in a sense, difficult to get many of these officials to even think about how much better their world might be if funding were received on schedule. It is hard, however, to argue with the “senior Navy official” who, when interviewed concerning the effects of a 2011 funding delay of six months said that “(i)t is not a good situation to be in. It forces you into stupid management decisions” (Brannan, Cavas, and Majumdar, 2011). It seems, from reviewing the research and from interviewing current and past federal officials, that routine timely appropriations would have many positive effects on budget formulation and execution.

- 1. Improve Planning.** If appropriations were timely, it would improve budget planning for future years. Late appropriations make planning for future fiscal years difficult. The clearest example of this has to do with the President’s budget; if the current year appropriations are not enacted by around mid-December, it is virtually impossible to have reliable information on which to base proposed funding for the next budget year.
- 2. Better Decisions.** If decisions in budget execution did not have to be made in such compressed time frames, it would lead to better decisions since agencies would not be (at least to the same extent) rushing to make choices on contractors, grants, etc.
- 3. Timely Hiring.** Agencies could begin to plan for hiring earlier in the year. Given how long it can take to fill a position, this increases the chance that they will have a full complement of staff available to deliver priority services.
- 4. Timely Training.** Employee training would be able to be provided in a deliberate, planned manner. This would enable agencies to better invest in their most expensive resource—their people. This training has fallen off because of funding delays and also because high-profile scandals, such as the one at GSA, have resulted in much training being unfairly characterized as wasteful.
- 5. Improved Contracts.** Both the cost of contractual services and their quality would be improved if appropriations were received in a timely manner. Predictability would enable agencies to negotiate contracts at a lower price and contractors would be encouraged to leave employees with experience on that contract in place, as opposed to moving them to some other assignment.

While historically the problem with late appropriations has been more one of timing than of uncertainty of the eventual funding level, recently federal agencies have found themselves in a position where both the timing and the amount are in serious question. Under divided government, the House and Senate may have substantial disagreements about the level of funding, and at least one of these may be significantly at odds with the President’s budget. The threat of the Budget Control Act’s sequestration reductions ratchets up this level of uncertainty. Independent of sequestration, the need to reduce federal debt will result in less than a zero-sum game for federal agencies; having sufficient time to plan for these budget reductions will be even more important than ever.

Sequestration places the quandary for agencies in stark relief. They have two options, both with operational consequences. They could assume that sequestration will not occur. In the event that sequestration does occur, they will have to make the changes necessary to comply over a period lasting less than three-quarters of the fiscal year. On the other hand, they could on their own initiative plan for the eventuality that sequestration will occur. If they do this, and it does not, this will mean that they have unnecessarily taken the initiative to reduce services.

In the end, the obvious conclusion is difficult to ignore. **That is: Given all the negative consequences of late appropriations, the Congress should fulfill its constitutional responsibility and routinely enact appropriations before the beginning of the fiscal year.** It is hard to imagine that the roughly eight months between the delivery of the President's budget and the beginning of the fiscal year would not provide sufficient time to enact appropriation bills if the Congress viewed it as a significant priority. Even though the federal government is a large, complicated enterprise, and the federal budget process is a complex process, it does not excuse this lack of action. Meyers correctly observed that the appropriations process is partially a victim of the same ultra-partisanship that plagues U.S. politics more generally; part of the reason that the appropriations process is chronically late is because it involves so many decisions with political consequences (Meyers, 1997).

To begin and end with a conclusion that the Congress should just do its work, however, seems particularly unhelpful. For this reason, it is useful to consider some recommendations that start from the assumption that the congressional appropriations process will not become more (or at least much more) timely. If departments and agencies continue to face late appropriations, what can be done to minimize their effects? The following recommendations are appropriate based on this review of the effects of federal funding delays.

Recommendations

Recommendation One: The Congress should make more funding available on a multi-year or no-year basis.

At present, many agency salary and expense budgets are provided using one-year money. If agencies had the flexibility to obligate funds over multiple fiscal years, many of the specific problems caused by late appropriations would be reduced. This is not to suggest that all appropriations should permit multi-year or no-year obligations, but it would be useful to specifically review current practice with an eye toward increasing the percentage where such multi-year obligations are permitted. This might assist, in particular, those agencies with significant amounts of grant and contract funding. Those agencies with more multi-year funding have routinely reported that they have fewer problems navigating continuing resolutions.

Many have also advocated biennial budgeting as a means of introducing more certainty into the budget process. Biennial budgeting would not address only the availability of funding, but also the frequency with which budget decisions are made. A full consideration of biennial budgeting is beyond the scope of this report, but certainly it would make federal agencies better able to plan for future spending. Absent a full biennial process, making more federal spending available over multiple years would be a step in the right direction. Thus we might be able to get some of the flexibility offered by biennial budgeting without having to change the frequency with which budget decisions are made.

Recommendation Two: The Congress should prohibit itself from using continuing resolutions.

This may seem like an odd recommendation, as it increases the probability of a government shutdown. In fact, it flies in the face of a more common recommendation, which is that failure

to enact appropriations should result in an automatic continuing resolution (ACR). The problem with that recommendation is that ACRs may just become the norm; that is, this might reduce the urgency of enacting appropriations even further. Given the problems created by CRs as outlined in this report, this would not be a good outcome. Conversely, prohibiting CRs turns up the heat. It means that the options are either a full-year appropriation or a government shutdown. The point here is that if there were more urgency in enacting appropriations, it would increase the odds of their being enacted.

Recommendation Three: The Congress should enact CRs that permit inflationary increases to the prior year level.

For those members of Congress and Presidents who believe that spending should be frozen or reduced, this would provide incentives to reach agreement on appropriations in a timely manner, since the reversion level would be a higher level of spending. For federal agencies, however, this would reduce the necessity of counterproductive actions having to be taken in order to live within a CR that requires spending at the prior year level. As long as agencies do not receive a final appropriation, it seems unnecessary to force them into actions that only increase costs and reduce effectiveness. This recommendation would also reduce, but not eliminate, the need for anomalies, which should be held to a minimum in the interest of lessening the substantial effort that goes into identifying and negotiating them.

Recommendation Four: The Congress should avoid micromanaging the budget execution process, particularly if late appropriations are to continue to be the norm.

Requirements imposed on some agencies to have spending plans approved by congressional committees are, in the context of late appropriations, a costly luxury in terms of congressional oversight. If appropriations were timely, such a review could potentially be justified. In cases where a final appropriation is not received until three to six months into the fiscal year, there is no justification for the additional delay that such a requirement imposes on federal agencies and their ability to manage funds.

Recommendation Five: The Congress and President should limit CRs to only one or two per year and they should not extend past the end of the calendar year.

It is important to recognize that all CRs are not created equal. The length of individual CRs and the duration of the total period that agencies are required to operate under a CR matter. Consistently, this report identifies more problems with two kinds of CRs—those of short duration and those that extend far into the fiscal year. In the former case, short CRs (especially where there are multiple CRs lasting days or weeks, as opposed to months) create all sorts of problems for federal agencies that increase the odds of agency officials unwittingly violating some law or engaging in counterproductive management practices. In the latter case, the problems created by attempting to manage through CRs lasting four months or six months (or more) are well documented. If CRs are to be enacted, it is important for them to be enacted in a way that minimizes their negative effects.

Recommendation Six: The Congress and President should not allow salary increases for federal employees to take effect during a CR.

Salary increases that take effect during CRs both make budget management more difficult (potentially reducing options available for final appropriations), and result in out-year costs that must be managed. Unlike inflation for other line items, which cannot be controlled, salary increases are optional, and it seems prudent to delay them pending approval of a final appropriation.

Recommendation Seven: Federal agencies should continue the practice of delaying renewal of non-recurring contracts and competitive grant awards to the second half of the year.

One striking, and consistent, finding of virtually all reviews of late appropriations is that federal agencies have done an admirable job of adjusting to the reality of late appropriations by attempting to minimize their operational impacts. To the extent that there are agencies that have not taken advantage of flexibility permitted under federal law and pushed contract and grant processes until later in the fiscal year, they should do so. Agencies that have already engaged in these activities should continue them.

Conclusion

In the end, there can be little question that late appropriations and the uncertainty they create lead to substantial negative effects for federal agencies. These negatives have historically been associated with the timeliness of the process. Appropriations have gotten less timely over the past 10 years. Increasingly, however, timing uncertainty has been compounded by uncertainty over the level of funds to be provided. This twin uncertainty—over timeliness and the level of funding—creates all sorts of counterproductive results. These results, which are unacceptable given the importance of the federal budget to the overall performance of the U.S. economy and the delivery of services to citizens, should be minimized if they cannot be eliminated.

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About the Author

Philip Joyce is Professor of Management, Finance and Leadership in the Maryland School of Public Policy. Professor Joyce's teaching and research interests include public budgeting, performance measurement, and intergovernmental relations. He is the author of *The Congressional Budget Office: Honest Numbers, Power, and Policymaking* (Georgetown University Press, 2011), and coauthor of two books—*Government Performance: Why Management Matters* (Johns Hopkins, 2003) and *Public Budgeting Systems, 9th Edition* (Jones and Bartlett, 2013). He is the author of more than 50 other publications (including book chapters and articles), appearing in journals such as the *Public Administration Review*, *Public Budgeting & Finance*, *The Journal of Policy Analysis and Management*, *Administration and Society*, and the *Handbook of Government Budgeting*. His 1993 article, "Using Performance Measures for Federal Budgeting: Proposals and Prospects" was reprinted in *Classics of Public Administration* (1997).



Professor Joyce is Editor of *Public Budgeting & Finance*, is a Past President of the American Association of Budget and Program Analysis and is a Past Chair of the American Society for Public Administration (ASPA)'s Center on Accountability and Performance (CAP). Professor Joyce is the recipient of a number of grants since 2000 from The Pew Charitable Trusts, focusing on the performance of state governments and federal agencies. The highest profile grant funded his participation in the Government Performance Project, which evaluated the performance of state governments, including their management of money, people, infrastructure, and information. He also was the Principal Investigator on the Pew-funded Federal Performance Project, which undertook a similar evaluation of federal agencies between 2000 and 2002.

In addition to his work at the University of Maryland, Dr. Joyce has been on the faculty of The George Washington University, the Maxwell School of Citizenship and Public Affairs at Syracuse University, and the University of Kentucky. He also has 12 years of public sector work experience, including four years with the Illinois Bureau of the Budget and five years with the United States Congressional Budget Office (CBO). In 1992, he received

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Dr. Joyce is a Fellow of the National Academy of Public Administration. He is the recipient of several national awards, including the Aaron Wildavsky Award for lifetime scholarship in public budgeting and finance, the Elmer Staats Award from the National Association of Schools of Public Affairs and Administration, and the Joseph Wholey Award from the American Society for Public Administration. He has done extensive volunteer work in his local community of Arlington, Virginia, including recently serving as Chair of the Budget Advisory Council to the Arlington County School Board. He has consulted and lectured internationally, both as an individual and for the International Monetary Fund and the World Bank. This consulting work has taken him to Bulgaria, China, Guyana, Korea, Latvia, Lithuania, Mexico, and Slovenia.

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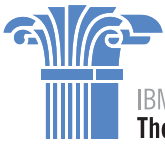
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