

Continuing Resolutions

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Continuing Resolutions

A. Introduction

1. Definition and General Description

The term “continuing resolution” may be defined as follows:

“An appropriation act that provides budget authority for federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year.”¹

For the most part, continuing resolutions are temporary appropriation acts. With a few exceptions to be noted later, they are intended by Congress to be stop-gap measures enacted to keep existing federal programs functioning after the expiration of previous budget authority and until regular appropriation acts can be enacted. [B-300673, July 3, 2003](#). Congress resorts to the continuing resolution when there is no regular appropriation for a program or agency, perhaps because the two houses of Congress have not yet agreed on common language, because authorizing legislation has not yet been enacted, or because the President has vetoed an appropriation act passed by Congress. [58 Comp. Gen. 530, 532 \(1979\)](#). Also, given the size and complexity of today’s government, the consequent complexity of the budget and appropriations process, and the occasionally differing policy objectives of the executive and legislative branches, it sometimes becomes difficult for Congress to enact all of the regular appropriation acts before the fiscal year ends.

Continuing resolutions are nothing new. GAO has found administrative decisions discussing them as far back as the 1880s.² At one time, they were called “temporary resolutions.” The term “continuing resolution” came into widespread use in the early 1960s.³

¹ GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: September 2005), at 35–36.

² 4 Lawrence, First Comp. Dec. 116 (1883); 3 Lawrence, First Comp. Dec. 213 (1882).

³ For a brief historical sketch, see Library of Congress, Congressional Research Service, *Budget Concepts and Terminology: The Appropriations Phase*, No. GGR 74-210, ch. V (1974), at 31–32, which identifies what may have been the first continuing resolution, an 1876 resolution (ch. 157, 19 Stat. 65 (June 30, 1876)) requested by President Grant.

In the 20 years from fiscal years 1962 to 1981, 85 percent of the appropriation bills for federal agencies were enacted after the start of the fiscal year and thus necessitated continuing resolutions. GAO has discussed the problems inherent in this situation in several reports. *See, e.g.,* GAO, *Updated Information Regarding Funding Gaps and Continuing Resolutions*, GAO/PAD-83-13 (Washington, D.C.: Dec. 17, 1982); *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31 (Washington, D.C.: Mar. 3, 1981). In 24 of the fiscal years between fiscal years 1977 and 2004, Congress and the President did not complete action on a majority of the 13 regular appropriations by the start of the fiscal year. In eight of those years, they did not finish any of the bills by the start of the new fiscal year.⁴ Twenty-one continuing resolutions were enacted for fiscal year 2001.

The periodic experience of government “shutdowns,” or partial shutdowns, when appropriations bills have not been enacted has led to proposals for an automatic continuing resolution. The automatic continuing resolution, however, is an idea for which the details are critically important. Depending on the detailed structure of such a continuing resolution, the incentive for policymakers—some in the Congress and the President—to negotiate seriously and reach agreement may be lessened. If the goal of the automatic continuing resolution is to provide a little more time for resolving issues, it could be designed to permit the incurrence of obligations to avoid a funding gap, but not the outlay of funds to liquidate the new obligations. This would allow agencies to continue operations for a period while the Congress completes appropriations actions. GAO, *Budget Process: Considerations for Updating the Budget Enforcement Act*, GAO-01-991T (July 19, 2001). Funding gaps and the legal problems they present are discussed in greater detail in Chapter 6, section C.6.

Continuing resolutions are enacted as joint resolutions making continuing appropriations for a certain fiscal year or portion of the fiscal year. Although enacted in this form rather than as an “act,” once passed by both houses of Congress and approved by the President, a continuing resolution becomes a public law and has the same force and effect as any other statute. *Oklahoma v. Weinberger*, 360 F. Supp. 724, 726 (W.D. Okla. 1973);

⁴ Library of Congress, Congressional Research Service (CRS), *The Congressional Appropriations Process: An Introduction*, No. 97-6845 (Dec. 6, 2004), at 15. *See also* CRS, *Duration of Continuing Resolutions in Recent Years*, No. RL32614 (Apr. 22, 2005); CRS, *Continuing Appropriations Acts: Brief Overview of Recent Practices*, No. RL30343 (Jan. 10, 2005).

[B-152554, Dec. 15, 1970](#). Since a continuing resolution is a form of appropriation act, it often will include the same types of restrictions and conditions that are commonly found in regular appropriation acts. *See, e.g.,* [B-210603, Feb. 25, 1983](#) (ship construction appropriation in continuing resolution making funds available “only under a firm, fixed price type contract”). Indeed, continuing resolutions typically incorporate by reference restrictions and conditions from regular appropriations acts. *See, e.g.,* Pub. L. No. 108-309, § 102, 118 Stat. 1137, 1138 (Sept. 30, 2004). Having said this, however, it is necessary to note that continuing resolutions, at least those in what GAO considers the “traditional form,” differ considerably from regular appropriation acts.

Continuing resolutions may take different forms. The “traditional” form, used consistently except for a few years in the 1980s, employs essentially standard language and is clearly a temporary measure. An example of this form is Public Law 108-309, the first continuing resolution for fiscal year 2005, which provided funding authority from October 1 through November 20, 2004. Section 101 appropriates:

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

Section 101 then references most of the regular appropriation acts for fiscal year 2004.

Public Law 108-309 also contains a number of additional typical provisions, including the following:

“SEC. 102. Appropriations made by section 101 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.”

“SEC. 104. No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which

appropriations, funds, or other authority were not available during fiscal year 2004.”

“SEC. 107. Unless otherwise provided for in this joint resolution or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this joint resolution shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this joint resolution, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) November 20, 2004, whichever first occurs.”

When enacting continuing resolutions in this form, there is clear indication that Congress intends and expects that the normal authorization and appropriation process will eventually produce appropriation acts which will replace or terminate the budget authority contained in the resolution. Thus, a continuing resolution of this type generally provides that funds appropriated for an activity by the resolution will no longer be available for obligation if the activity is later funded by a regular appropriation act, or Congress indicates its intent to end the activity by enacting an applicable appropriation act without providing for the activity. 58 Comp. Gen. at 532. See also section 107 of Public Law 108-309, quoted above. Obligations already incurred under the resolution, however, may be liquidated.

GAO’s decision in [B-300673, July 3, 2003](#), illustrates the interplay between funding under a continuing resolution and a later-enacted regular appropriation. The fiscal year 2003 appropriation act for the legislative branch authorized the House of Representatives Chief Administrative Officer to use that Office’s salaries and expenses appropriation to pay certain expenses of the House Child Care Center for “fiscal year 2003 and each succeeding fiscal year.” Pub. L. No. 108-7, § 108, 117 Stat. 11, 355 (Feb. 20, 2003). Previously, a revolving fund paid those expenses. However, since Public Law 108-7 was not enacted until February 20, 2003, fiscal year 2003 expenses for the Child Care Center were initially charged to the revolving fund under continuing resolutions. With enactment of Public Law 108-7, GAO held that the Chief Administrative Officer’s salaries and expenses appropriation should fund the Child Care Center expenses retroactive to the beginning of fiscal year 2003 and that this appropriation should reimburse the revolving fund for the fiscal year 2003 expenses initially charged to it under the continuing resolutions. The decision stated

that the fact that payments were initially made during a period covered by a continuing resolution was not significant since the regular appropriation, once enacted, supersedes the continuing resolution and governs the amount and period of availability.

Unlike regular appropriation acts, continuing resolutions in their traditional form do not usually appropriate specified sums of money. Rather, they usually appropriate “such amounts as may be necessary” for continuing projects or activities at a certain “rate for operations.” The rate for operations may be the amount provided for the activity in an appropriation act that has passed both houses of Congress but has not become law; the lower of the amounts provided when each house has passed a different act; the lower of the amounts provided either in an act which has passed only one house or in the administration’s budget estimate; the amount specified in a particular conference report; the lower of either the amount provided in the budget estimate or the “current rate”; or simply the current rate. Therefore, in order to determine the sum of money appropriated for any given activity by this type of continuing resolution, it is necessary to examine documents other than the resolution itself. Some continuing resolutions have used a combination of “formula appropriations” of the types described in this paragraph and appropriations of specific dollar amounts. An example is the fiscal year 1996 continuing resolution, Pub. L. No. 104-69, 109 Stat. 767 (Dec. 22, 1995).

There are times when Congress acknowledges at the outset that it is not likely to enact one or more regular appropriation acts during the current fiscal year.⁵ See, for example, the 1980 continuing resolution, Pub. L. No. 96-86, 93 Stat. 656 (Oct. 12, 1979), which provided budget authority for the legislative branch for the entire fiscal year.

For a few years in the 1980s, Congress used a very different form of continuing resolution, simply stringing together the complete texts of appropriation bills not yet enacted and enacting them together in a single “omnibus” package. This approach reached its extreme in the 1988 continuing resolution, Pub. L. No. 100-202, 101 Stat. 1329 (Dec. 22, 1987), which included the complete texts of all 13 of the regular appropriation

⁵ In November 1995, perhaps anticipating numerous continuing resolutions for fiscal year 1996, for example, Congress suspended for the remainder of that session the requirement in 1 U.S.C. § 107 that the resolutions be printed on parchment for presentation to the President. Pub. L. No. 104-56, title II, § 201, 109 Stat. 548, 553 (Nov. 20, 1995).

bills. This form of continuing resolution differs from the traditional form in two key respects:

- Unlike the traditional continuing resolution, the “full text” version amounts to an acknowledgement that no further action on the unenacted bills will be forthcoming, and consequently provides funding for the remainder of the fiscal year.
- When the entire text of an appropriation bill is incorporated into a continuing resolution, the appropriations are in the form of specified dollar amounts, the same as if the individual bill had been enacted.

The “full text” format generally does not raise the same issues of statutory interpretation that arise under the traditional format. However, it produces new ones. For example, in a continuing resolution which consolidates the full texts of what would otherwise have been several separate appropriation acts, GAO has construed the term “this act” as referring only to the individual “appropriation act” in which it appears rather than to the entire continuing resolution. [B-230110, Apr. 11, 1988](#).

While the omnibus approach of the 1988 resolution may appear convenient, it generated considerable controversy because, among other reasons, it is virtually “veto-proof”—the President has little choice but to sign the bill or bring the entire government to an abrupt halt. *See Presidential Remarks on the Signing of the Continuing Appropriations for Fiscal Year 1988 and the Omnibus Budget Reconciliation Act of 1987 Into Law*, 23 Weekly Comp. Pres. Doc. 1546, 1547 (Dec. 22, 1987).

There was no continuing resolution for fiscal year 1989. All 13 of the appropriation bills were enacted on time, for what was reported to be the first time in 12 years.⁶ For fiscal year 1990, Congress reverted to the traditional type of continuing resolution. *See* Pub. L. No. 101-100, 103 Stat. 638 (Sept. 29, 1989). Nor were there any continuing resolutions for fiscal years 1995 and 1997. The start of the 1997 fiscal year was met with an omnibus appropriations act which added five regular appropriations bills to a sixth regular appropriations bill. Pub. L. No. 104-208, 110 Stat. 3009 (Sept. 30, 1996). The remaining seven bills were enacted separately.

⁶ Irvin Molotsky, *All Spending Bills Completed on Time*, N.Y. Times, Oct. 2, 1988, at 27.

Questions arising under continuing resolutions can be grouped loosely into two broad categories. First are questions in which the fact that a continuing resolution is involved is purely incidental, in other words, questions which could have arisen just as easily under a regular appropriation act. For example, one of the issues considered in [B-230110, Apr. 11, 1988](#), was whether certain provisions in the 1988 resolution constituted permanent legislation. Cases in this category are included with their respective topics throughout this publication and are not repeated in this chapter.

Second are issues that are unique to continuing resolutions, and these are the focus of the remainder of this chapter. For the most part, the material deals with the traditional form of continuing resolution as it is this form that uses concepts and language found only in continuing resolutions.

One point that should emerge from the GAO decisions and opinions is the central role of legislative intent. To be sure, legislative intent cannot change the plain meaning of a statute; Congress must enact what it intends in order to make it law. However, there are many cases in which the statutory language alone does not provide a clear answer, and indications of congressional intent expressed in well-established methods, viewed in light of the purpose of the continuing resolution, will tip the balance.

In one case, for example, a continuing resolution provided a lump-sum appropriation for the National Oceanic and Atmospheric Administration's research and facilities account, and provided further for the transfer of \$1.8 million from the Fisheries Loan Fund. The first continuing resolution for 1987 included the transfer provision and was signed into law on October 1, 1986. The Fisheries Loan Fund was scheduled to expire at "the close of September 30, 1986." Under a strictly technical reading, the \$1.8 million ceased to be available once the clock struck midnight on September 30. However, the Comptroller General found the transfer provision effective, noting that a contrary result would "frustrate the obvious intent of Congress." [B-227658, Aug. 7, 1987](#).

Similarly, appropriations for the United States Commission on Civil Rights contained in a fiscal year 1992 continuing resolution were found to have extended the existence of the Commission beyond its termination on September 30, 1991. "When viewed in their entirety, legislative actions on the Commission's reauthorization and appropriation bills, together with their legislative history, clearly manifest an intent by Congress for the

Commission to continue to operate after September 30, 1991.” [71 Comp. Gen. 378, 381 \(1992\)](#).

While many of the continuing resolution provisions to be discussed will appear highly technical (because they are highly technical), there is an essential logic to them, evolved over many years, which is more readily seen from the perspective not of a specific case or problem, but of the overall goals and objectives of continuing resolutions and their relationship to the rest of the budget and appropriations process.

2. Use of Appropriation Warrants

Funds, including funds appropriated under a continuing resolution, are drawn from the Treasury by means of an appropriation warrant (FMS Form 6200).⁷ A warrant is the official document issued pursuant to law by the Secretary of the Treasury upon enactment of an appropriation that establishes the amount of money authorized to be withdrawn from the Treasury.⁸ Under 31 U.S.C. § 3323(a), warrants authorized by law are to be signed by the Secretary of the Treasury and countersigned by the Comptroller General. However, under the authority of section 3326(a) of title 31, United States Code, the Secretary of the Treasury and the Comptroller General have issued several joint regulations phasing out the countersignature requirement.⁹ First, Department of the Treasury-General Accounting Office Joint Regulation No. 5 (Oct. 18, 1974) waived the requirement for all appropriations *except continuing resolutions*. Next, Treasury-GAO Joint Regulation No. 6 (Oct. 1, 1983) further simplified the process by requiring issuance of a warrant and countersignature under a continuing resolution only once, for the total amount appropriated, unless a subsequent resolution changed the annual amount. Finally, Treasury-GAO Joint Regulation No. 7, effective January 1, 1991, eliminated the countersignature requirement completely.

⁷ 1 TFM 2-2025 (Dec. 15, 2004).

⁸ GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: September 2005), at 101.

⁹ Treasury-GAO Joint Regulations are included in Appendix II to Title 7 of the GAO *Policy and Procedures Manual for Guidance of Federal Agencies* (Washington, D.C.: May 18, 1993). Because of their nature, they are not published in the Federal Register. Some of the earlier ones, but not those noted in the text, were published in the annual “Comp. Gen.” volumes. Title 7 of the Policy and Procedures Manual is the only GAO reference in which the regulations and amendments can be found together in a single location, available at www.gao.gov/special.pubs/ppm.html (last visited September 15, 2005).

B. Rate for Operations

1. Current Rate

The current rate, as that term is used in continuing resolutions, is equivalent to the total amount of money which was available for obligation for an activity during the fiscal year immediately prior to the one for which the continuing resolution is enacted.

The term “current rate” is used in continuing resolutions to indicate the level of spending which Congress desires for a program. For example, a resolution may appropriate sufficient funds to enable a program to operate at a rate for operations “not in excess of the current rate,” or at a rate “not in excess of the lower of the current rate” or the rate provided in a certain bill. It is possible to read the term “current rate” as referring to either the amount of money available for the program in the preceding year, or an amount of money sufficient to enable continuation of the program at the level of the preceding year. The two can be very different.

As a general proposition, GAO regards the term “current rate” as referring to a sum of money rather than a program level. *See, e.g., 58 Comp. Gen. 530, 533 (1979); B-194362, May 1, 1979.* Thus, when a continuing resolution appropriates in terms of the current rate, the amount of money available under the resolution will be limited by that rate, even though an increase in the minimum wage may force a reduction in the number of people participating in an employment program (*B-194063, May 4, 1979*), or an increase in the mandatory level of assistance will reduce the number of meals provided under a meals for the elderly program (*B-194362, May 1, 1979*).

The term “current rate” refers to the rate of operations carried on within the appropriation for the prior fiscal year: *B-152554, Dec. 6, 1963.* The current rate is equivalent to the total appropriation, or the total funds which were available for obligation, for an activity during the previous fiscal year: *Edwards v. Bowen*, 785 F.2d 1440 (9th Cir. 1986); *B-300167, Nov. 15, 2002; B-255529, Jan. 10, 1994; 64 Comp. Gen. 21 (1984); 58 Comp. Gen. 530, 533 (1979); B-194063, May 4, 1979; B-194362, May 1, 1979.* Funds administratively transferred from the account during the fiscal year, under authority contained in substantive legislation, should not be deducted in determining the current rate. *B-197881, Apr. 8, 1980; B-152554, Nov. 4, 1974.*

It follows that funds transferred into the account during the fiscal year pursuant to statutory authority should be excluded. [B-197881, Apr. 8, 1980](#).

In those instances in which the program in question has been funded by 1-year appropriations in prior years, the current rate is equal to the total funds appropriated for the program for the previous fiscal year. *See, e.g.*, [B-271304, Mar. 19, 1996](#); 64 Comp. Gen. at 22; 58 Comp. Gen. 530; [B-194362, May 1, 1979](#). In those instances in which the program has been funded by multiple year or no-year appropriations in prior years, the current rate is equal to the total funds appropriated for the previous fiscal year plus the total of unobligated budget authority carried over into that year from prior years. 58 Comp. Gen. 530; [B-152554, Oct. 9, 1970](#).

One apparent deviation from this calculation of current rate occurred in [58 Comp. Gen. 530](#), a case involving the now obsolete Comprehensive Employment and Training Act program. In that decision, the Comptroller General, in calculating the current rate under the 1979 continuing resolution, included funds appropriated in a 1977 appropriation act and obligated during 1977. Ordinarily, only funds appropriated by the fiscal year 1978 appropriation act, and carry-over funds unobligated at the beginning of fiscal year 1979, would have been included in the current rate. However, Congress did not appropriate funds for this activity in the fiscal year 1978 appropriation act. In this instance the funds appropriated in 1977 were included because it was clear from the legislative history of the appropriation act that Congress intended these funds to be an advance of appropriations for fiscal year 1978. Thus, in order to ascertain the actual amount available for the activity for fiscal year 1978, it was necessary to include the advance funding provided by the 1977 appropriation act. The rationale used in this decision would apply only when it is clear that Congress was providing advance funding for the reference fiscal year in an earlier year's appropriation act.

Where funding for the preceding fiscal year covered only a part of that year, it may be appropriate to “annualize” the previous year's appropriation in order to determine the current rate. This was the result in 61 Comp. Gen. 473 (1982), in which the fiscal year 1981 appropriation for a particular program had been contained in a supplemental appropriation act and was intended to cover only the last quarter of the fiscal year. The current rate for purposes of the fiscal year 1982 continuing resolution was four times the fiscal year 1981 figure.

Prior year supplemental appropriations also count in calculating the current rate. In this regard, section 103 of Public Law 108-309, 118 Stat. 1137, 1138 (Sept. 30, 2004), discussed above, provides: “The appropriations Acts listed in section 101 shall be deemed to include miscellaneous and supplemental appropriation laws enacted during fiscal year 2004.”

There are exceptions to the rule that current rate means a sum of money rather than a program level. For example, GAO construed the fiscal year 1980 continuing resolution as appropriating sufficient funds to support an increased number of Indochinese refugees in view of explicit statements by both the Appropriations and the Budget Committees that the resolution was intended to fund the higher program level. [B-197636, Feb. 25, 1980](#). Also, the legislative history of the fiscal year 1981 continuing resolution (Pub. L. No. 96-369, 94 Stat. 1351 (Oct. 1, 1980)) indicated that in some instances current rate must be interpreted so as to avoid reducing existing program levels.

It is always preferable for the exception to be specified in the resolution itself. Starting with the first continuing resolution for fiscal year 1983 (Pub. L. No. 97-276, 96 Stat. 1186 (Oct. 2, 1982)), Congress began appropriating for the continuation of certain programs “at a rate to maintain current operating levels.” GAO has construed this language as meaning sufficient funds to maintain the program in question at the same operating level as at the end of the immediately preceding fiscal year. [B-209676, Apr. 14, 1983](#); [B-200923, Nov. 16, 1982](#) (nondecision letter). Recent continuing resolutions have included similar language for entitlement and other mandatory payments: “activities shall be continued at the rate to maintain program levels under current law.”¹⁰

2. Rate Not Exceeding Current Rate

When a resolution appropriates funds to continue an activity at a rate for operations “not in excess of the current rate,” the amount of funds appropriated by the resolution is equal to the current rate less any unobligated balance carried over into the present year.

As discussed in the preceding section, the current rate is equivalent to the total amount of funds that was available for obligation for a project or

¹⁰ Pub. L. No. 108-309, § 126 (first continuing resolution for fiscal year 2005). *See also* Pub. L. No. 108-84, § 112, 117 Stat. 1042, 1044 (Sept. 30, 2003) (first continuing resolution for fiscal year 2004).

activity in the preceding fiscal year. When the continuing resolution appropriates funds to continue an activity at a rate for operations “not in excess of the current rate,” it is the intent of Congress that the activity have available for obligation in the present fiscal year no more funds than it had available for obligation in the preceding fiscal year. Therefore, if there is a balance of unobligated funds which can be carried over into the present fiscal year because the funds are multiple year or no-year funds, this balance must be deducted from the current rate in determining the amount of funds appropriated by the continuing resolution. If this were not done, the program would be funded at a higher level in the present year than it was in the preceding year, which is not permitted by the language of the resolution. *See* [58 Comp. Gen. 530, 535 \(1979\)](#).

For example, suppose a continuing resolution for fiscal year 2006 were to appropriate sufficient funds to continue an activity at a rate not exceeding the current rate, and the current rate, or the total amount which was available for obligation in fiscal year 2005, is \$1,000,000. Of this amount, suppose \$100,000 of multiple year funds remains unobligated at the end of fiscal year 2005, and is available for obligation in fiscal year 2006. If the activity is to operate at a rate not to exceed the current rate, \$1,000,000, then the resolution appropriates no more than the difference between the current rate and the carryover from 2005 to 2006, or \$900,000. If the resolution were interpreted as appropriating the full current rate, then a total of \$1,100,000 would be available for fiscal year 2006, and the activity would be able to operate at a rate in excess of the current rate, a result prohibited by the language of the resolution.

An unobligated balance which does not carry over into the present fiscal year (the more common situation) does not have to be deducted. [B-152554, Nov. 4, 1974](#).

A commonly encountered form of continuing resolution formula appropriation is an amount not in excess of the current rate or the rate provided in some reference item, whichever is lower. The reference item may be an unenacted bill, a conference report, the President’s budget estimate, *etc.* When the current rate produces the lower figure—the situation encountered in [58 Comp. Gen. 530](#)—the above rule applies and an unobligated carryover balance must be deducted to determine the amount appropriated by the continuing resolution. However, when the current rate is not the lower of the two referenced items, the rule does not necessarily apply.

To illustrate, a continuing resolution appropriated funds for the Office of Refugee Resettlement at a rate for operations not in excess of the lower of the current rate or the rate authorized by a bill as passed by the House of Representatives. The rate under the House-passed bill was \$50 million. The current rate was \$77.5 million, of which \$39 million remained unobligated at the end of the preceding fiscal year and was authorized to be carried over into the current fiscal year. If the continuing resolution had simply specified a rate not in excess of the current rate, or if the rate in the House-passed bill had been greater than the current rate, it would have been necessary to deduct the \$39 million carryover balance from the \$77.5 million current rate to determine the maximum funding level for the current year. Here, however, the rate in the House-passed bill was the lower of the two.

Reasoning that the current rate already includes an unobligated carryover balance, if any, whereas the rate in the House-passed bill did not include a prior year's balance, and supported by the legislative history of the continuing resolution, the Comptroller General concluded that the amount available for the current year was the amount appropriated by the resolution, \$50 million, plus the unobligated carryover balance of \$39 million, for a total of \$89 million. *64 Comp. Gen. 649 (1985)*. The decision distinguished *58 Comp. Gen. 530*, stating that “the rule with respect to deduction of unobligated balances in *58 Comp. Gen. 530* is not applicable where the lower of two referenced rates is not the current rate.” *Id.* at 652–53. The case went to court, and the Ninth Circuit Court of Appeals reached the same result. *Edwards v. Bowen*, 785 F.2d 1440 (9th Cir. 1986).

In sum, if a continuing resolution appropriates the lower of the current rate or the rate in some reference item, you compare the two numbers to determine which is lower before taking any unobligated carryover balance into account. If the current rate is lower, you then deduct the carryover balance to determine the funding level under the continuing resolution. If the rate in the reference item is lower, the funding level is the reference rate plus the carryover balance unless it is clear that this is not what was intended.

3. Spending Pattern under Continuing Resolution

a. Pattern of Obligations

An agency may determine the pattern of its obligations under a continuing resolution so long as it operates under a plan which will keep it within the rate for operations limit set by the resolution. If an agency usually obligates most of its annual budget in the first month or first quarter of the fiscal year, it may continue that pattern under the resolution. If an agency usually obligates funds uniformly over the entire year, it will be limited to that pattern under the resolution, unless it presents convincing reasons why its pattern must be changed in the current fiscal year.

Continuing resolutions are often enacted to cover a limited period of time, such as a month or a calendar quarter. The time limit stated in the resolution is the maximum period of time during which funds appropriated by the resolution are available for obligation.

However, this limited period of availability does not affect the amount of money appropriated by the resolution. The rate for operations specified in the resolution, whether in terms of an appropriation act which has not yet become law, a budget estimate, or the current rate, is an annual amount. The continuing resolution, in general, regardless of its period of duration, appropriates this full annual amount. *See* [B-271304, Mar. 19, 1996](#); [B-152554, Nov. 4, 1974](#).

Because the appropriation under a continuing resolution is the full annual amount, an agency may generally follow any pattern of obligating funds, so long as it is operating under a plan which will enable continuation of activities throughout the fiscal year within the limits of the annual amount appropriated. Thus, under a resolution with a duration of one month, and which appropriates funds at a rate for operations not in excess of the current rate, the agency is not necessarily limited to incurring obligations at the same rate it incurred them in the corresponding month of the preceding year if the agency can establish that it is operating under a flexible plan that would enable continuation of activities throughout the fiscal year. [B-152554, Dec. 6, 1963](#). The same principle applies when the resolution appropriates funds at a rate to maintain current operating levels. [B-209676, Apr. 14, 1983](#).

However, the pattern of obligations in prior years does provide a framework for determining the proper pattern of obligations under the

continuing resolution. For example, if the activity is a formula grant program in which nearly all appropriated funds are normally obligated at the beginning of the fiscal year, then the full annual amount should be made available to the agency under the resolution, even though the resolution may be in effect for only 1 month. However, if the activity is salaries and expenses, in which funds are normally obligated uniformly throughout the year, then the amount made available to the agency should be only one-twelfth of the annual amount under a 1-month resolution or one-fourth of the annual amount under a calendar quarter resolution. [B-152554, Feb. 17, 1972.](#)

For example, GAO determined that OMB properly apportioned, and the State Department properly obligated, 75 percent of funds appropriated by a fiscal year 1994 continuing resolution (Pub. L. No. 103-88, 107 Stat. 977 (Sept. 30, 1993)) for payments to the United Nations. It was State Department policy to defer payment of the United States' general assessment of United Nations contributions to the fourth quarter of the calendar year, which is the first quarter of the fiscal year. As a matter of normal practice, the State Department also made peacekeeping payments when bills were received to the extent funds were available. We found that the advance apportionment and obligation for the United Nations assessment and peacekeeping payments with funds appropriated by the fiscal year 1994 continuing resolution did not violate either the continuing resolution or the provisions of title 31, United States Code, controlling apportionment of funds. [B-255529, Jan. 10, 1994.](#)

Congress can, of course, alter the pattern of obligations by the language of the resolution. For example, if the resolution limits obligations in any calendar quarter to one-fourth of the annual rate, the agency is limited to that one-fourth rate regardless of its normal pattern of obligations. [B-152554, Oct. 16, 1973.](#) Further, even if the resolution itself does not have such limitations, but the legislative history clearly shows the intent of Congress that only one-fourth of the annual rate be obligated each calendar quarter, only this amount should be made available unless the agency can demonstrate a real need to exceed that rate. [B-152554, Nov. 4, 1974.](#)

Beginning with fiscal year 1996, Congress to date has included the following two provisions in continuing resolutions:

“ . . . for those programs that had high initial rates of operation or complete distribution of funding at the beginning of the fiscal year in fiscal year [1995] because of

distributions of funding to States, foreign countries, grantees, or others, similar distributions of funds for fiscal year [1996] shall not be made and no grants shall be awarded for such programs funded by this resolution that would impinge on final funding prerogatives.”

“This joint resolution shall be implemented so that only the most limited funding action of that permitted in the resolution shall be taken in order to provide for continuation of projects and activities.”

Pub. L. No. 104-31, §§ 113, 114, 109 Stat. 278, 281 (Sept. 30, 1995).¹¹

GAO considered these provisions in [B-300167, Nov. 15, 2002](#). That decision involved the Federal Highway Administration’s (FHWA) distribution of federal aid to highways funds to the states under a continuing resolution for fiscal year 2003, Pub. L. No. 107-229, 116 Stat. 1465 (Sept. 30, 2002).

FHWA had determined its distributions to the states at $\frac{4}{365}$ ths of the current rate of \$31.8 billion since that was the previous fiscal year’s obligation limitation under the 2002 Department of Transportation appropriations act referenced by the continuing resolution. FHWA’s consistent historical practice was to allocate funds to the states on a pro-rata basis by multiplying the percentage of the year covered by the continuing resolution by the rate for the continuing resolution (at the time the anticipated length of the continuing resolution was 4 days, hence FHWA’s $\frac{4}{365}$ ths distribution).

OMB, however, apportioned a total amount of \$27.7 billion to FHWA during the term of the continuing resolution to refrain from “impinging on final funding prerogatives” per the first provision quoted above, thereby reducing the amount FHWA had available for allocation to the states from $\frac{4}{365}$ ths of \$31.8 billion to $\frac{4}{365}$ ths of \$27.7 billion. OMB reasoned that because the program traditionally makes available all of the budgetary resources subject to limitation for allocation to the states at the beginning of the fiscal year, had OMB apportioned the full amount of the fiscal year

¹¹ See also Pub. L. No. 108-309, §§ 110, 111, 118 Stat. 1137, 1138–39 (Sept. 30, 2004). Our review did not reveal any relevant legislative history concerning the intent of Congress in adopting these provisions.

2002 level, then any subsequent effort by Congress to enact an obligation limitation of less than \$31.8 billion could have been compromised.

GAO found that OMB had no basis to further reduce the level of highway spending below the current rate established in fiscal year 2002. Based on the plain language of the first provision above, it only applies to programs that (1) had “high initial rates of operation or a complete distribution” of funds at the beginning of the prior fiscal year (assuming the normal appropriations process), and where (2) a “similar distribution of funds” under the continuing resolution would impinge on Congress’s final funding prerogatives. In other words, the provision can only be applied to reduce or limit the distribution of the current rate for a program (as defined in the continuing resolution) if both prongs of the two-part test are met. Since FHWA’s long-standing practice of distributing highway funds under a continuing resolution on a pro-rata basis fully protects congressional funding prerogatives, and does so in a manner that is consistent with the second provision (and is far more restrictive than would be true under the first provision), GAO concluded that OMB was not justified under the two provisions to set the level of highway spending at \$27.7 billion.

Congress subsequently resolved the dispute between OMB and FHWA by including a specific provision in its second amendment to the continuing resolution establishing an annual rate of operations of \$31.8 billion for FHWA provided that total obligations for the program not exceed \$27.7 billion while operating under the resolution, Pub. L. No. 107-240, § 137, 116 Stat. 1492, 1495 (Oct. 11, 2002).

b. Apportionment

The requirement that appropriations be apportioned by the Office of Management and Budget, imposed by the Antideficiency Act, applies to funds appropriated by continuing resolution as well as regular appropriations.¹² See generally OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, pt. 4, § 120.1 (June 21, 2005).

Typically, OMB has permitted some continuing resolution funds to be apportioned automatically. OMB Cir. No. A-11, § 123.5. For example, if a given continuing resolution covers 10 percent of a fiscal year, OMB may permit 10 percent of the appropriation to be apportioned automatically, meaning that the agency can obligate this amount without seeking a specific apportionment. Under such an arrangement, if program

¹² For a more general discussion of apportionment, see Chapter 6, section C.4.

requirements produced a need for additional funds, the agency would have to seek an apportionment from OMB for the larger amount.

Apportionment requirements may vary from year to year because of differences in duration and other aspects of applicable continuing resolutions. A device OMB has commonly used to announce its apportionment requirements for a given fiscal year is an OMB Bulletin reflecting the particular continuing resolution for that year.¹³

4. Liquidation of Contract Authority

When in the preceding fiscal year Congress has provided an agency with contract authority, the continuing resolution must be interpreted as appropriating sufficient funds to liquidate that authority to the extent it becomes due during the period covered by the continuing resolution.

When an activity operates on the basis that in one year Congress provides contract authority to the agency and in the next year appropriates funds to liquidate that authority, then a continuing resolution in the second year must be interpreted as appropriating sufficient funds to liquidate the outstanding contract authority. The term “contract authority” means express statutory authority to incur contractual obligations in advance of appropriations.¹⁴ Thus, there is no “rate for operations” limitation in connection with the liquidation of due debts based on validly executed contracts entered into under statutory contract authority. In this context, rate for operations limitations apply only to new contract authority for the current fiscal year. [B-114833, Nov. 12, 1974.](#)

5. Rate for Operations Exceeds Final Appropriation

If an agency operating under a continuing resolution incurs obligations within the rate for operations limit, but Congress subsequently appropriates a total annual amount less than the amount of these obligations, the obligations remain valid. [B-152554, Feb. 17, 1972.](#)

¹³ See, e.g., OMB Bulletin No. 04-05, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2005* (Sept. 30, 2004). For a detailed review of apportionment of funds appropriated or authority granted by the fiscal year 2003 continuing resolution, see [B-300373, Dec. 20, 2002.](#)

¹⁴ GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: September 2005), at 21.

For example, a continuing resolution for a period of 1 month may have a rate for operations limitation of the current rate. The activity being funded is a grant program and the agency obligates the full annual amount during the period of the resolution. Congress then enacts a regular appropriation act which appropriates for the activity an amount less than the obligations already incurred by the agency. Under these circumstances, the obligations incurred by the agency remain valid obligations of the United States.

Having established that the “excess” obligations remain valid, the next question is how they are to be paid. At one time, GAO took the position that an agency finding itself in this situation must not incur any further obligations and must attempt to negotiate its obligations downward to come within the amount of the final appropriation. [B-152554, Feb. 17, 1972](#). If this is not possible, the agency would have to seek a supplemental or deficiency appropriation. This position was based on a provision commonly appearing in continuing resolutions along the following lines:

“Expenditures made pursuant to this joint resolution shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.”¹⁵

However, the 1972 opinion failed to take into consideration another provision commonly included in continuing resolutions:

“Appropriations made and authority granted pursuant to this joint resolution shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this joint resolution.”¹⁶

When these two provisions are considered together, it becomes apparent that the purpose of the first provision is merely to emphasize that the funds

¹⁵ *E.g.*, Pub. L. No. 108-309, § 108, 118 Stat. 1137, 1138 (Sept. 30, 2004). Comparable provisions have been included in continuing resolutions for over a century. See, for example, the fiscal year 1883 continuing resolution (Pub. L. No. 38, 22 Stat. 384 (June 30, 1882)) discussed in 3 Lawrence, First Comp. Dec. 213 (1882).

¹⁶ *E.g.*, Pub. L. No. 108-309, § 105.

appropriated by the continuing resolution are not in addition to the funds later provided when the applicable regular appropriation act is enacted. Accordingly, GAO modified the 1972 opinion and held that funds made available by a continuing resolution remain available to pay validly incurred obligations which exceed the amount of the final appropriation. [62 Comp. Gen. 9 \(1982\)](#). *See also* [67 Comp. Gen. 474 \(1988\)](#); [B-207281, Oct. 19, 1982](#).

Thus, obligations under a continuing resolution are treated as follows:

“When an annual appropriation act provides sufficient funding for an appropriation account to cover obligations previously incurred under the authority of a continuing resolution, any unpaid obligations are to be charged to and paid from the applicable account established under the annual appropriation act. Similarly, to the extent the annual act provides sufficient funding, those obligations which were incurred and paid during the period of the continuing resolution must be charged to the account created by the annual appropriation act. On the other hand, to the extent the annual appropriation act does not provide sufficient funding for the appropriation account to cover obligations validly incurred under a continuing resolution, the obligations in excess of the amount provided by the annual act should be charged to and paid from the appropriation account established under authority of the continuing resolution. [Footnote omitted.] Thus the funds made available by the resolution must remain available to pay these obligations.”

[62 Comp. Gen. 9, 11–12 \(1982\)](#). Thus, as GAO had advised in 1972, agencies are still required to make their best efforts to remain within the amount of the final appropriation. The change recognized in [62 Comp. Gen. 9](#) is that, to the extent an agency is unable to do so, the appropriation made by the continuing resolution remains available to liquidate the “excess” obligations.

C. Projects or Activities

“Projects or activities” as used in continuing resolutions may have two meanings. When determining which government programs are covered by the resolution, and the rate for operations limit, the term “project or

activity” refers to the total appropriation rather than to specific activities. When determining whether an activity was authorized or carried out in the preceding year, the term “project or activity” may refer to the specific activity. The following paragraphs will elaborate.

The term “projects or activities” is sometimes used in continuing resolutions to indicate which government programs are to be funded and at what rate. Thus a resolution might appropriate sufficient funds to continue “projects or activities provided for” in a certain appropriation bill “to the extent and in the manner” provided in the bill or as provided for in prior year appropriation acts. *See, e.g.*, Pub. L. No. 108-309, §§ 101, 102, 118 Stat. 1137–38 (Sept. 30, 2004).

Occasionally Congress will use only the term “activities” by appropriating sufficient funds “for continuing the following activities, but at a rate for operations not in excess of the current rate.” *See, e.g.*, Pub. L. No. 97-51, § 101(d), 95 Stat. 958, 961 (Oct. 1, 1981). When used in this context, “projects or activities” or simply “activities” does not refer to specific items contained as activities in the administration’s budget submission or in a committee report. Rather, the term refers to the appropriation for the preceding fiscal year. [B-204449, Nov. 18, 1981](#).¹⁷ Thus, if a resolution appropriates funds to continue projects or activities under a certain appropriation at a rate for operations not exceeding the current rate, the agency is operating within the limits of the resolution so long as the total of obligations under the appropriation does not exceed the current rate. Within the appropriation, an agency may fund a particular activity at a higher rate than that activity was funded in the previous year and still not violate the current rate limitation, assuming of course that the resolution itself does not provide to the contrary.

An exception to the interpretation that projects or activities refers to the appropriation in existence in the preceding fiscal year occurred in [58 Comp. Gen. 530 \(1979\)](#). In prior years, Comprehensive Employment and

¹⁷ This position also follows from decisions such as [B-162447, Mar. 8, 1971](#), read in conjunction with decisions on the availability of lump-sum appropriations. Of course, if the appropriation for the preceding fiscal year was a line-item appropriation, then the scope of “project or activity” will be defined accordingly. *See* [66 Comp. Gen. 484 \(1987\)](#) (Special Defense Acquisition Fund, a revolving fund made available by annual “limitation on obligations” provisions, held a “project or activity” for purposes of appropriating language in a continuing resolution).

Training Act (CETA)¹⁸ programs had been funded in two separate appropriations, Employment and Training Assistance and Temporary Employment Assistance. The individual programs under the two appropriations differed only in that the number of jobs provided under Temporary Employment Assistance depended on the condition of the national economy.

Concurrently with the enactment of the 1979 continuing resolution, Congress amended the CETA authorizing legislation so that certain programs previously operating under the Temporary Employment Assistance appropriation were to operate in fiscal year 1980 under the Employment and Training Assistance appropriation. Under these circumstances, if the phrase “activities under the Comprehensive Employment and Training Act” in the continuing resolution had been interpreted as referring to the two separate appropriations made in the preceding year, and the current rates calculated accordingly, there would have been insufficient funds available for the now increased programs under the Employment and Training Assistance appropriation, and a surplus of funds available for the decreased programs under the Temporary Employment Assistance appropriation. To avoid this result, the Comptroller General interpreted the 1979 continuing resolution as appropriating a single lump-sum amount for all CETA programs, based on the combined current rates of the two appropriation accounts for the previous year. *See* 58 Comp. Gen. at 535–36.

Of course, as we noted earlier, continuing resolutions are really just short term appropriations that bridge the gaps that occasionally arise between the end of appropriations for one fiscal year and the start of appropriations for the next.¹⁹ For this reason, continuing resolutions usually refer only to those projects and activities for which annual funding has expired—on account of which funding is being provided. It should be remembered that most, but not all, of the government is funded under annual appropriations. Those projects and activities which are funded by multiple year and no-year appropriations are not usually directly affected by continuing resolutions. Thus, it would be a mistake to read the failure of a continuing resolution to address funding for the rest of the government as an implicit

¹⁸ Pub. L. No. 93-203, 87 Stat. 839 (Dec. 28, 1973).

¹⁹ *See* GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: September 2005) at 35–36 (definition of “Continuing Appropriation/Continuing Resolution”).

prohibition on undertaking other projects or activities that are, in fact, funded from other appropriations not covered by the continuing resolution.²⁰

The term “projects or activities” has also been used in continuing resolutions to prohibit the use of funds to start new programs. Thus, many resolutions have contained a section stating that no funds made available under the resolution shall be available to initiate or resume any project or activity which was not conducted during the preceding fiscal year. When used in this context, the term “projects or activities” refers to the individual program rather than the total appropriation. *See* [52 Comp. Gen. 270 \(1972\)](#); [35 Comp. Gen. 156 \(1955\)](#).

One exception to this interpretation occurred in [B-178131, Mar. 8, 1973](#). In that instance, in the previous fiscal year funds were available generally for construction of buildings, including plans and specifications. However, a specific construction project was not actually under way during the previous year. Nonetheless it was decided that, because funds were available generally for construction in the previous year, this specific project was not a new project or activity and thus could be funded under the continuing resolution.²¹

In more recent years, Congress has resolved the differing interpretations of “project or activity” by altering the language of the new program limitation. Rather than limiting funds to programs which were actually conducted in the preceding year, the more recent resolutions prohibit use of funds appropriated by the resolution for “any project or activity for which appropriations, funds, or other authority were not available” during the

²⁰ *See* 19 Op. Off. Legal Counsel 278 (1995) (requester was proceeding from the mistaken belief that a continuing resolution implicitly prohibits all obligations or expenditures except those expressly provided for in the resolution itself; activity at issue was funded by a no-year appropriation).

²¹ For this exception to work, however, the previous appropriation must have afforded adequate authority to undertake the construction. *See* 4 Lawrence, First Comp. Dec. 116 (1883), which concluded that Howard University violated the Antideficiency Act while operating under a continuing resolution. The University undertook building repairs that were not authorized by the outgoing appropriation or the continuing resolution, and could not defend its violation by pointing to new authority pending (and eventually enacted) during the continuing resolution that would have authorized the repairs.

preceding fiscal year.²² Thus, if an agency had authority and sufficient funds to carry out a particular program in the preceding year, that program is not a new project or activity regardless of whether it was actually operating in the preceding year.

A variation occurred in [60 Comp. Gen. 263 \(1981\)](#). A provision of the Higher Education Act²³ authorized loans to institutions of higher education from a revolving fund, not to exceed limitations specified in appropriation acts. Congress had not released money from the loan fund since 1978. The fiscal year 1981 continuing resolution provided funds to the Department of Education based on its regular fiscal year 1981 appropriation bill as passed by the House of Representatives. The House-passed version included \$25 million for the higher education loans. Since the continuing resolution did not include a general prohibition against using funds for projects not funded during the preceding fiscal year, the \$25 million from the loan fund was available under the continuing resolution, notwithstanding that the program had not been funded in the preceding year.

Another variation can be seen in *In re Uncle Bud's, Inc.*, 206 B.R. 889 (Bankr. M.D. Tenn., 1997). In a fiscal year 1997 continuing resolution, Pub. L. No. 104-99, title II, § 211, 110 Stat. 26, 37–38 (Jan. 26, 1996), Congress amended the Bankruptcy Code to require the U.S. Trustee to impose and collect a new quarterly fee as part of the bankruptcy process. *Uncle Bud's*, 206 B.R. at 897. Some debtors argued that the new fee was barred because it constituted a “new activity.” The bankruptcy court disagreed, noting that, while the fee itself was new, the U.S. Trustee had long been required to collect other fees imposed by law. The court reasoned that the continuing resolution language was intended to limit spending to previous year levels. The new fee did not require the expenditure of additional funds—rather, it brought in more revenues. Accordingly, the bankruptcy court concluded that collection of the new fee represented, not a new project or activity, but the continuation of activities undertaken in the previous year. *Id.* On appeal, while other parts of the bankruptcy court’s ruling were reversed, this part was upheld and even expanded when the district court gave retroactive effect to the provision

²² See, e.g., Pub. L. No. 108-309, § 104 (first continuing resolution for fiscal year 2005, discussed above).

²³ Pub. L. No. 96-374, § 731, 94 Stat. 1367, 1475 (Oct. 3, 1980).

imposing the new fees. *See Vergos v. Uncle Bud's, Inc., No. 3-97-0296 (M.D. Tenn., Aug. 17, 1998).*

Under the right set of circumstances, the projects or activities limitation can also have the effect of blocking existing programs. For example, in *Environmental Defense Center v. Babbitt*, 73 F3d 867 (9th Cir. 1995), the Secretary of the Interior was sued for failing to determine whether to list the California red-legged frog under the Endangered Species Act, 16 U.S.C. § 1533(b)(6)(A). The Secretary acknowledged that the only actions that remained to be taken before the frog's status could be settled were the agency's in-house review and its final decision-making. *Babbitt*, 73 F3d at 871–72. However, the Secretary argued he could not take those steps because, in 1995, Congress had enacted an appropriations rider which rescinded some of that fiscal year's funds and barred the remaining funds for that year from being used to make any determination that a species was threatened or endangered.²⁴ *See* Emergency Supplemental Appropriations and Rescissions for the Department of Defense to Preserve and Enhance Military Readiness Act of 1995, Pub. L. No. 104-6, 109 Stat. 73, 86 (Apr. 10, 1995). Although the supplemental rider applied only to fiscal year 1995 funds, the ban was effectively continued into fiscal year 1996 by the projects or activities limitation in the continuing resolution under which the government was being funded when the lawsuit was brought. *Babbitt*, 73 F3d at 870.

Continuing Resolutions can carry over restrictions on projects and activities that applied under prior year appropriations riders. The court held that neither the appropriations rider nor the projects or activities limitation repealed the Secretary's duty to determine whether the California red-legged frog is endangered, but they did bar the Secretary from complying with that duty by denying him funding for that purpose. *Id.* at 871–72. As the court explained:

“[E]ven though completion of the process may require only a slight expenditure of funds, . . . taking final action on the California red-legged frog listing proposal would necessarily require the use of appropriated funds. The use of any

²⁴ For a further discussion of the effect of appropriations riders, see Chapter 1, section B, and the update of that section in GAO, *Principles of Federal Appropriations Law: Annual Update of the Third Edition*, GAO-05-354SP (Washington, D.C.: March 2005), available at www.gao.gov/legal.htm (last visited September 15, 2005).

government resources—whether salaries, employees, paper, or buildings—to accomplish a final listing would entail government expenditure. The government cannot make expenditures, and therefore cannot act, other than by appropriation.”

Id.

D. Relationship to other Legislation

1. Not Otherwise Provided For

Continuing resolutions often appropriate funds to continue projects “not otherwise provided for.” This language limits funding to those programs which are not funded by any other appropriation act. Programs which received funds under another appropriation act are not covered by the resolution even though the authorizing legislation which created the program is mentioned specifically in the continuing resolution. *See* [B-183433, Mar. 28, 1979](#). For example, if a resolution appropriates funds to continue activities under the Social Security Act, and a specific program under the Social Security Act has already been funded in a regular appropriation act, the resolution does not appropriate any additional funds for that program.

2. Status of Bill or Budget Estimate Used as Reference

When a continuing resolution appropriates funds at a rate for operations specified in a certain bill or in the administration’s budget estimate, the status of the bill or estimate on the date the resolution passes is controlling, unless the resolution specifies some other reference date.

A continuing resolution will often provide funds to continue activities at a rate provided in a certain bill that has passed one or both houses of Congress, or at the rate provided in the administration’s budget estimate. In such instances, the resolution is referring to the status of the bill or budget estimate on the date the resolution became law. [B-164031\(2\).17, Dec. 5, 1975](#); [B-152098, Jan. 30, 1970](#).

For example, the resolution may provide that activities are to be continued at the current rate or at the rate provided in the budget estimate, whichever

is lower. The budget estimate referred to is the one in existence at the time the resolution is enacted, and the rate for operations cannot be increased by a subsequent upward revision of the budget estimate. [B-164031\(2\)](#),¹⁷ Dec. 5, 1975.

Similarly, if a resolution provides that activities are to continue at the rate provided in a certain appropriation bill, the resolution is referring to the status of the bill on the date the resolution is enacted. A later veto of the bill by the President would not affect the continuation of programs under the resolution. [B-152098](#), Jan. 15, 1973.

Where a continuing resolution provides funds based on a reference bill, this includes restrictions or limitations contained in the reference bill, as well as the amounts appropriated, unless the continuing resolution provides otherwise. [33 Comp. Gen. 20 \(B-116069, July 10, 1953\)](#);²⁵ [B-199966](#), Sept. 10, 1980. In *National Treasury Employees Union v. Devine*, 733 F.2d 114 (D.C. Cir. 1984), the court construed a provision in a reference bill prohibiting the implementation of certain regulations, accepting without question the restriction as having been “enacted into law” by a continuing resolution which provided funds “to the extent and in the manner provided for” in the reference bill. See also *Environmental Defense Center v. Babbitt*, 73 F.3d 867 (9th Cir. 1995); *Connecticut v. Schweiker*, 684 F.2d 979 (D.C. Cir. 1982), cert. denied, 459 U.S. 1207 (1983). Obviously, the same result applies under a “full text” continuing resolution, that is, a continuing resolution that enacts the full text of a reference bill “to be effective as if” the reference bill “had been enacted into law as the regular appropriation Act.” [B-221694](#), Apr. 8, 1986.

A provision in a continuing resolution using a reference bill may incorporate legislative history, in which event the specified item of legislative history will determine the controlling version of the reference bill. For example, an issue in *American Federation of Government Employees v. Devine*, 525 F. Supp. 250 (D.D.C. 1981), was whether the 1982 continuing resolution prohibited the Office of Personnel Management from funding coverage of therapeutic abortions in government health plans. The resolution funded employee health benefits “under the authority and conditions set forth in H.R. 4121 as reported to the Senate on September 22, 1981.” An earlier version of H.R. 4121 had included a provision barring the funding of therapeutic abortions. However, the bill as reported to the full

²⁵ Two decisions begin on the same page, hence the variation in citation format.

Senate by the Appropriations Committee on September 22, 1981, dropped the provision. Accordingly, the court held that the continuing resolution could not form the basis for refusing to fund therapeutic abortions in the plaintiff's 1982 health plan. *Devine*, 525 F. Supp. at 254.

In previous years, it was also not uncommon for a continuing resolution to appropriate funds as provided in a particular reference bill at a rate for operations provided for in the conference report on the reference bill. *See, e.g.*, Pub. L. No. 99-103, § 101(c), 99 Stat. 471, 472 (Sept. 30, 1985). At a minimum, this will include items on which the House and Senate conferees agreed, as reflected in the conference report. If the resolution also incorporates the “joint explanatory statement” portion of the conference report, then it will enact those amendments reported in “technical disagreement” as well. *See* B-221694, Apr. 8, 1986; B-205523, Nov. 18, 1981; B-204449, Nov. 18, 1981.

3. More Restrictive Authority

The “more restrictive authority,” as that term is used in continuing resolutions, is the version of a bill which gives an agency less discretion in obligating and disbursing funds under a certain program.

Continuing resolutions will often appropriate funds to continue projects or activities at the rate provided in either the version of an appropriation act that has passed the House or the version that has passed the Senate, whichever is lower, “or under the more restrictive authority.” Under this language, the version of the bill which appropriates the lesser amount of money for an activity will be controlling. If both versions of the bill appropriate the same amount, the version which gives the agency less discretion in obligating and disbursing funds under a program is the more restrictive authority and will be the reference for continuing the program under the resolution. B-210922, Mar. 30, 1984; B-152098, Mar. 26, 1973; B-152554, Dec. 15, 1970.

However, this provision may not be used to amend or nullify a mandatory provision of prior permanent law. To illustrate, the Federal Housing Administration was required by a provision of permanent law to appoint an Assistant Commissioner to perform certain functions. The position subsequently became controversial. For the first month of fiscal year 1954, the agency operated under a continuing resolution which included the “more restrictive authority” provision. Language abolishing the position had been contained in one version of the reference bill, but not both. The bill, when subsequently enacted, abolished the position.

Under a strict application of the “more restrictive authority” provision, it could be argued that there was no authority to continue the employment of the Assistant Commissioner during the month covered by the continuing resolution. Noting that “laws are to be given a sensible construction where a literal application thereof would lead to unjust or absurd consequences, which should be avoided if a reasonable application is consistent with the legislative purpose,” the Comptroller General held that the Assistant Commissioner could be paid his salary for the month in question. [B-116566, Sept. 14, 1953](#). The decision concluded:

“[M]anifestly the [more restrictive authority] language . . . was not designed to amend or nullify prior permanent law which theretofore required, or might thereafter require, the continuance of a specific project or activity during July 1953. . . .

* * * * *

“ . . . Accordingly, it is concluded that the words ‘the lesser amount or the more restrictive authority’ as used in [the continuing resolution] had reference to such funds and authority as theretofore were provided in appropriations for [the preceding fiscal year], and which might be changed, enlarged or restricted from year to year.”

In addition, continuing resolutions frequently provide that a provision “which by its terms is applicable to more than one appropriation” and which was not included in the applicable appropriation act for the preceding fiscal year, will not be applicable to funds or authority under the resolution unless it was included in identical form in the relevant appropriation bill as passed by both the House and the Senate. Thus, in [52 Comp. Gen. 71 \(1972\)](#), a provision in the House version of the 1973 Labor Department appropriation act prohibited the use of “funds appropriated by this Act” for Occupational Safety and Health Act (OSHA)²⁵ inspections of firms employing 25 persons or less. The Senate version contained the identical version except that “15” was substituted for “25.” The continuing resolution for that year contained both the “more restrictive authority” and the “applicable to more than one appropriation” provisions. The

²⁵ Pub. L. No. 91-596, 84 Stat. 1590 (Dec. 29, 1970).

Comptroller General concluded that, even though the House provision was more restrictive, the OSHA provision did not apply to funds under the continuing resolution since it had not been contained in the 1972 appropriation act and by its terms it was applicable to more than one appropriation (*i.e.*, it applied to the entire appropriation act). *See also* [B-210922, Mar. 30, 1984](#); [B-142011, Aug. 6, 1969](#).

For purposes of the “applicable to more than one appropriation” provision, GAO has construed the “applicable appropriation act for the preceding fiscal year” as meaning the regular appropriation act for the preceding year and not a supplemental. [B-210922, Mar. 30, 1984](#). (The cited decision also illustrates some of the complexities encountered when the appropriation act for the preceding year was itself a continuing resolution.)

4. Lack of Authorizing Legislation

In order for a government agency to carry out a program, the program must first be authorized by law and then funded, usually by means of regular appropriations. This section deals with the relationship of continuing resolutions to programs whose authorization has expired or is about to expire. The common issue is the extent to which a continuing resolution provides authority to continue the program after expiration of the underlying authorization.

As the following discussion will reveal, there are no easy answers. The cases frequently involve a complex interrelationship of various legislative actions (or inactions) and are not susceptible to any meaningful formulation of simple rules. For the most part, the answer is primarily a question of intent, circumscribed of course by statutory language and aided by various rules of statutory construction.

We start with a fairly straightforward case. Toward the end of fiscal year 1984, Congress was considering legislation (S. 2456) to establish a commission to study the Ukrainian famine of 1932–33. The bill passed the Senate but was not enacted into law before the end of the fiscal year. The fiscal year 1985 continuing resolution provided that “[t]here are hereby appropriated \$400,000 to carry out the provisions of S. 2456, as passed by the Senate on September 21, 1984.”²⁷ If this provision were not construed as authorizing the establishment and operation of the commission as well

²⁷ Pub. L. No. 98-473, § 136, 98 Stat. 1837, 1973 (Oct. 12, 1984).

as the appropriation of funds, it would have been absolutely meaningless. Accordingly, GAO concluded that the appropriation incorporated the substantive authority of S. 2456. [B-219727, July 30, 1985](#). The result was supported by clear and explicit legislative history.

In a 1975 case, GAO held that the specific inclusion of a program in a continuing resolution will provide both authorization and funding to continue the program despite the expiration of the appropriation authorization legislation. Thus, for example, if the continuing resolution specifically states that the School Breakfast Program is to be continued under the resolution, the program may be continued although funding authorization legislation for the program expires prior to or during the period the resolution is in effect. [55 Comp. Gen. 289 \(1975\)](#). The same result would follow if the intent to continue the program was made particularly clear in legislative history. [65 Comp. Gen. 318, 320–21 \(1986\)](#).

The result in [55 Comp. Gen. 289](#) flows from two concepts. First, the continuing resolution, as the later enactment, is the more recent expression of congressional intent. Second, if Congress can appropriate funds in excess of a specific ceiling in authorizing legislation, which it can, then it should be able to appropriate funds to continue a program whose funding authorization is about to expire, at least where the authorization of appropriations is not a legal prerequisite to the appropriation itself.

However, the “rule” of [55 Comp. Gen. 289](#) is not an absolute and the result in any given case will depend on several variables. Although not spelled out as such in any of the decisions, the variables may include: the degree of specificity in the continuing resolution; the apparent intent of Congress with respect to the expired program; whether what has expired is an authorization of appropriations or the underlying program authority itself;

and the duration of the continuing resolution (short-term *versus* full fiscal year).²⁸

In one case, for example, “all authority” under the Manpower Development and Training Act (MDTA)²⁹ terminated on June 30, 1973. The program was not specifically provided for in the 1974 continuing resolution, and the authority in fact was not reestablished until enactment of the Comprehensive Employment and Training Act (CETA)³⁰ six months later. Under these circumstances, the Claims Court held that, in the absence of express language in the continuing resolution or elsewhere, contracts entered into during the gap between expiration of the MDTA and enactment of CETA were without legal authority and did not bind the government. *Consortium Venture Corp. v. United States*, 5 Cl. Ct. 47 (1984), *aff’d mem.*, 765 F.2d 163 (Fed. Cir. 1985).

In another case, recent Defense Department authorization acts, including the one for fiscal year 1985, had authorized a test program involving payment of a price differential to “labor surplus area” contractors. The test program amounted to an exemption from permanent legislation prohibiting the payment of such differentials. The 1985 provision expired, of course, at the end of fiscal year 1985. The 1986 continuing resolution made no specific provision for the test program nor was there any evidence of congressional intent to continue the test program under the resolution. (This lack of intent was confirmed when the 1986 authorization act was subsequently enacted without the test program provision.) GAO found that the Defense Logistics Agency’s failure to apply the price differential in evaluating bids on a contract awarded under the continuing resolution

²⁸ See also 71 *Comp. Gen.* 378, 380–81 (1992):

“While the outcome in these cases varies, they are all grounded in the same principle. The Congress may revive or extend an act by any form of words which makes clear its intention to do so. *Kersten v. United States*, 161 F.2d 337 (10th Cir. 1947), *cert. denied*, 331 U.S. 851. Furthermore, when the Congress desires to extend, amend, suspend or repeal a statute, it can accomplish its purpose by including the requisite language in an appropriations or other act of Congress. The whole matter depends on the intention of Congress as expressed in statute. *United States v. Will*, 449 U.S. 200, 221–222 (1980) and *United States v. Burton*, 888 F.2d 682, 685 (10th Cir. 1989).”

²⁹ Pub. L. No. 87-415, 76 Stat. 23 (Mar. 15, 1962).

³⁰ Pub. L. No. 93-203, 87 Stat. 839 (Dec. 28, 1973).

(even though the differential had been included in the solicitation issued prior to the close of fiscal year 1985) was not legally objectionable. [65 Comp. Gen. 318 \(1986\)](#).

A more difficult case was presented in [B-207186, Feb. 10, 1989](#). Congress enacted two pieces of legislation on December 22, 1987. One was a temporary extension of the Solar Bank, which had been scheduled to go out of existence on September 30, 1987. Congress had enacted several temporary extensions while it was considering reauthorization, the one in question extending the Bank's life to March 15, 1988. The second piece of legislation was the final continuing resolution for 1988 which funded the government for the remainder of the fiscal year. The resolution included a specific appropriation of \$1.5 million for the Solar Bank, with a 2-year period of availability.

If the concept of [55 Comp. Gen. 289](#) were applied, the result would have been that the specific appropriation in the continuing resolution, in effect, reauthorized the Solar Bank as well. However, the "later enactment of Congress" concept has little relevance when both laws are enacted on the same day. In addition, in contrast to [55 Comp. Gen. 289](#), there was no indication of congressional intent to continue the Solar Bank beyond the March 1988 expiration date. Therefore, GAO distinguished prior cases,³¹ found that the two pieces of legislation could be reconciled, and concluded that the resolution merely appropriated funds for the Bank to use during the remainder of its existence.

Another case involving a sunset provision is [71 Comp. Gen. 378 \(1992\)](#). The legislation establishing the United States Commission on Civil Rights provided for the Commission to terminate on September 30, 1991. During fiscal year 1991, Congress was working on the Commission's reauthorization and its regular fiscal year 1992 appropriation. Although both bills passed both houses of Congress, neither was enacted into law by September 30. The first continuing resolution for fiscal year 1992, with a cutoff date of October 29, 1991, expressly provided funds for activities included in the Commission's yet-unenacted 1992 appropriations bill. It was clear from all of this that Congress intended the Commission to

³¹ GAO had also applied the concept of [55 Comp. Gen. 289](#) in [65 Comp. Gen. 524 \(1986\)](#), holding that a specific provision in a regular appropriation act permitted the continuation of an activity whose organic authority had expired at the end of the preceding fiscal year. *See also* [B-164031\(3\), Jan. 3, 1973](#).

continue operating beyond September 30. Thus, the continuing resolution effectively suspended the sunset date and authorized the Commission to operate until October 28, 1991, when the regular 1992 appropriation act was enacted, at which time the regular appropriation provided similar authority until November 26, when the reauthorization was enacted.

Appropriation bills sometimes contain provisions making the availability of the appropriations contingent upon the enactment of additional authorizing legislation. If a continuing resolution used a bill with such a provision as a reference, and if the authorizing legislation was not enacted, the amount contained in the appropriation bill, and therefore the amount appropriated by the continuing resolution, would be zero. To avoid this possibility, a continuing resolution may contain a provision suspending the effectiveness of such “contingency” provisions for the life of the resolution.³² Such a suspension provision will be applicable only until the referenced appropriation bill is enacted into law. 55 Comp. Gen. at 294.

E. Duration

1. Duration of Continuing Resolution

Continuing resolutions generally provide that the budget authority provided for an activity by the resolution shall remain available until (a) enactment into law of a regular appropriation for the activity, (b) enactment of the applicable appropriation by both houses of Congress without provision for the activity, or (c) a fixed cutoff date, whichever occurs first.³³ Once either of the first two conditions occurs, or the cutoff date passes, funds appropriated by the resolution are no longer available for obligation and new obligations may be incurred only if a regular appropriation is made or if the termination date of the resolution is extended.

The period of availability of funds under a continuing resolution can be extended by Congress by amending the fixed cutoff date stated in the resolution. B-165731(1), Nov. 10, 1971; B-152098, Jan. 30, 1970. The

³² *E.g.*, Pub. L. No. 102-109, § 109, 105 Stat. 551, 553 (Sept. 30, 1991) (1992 continuing resolution).

³³ *E.g.*, Pub. L. No. 108-309, § 107, 118 Stat. 1137, 1138 (Sept. 30, 2004).

extension may run beyond the session of Congress in which it is enacted. [B-152554, Dec. 15, 1970.](#)

Thus, some fiscal years have seen a series of continuing resolutions, informally designated “first,” “second,” *etc.*, up to “final.” This happens as Congress extends the fixed cutoff date for short time periods until either all the regular appropriation acts are enacted or Congress determines that some or all of the remaining bills will not be enacted individually, in which event relevant portions of the resolution will continue in effect for the remainder of the fiscal year.

The second condition of the standard duration provision—enactment of the appropriation by both houses of Congress without provision for the activity—will be considered to have occurred only when it is clear that Congress intended to terminate the activity. Thus, in [B-164031\(1\), Mar. 14, 1974](#), although regular and supplemental appropriation acts had been enacted without provision for a program, the Comptroller General decided that funds for the program were still available under the continuing resolution. In this case, the legislative history indicated that in enacting the regular appropriation act, Congress was providing funding for only some of the programs normally funded by this act and was deferring consideration of other programs, including the one in question. Therefore, the second condition was not applicable. Moreover, because supplemental appropriations are intended to provide funding only for new or additional needs, omission of the program from the supplemental did not trigger the second cutoff provision.

As discussed previously, once the applicable appropriation is enacted into law, expenditures made under the continuing resolution are charged to that appropriation, except that valid obligations incurred under the continuing resolution in excess of the amount finally appropriated are charged to the account established under the continuing resolution.

2. Duration of Appropriations

For the most part, the duration (period of obligational availability) of an appropriation under a short-term continuing resolution does not present problems. If you have, say, only 1 month to incur obligations under a continuing resolution, it matters little that the corresponding appropriation in a regular appropriation act might be a multiple year or no-year appropriation. Also, once the regular appropriation is enacted, it supersedes the continuing resolution and governs the period of availability.

[B-300673, July 3, 2003](#). Questions may arise, however, under continuing resolutions whose duration is the balance of the fiscal year.

For example, the continuing resolution for fiscal year 1979 included the standard duration provision described above, with a cutoff date of September 30, 1979, the last day of the fiscal year. However, a provision in the Comprehensive Employment and Training Act (CETA), 29 U.S.C. § 802(B) (1976), stated that “notwithstanding any other provision of law, unless enacted in specific limitation of the provisions of this subsection,” appropriations to carry out the CETA program shall remain available for 2 years. Applying the principle that a specific provision governs over a more general one, it was held that funds appropriated for CETA under the continuing resolution were available for obligation for 2 years in accordance with the CETA provision. [B-194063, May 4, 1979](#); [B-115398.33, Mar. 20, 1979](#).

A few years earlier, the United States District Court for the District of Columbia had reached the same result in a case involving grants to states under the Elementary and Secondary Education Act. *Pennsylvania v. Weinberger*, 367 F. Supp. 1378, 1384–85 (D.D.C. 1973). The court stated, “[i]t is a basic premise of statutory construction that in such circumstances the more specific measure . . . is to be held controlling over the general measure where inconsistencies arise in their application.” *Id.* at 1385.

Application of the same principle produced a similar result in [B-199966, Sept. 10, 1980](#). The 1980 continuing resolution appropriated funds for foreign economic assistance loans by referencing the regular 1980 appropriation bill which had passed the House but not the Senate. For that type of situation, the resolution provided for continuation of projects or activities “under the appropriation, fund, or authority granted by the one House [which had passed the bill].” The House-passed bill gave the economic assistance loan funds a 2-year period of availability. The continuing resolution also included the standard duration provision with a cutoff date of September 30, 1980. Since the duration provision applied to the entire resolution whereas the provision applicable to the loan funds had a narrower scope, the latter provision was the more specific one and the loan funds were therefore held to be available for 2 years. See also [60 Comp. Gen. 263 \(1981\)](#) for further discussion of similar continuing resolution language.

In some instances, an extended period of availability is produced by a specific exemption from the standard duration provision. For example, the

1983 continuing resolution provided foreign assistance funds “under the terms and conditions” set forth in the Foreign Assistance Appropriation Act of 1982, and further exempted that appropriation from the duration provision. Since under the 1982 act, appropriations for the African Development Fund were to remain available until expended, appropriations to the Fund under the continuing resolution were also no-year funds. [B-212876, Sept. 21, 1983](#). In view of the express exemption from the duration provision, there was no need to apply the “specific *versus* general” rule because there was no conflict. *See also* [B-210922, Mar. 30, 1984](#).

3. Impoundment

The duration of a continuing resolution is relevant in determining the application of the Impoundment Control Act. Impoundment in the context of continuing resolutions was discussed in a letter to the Chairman of the House Budget Committee, [B-205053, Dec. 31, 1981](#). Generally, a withholding from obligation of funds provided under a continuing resolution would constitute an impoundment. Where the continuing resolution runs for only part of the fiscal year, the withholding, even if proposed for the duration of the continuing resolution, should be classified as a deferral rather than a rescission. Withholding funds during a temporary continuing resolution is different from withholding them for the life of a regular annual appropriation in that, in the former situation, Congress is still deliberating over the regular funding levels. Also, deferred funds are not permanently lost when a continuing resolution expires if a subsequent funding measure is passed.

Under this interpretation, classification as a rescission would presumably still be appropriate where a regular appropriation is never passed, the agency is operating under continuing resolution authority for the entire fiscal year, and the timing of a withholding is such that insufficient opportunity would remain to utilize the funds. *See* [B-115398, May 9, 1975](#).

Impoundment issues under continuing resolutions may arise in other contexts as well. *See, e.g.,* [64 Comp. Gen. 649 \(1985\)](#) (failure to make funds available based on good faith disagreement over treatment of carryover balances in calculating rate for operations held not to constitute an illegal rescission); [B-209676, Apr. 14, 1983](#) (no improper impoundment where funds were apportioned on basis of budget request although continuing resolution appropriated funds at rate to maintain program level, as long as apportionment was sufficient to maintain requisite program level).