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Board (ATSB) were required to report an Antideficiency Act violation when, as discussed in section C.2 above, OMB erroneously apportioned, and ATSB erroneously obligated, funds to cover the subsidy cost of a loan guarantee prior to the availability of budget authority. [B-290600, July 10, 2001](#). Of course, if the agency feels there are extenuating circumstances, it is entirely appropriate to include them in the report. [35 Comp. Gen. 356 \(1955\)](#).

What if GAO uncovers a violation but the agency thinks GAO is wrong? The agency must still make the required reports, and must include an explanation of its disagreement. OMB Cir. No. A-11, § 145. *See also* GAO, *Anti-Deficiency Act: Agriculture's Food and Nutrition Service Violates the Anti-Deficiency Act*, GAO/AFMD-87-20 (Washington, D.C.: Mar. 17, 1987).

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## 6. Funding Gaps

The term “funding gap” refers to a period of time between the expiration of an appropriation and the enactment of a new one. A funding gap is one of the most difficult fiscal problems a federal agency may have to face. As our discussion here will demonstrate, the case law reflects an attempt to forge a workable solution to a bad situation.

Funding gaps occur most commonly at the end of a fiscal year when new appropriations, or a continuing resolution, have not yet been enacted. In this context, a gap may affect only a few agencies (if, for example, only one appropriation act remains unenacted as of October 1), or the entire federal government. A funding gap may also occur if a particular appropriation becomes exhausted before the end of the fiscal year, in which event it may affect only a single agency or a single program, depending on the scope of the appropriation. In the latter case the lack of funds occurs as a consequence of unforeseen circumstances beyond the agency’s control as opposed to the exhaustion of appropriations as a result of poor management.

Funding gaps occur for a variety of reasons. For one thing, the complexity of the budget and appropriations process makes it difficult at best for Congress and the President to get everything done on time. Add to this the enormity of some programs and the need to address budget deficits, and the scope of the problem becomes more apparent. Also, funding gaps are perhaps an inevitable reflection of the political process.

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As GAO has pointed out, funding gaps, actual or threatened, are both disruptive and costly.<sup>139</sup> They also produce difficult legal problems under the Antideficiency Act. The basic question, easy to state but not quite as easy to answer, is—what is an agency permitted or required to do when faced with a funding gap? Can it continue with “business as usual,” must it lock up and go home, or is there some acceptable middle ground?

In 1980, a congressional subcommittee asked GAO whether agency heads could legally permit employees to come to work when the applicable appropriation for salaries had expired and Congress had not yet enacted either a regular appropriation or a continuing resolution for the next fiscal year. The Comptroller General replied in [B-197841, Mar. 3, 1980](#), that 31 U.S.C. §§ 1341(a) and 1342 were both violated if agency employees reported for work under those circumstances. Permitting the employees to come to work would result in an obligation to pay salary for the time worked, an obligation in advance of appropriations in violation of section 1341(a). With respect to section 1342, no one was suggesting that the employees were offering to work gratuitously, even assuming they could lawfully do so, which for the most part they cannot. The fact that employees were willing to take the risk that the necessary appropriation would eventually be enacted did not avoid the violation. Clearly, the employees still expected to be paid eventually. “During a period of expired appropriations,” the Comptroller General stated, “the only way the head of an agency can avoid violating the Antideficiency Act is to suspend the operations of the agency and instruct employees not to report to work until an appropriation is enacted.” [B-197841, at 3](#).

Notwithstanding the literal effect of the Antideficiency Act, however, the Comptroller General went on to observe in [B-197841](#), “[W]e do not believe that the Congress intends that federal agencies be closed during periods of expired appropriations.” In this regard, the opinion pointed out that at the beginning of fiscal year 1980, GAO had prepared an internal memorandum to address its own operations in the event of a funding gap. The memorandum said, in effect, that employees could continue to come to work, but that operations would have to be severely restricted. No new obligations could be incurred for contracts or small purchases of any kind,

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<sup>139</sup> See, e.g., GAO, *Government Shutdown: Funding Lapse Furlough Information*, GAO/GGD-96-52R (Washington, D.C.: Dec. 1, 1995); *Government Shutdown: Permanent Funding Lapse Legislation Needed*, GAO/GGD-91-76 (Washington, D.C.: June 6, 1991); *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31 (Washington, D.C.: Mar. 3, 1981).

and of course the employees could not actually be paid until appropriations were enacted. The opinion further noted that the then chairman of the Senate Appropriations Committee had placed the 1980 GAO memorandum in the Congressional Record, and had described it as providing “common sense guidelines.”<sup>140</sup> The opinion also pointed to the fact that when Congress enacted appropriations following a funding gap, it generally made the appropriations retroactive to the beginning of the fiscal year and included language ratifying obligations incurred during the funding gap.

“It thus appears,” the opinion concluded, “that the Congress expects that the various agencies of the Government will continue to operate and incur obligations during a period of expired appropriations.” Nevertheless, the opinion conceded that this approach would “legally produce widespread violations of the Antideficiency Act.” B-197841, at 4. Therefore, the opinion reiterated GAO’s support at that time for legislation then pending that would provide permanent statutory authority to continue the pay of federal employees during funding gaps. *Id.*<sup>141</sup>

Less than two months after GAO issued B-197841, the Attorney General issued his opinion to the President. The Attorney General essentially agreed with GAO’s analysis that permitting employees to work during a funding gap would violate the Antideficiency Act, but concluded further that the approach outlined in the GAO internal memorandum went beyond what the Act permitted. 43 Op. Att’y Gen. 224, 4A Op. Off. Legal Counsel 16 (1980). The opinion stated:

“[T]here is nothing in the language of the Antideficiency Act or in its long history from which any exception to its terms during a period of lapsed appropriations may be inferred. . . .

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“[F]irst of all . . . , on a lapse in appropriations, federal agencies may incur no obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law. There are no exceptions to

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<sup>140</sup> 125 Cong. Rec. 26974 (Oct. 1, 1979) (remarks of Sen. Magnuson).

<sup>141</sup> GAO commented on this legislation in B-197584, Feb. 5, 1980, and B-197059, Feb. 5, 1980. The legislation was not enacted.

this rule under current law, even where obligations incurred earlier would avoid greater costs to the agencies should appropriations later be enacted.

“Second, the Department of Justice will take actions to enforce the criminal provisions of the Act in appropriate cases in the future when violations of the Antideficiency Act are alleged. This does not mean that departments and agencies, upon a lapse in appropriations, will be unable logistically to terminate functions in an orderly way. . . . [A]uthority may be inferred from the Antideficiency Act itself for federal officers to incur those minimal obligations necessary to closing their agencies.”

4A Op. Off. Legal Counsel at 19, 20.

This opinion stands for the proposition that agencies had little choice but to lock up and go home. A second opinion, 43 Op. Att’y Gen. 293, 5 Op. Off. Legal Counsel 1 (1981), went into much more detail on possible exceptions and should be read in conjunction with the 1980 opinion.

As set forth in the 1981 Attorney General opinion, the exceptions fall into two broad categories. The first category is obligations “authorized by law.” Within this category, there are four types of exceptions:

- Activities funded with appropriations that do not expire at the end of the fiscal year, that is, multiple year and no-year appropriations.<sup>142</sup>
- Activities authorized by statutes that expressly permit obligations in advance of appropriations, such as contract authority (see section C.2.g of this chapter).
- Activities “authorized by necessary implication from the specific terms of duties that have been imposed on, or of authorities that have been invested in, the agency.” To take the example given in the opinion, there will be cases where benefit payments under an entitlement program are funded from other than 1-year appropriations (*e.g.*, a trust

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<sup>142</sup> This would also include certain revolving fund operations, but not those whose use requires affirmative authorization in annual appropriation acts. B-241730.2, Feb. 14, 1991 (Government Printing Office revolving fund).

fund), but the salaries of personnel who administer the program are funded by 1-year money. As long as money for the benefit payments remains available, administration of the program is, by necessary implication, “authorized by law,” unless the entitlement legislation or its legislative history provides otherwise or Congress takes affirmative measures to suspend or terminate the program.

- Obligations “necessarily incident to presidential initiatives undertaken within his constitutional powers,” for example, the power to grant pardons and reprieves. This same rationale would apply to legislative branch agencies that incur obligations “necessary to assist the Congress in the performance of its constitutional duties.” [B-241911, Oct. 23, 1990](#) (nondecision letter).

The second broad category reflected the exceptions authorized under 31 U.S.C. § 1342—emergencies involving the safety of human life or the protection of property (see also the discussion of this provision in section C.3.d of this chapter). The Attorney General suggested the following rules for interpreting the scope of this exception:

“First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question.”

5 Op. Off. Legal Counsel at 8.

The Attorney General then cited the identical exception language in the deficiency apportionment prohibition of 31 U.S.C. § 1515, and noted that the Office of Management and Budget followed a similar approach in granting deficiency apportionments over the years.<sup>143</sup> Given the wide variations in agency activities, it would not be feasible to attempt an advance listing of functions or activities that might qualify under this exception. Accordingly, the Attorney General made the following recommendation:

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<sup>143</sup> See section C.4 of this chapter for a more detailed discussion of apportionment authorities.

“To erect the most solid foundation for the Executive Branch’s practice in this regard, I would recommend that, in preparing contingency plans for periods of lapsed appropriations, each government department or agency provide for the Director of the Office of Management and Budget some written description, that could be transmitted to Congress, of what the head of the agency, assisted by its general counsel, considers to be the agency’s emergency functions.”

5 Op. Off. Legal Counsel at 11.

Lest this approach be taken too far, Congress added the following sentence to 31 U.S.C. § 1342:

“As used in this section, the term ‘emergencies involving the safety of human life or the protection of property’ does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”

Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, § 13213(b), 104 Stat. 1388, 1388-621 (Nov. 5, 1990).

The conference report on the 1990 legislation explained the intent:

“The conference report also makes conforming changes to title 31 of the United States Code to make clear that . . . ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.”

H.R. Conf. Rep. No. 101-964, at 1170 (1990).

The Ninth Circuit Court of Appeals added to the list of exceptions, holding the suspension of the civil jury trial system for lack of funds unconstitutional. *Armster v. United States District Court*, 792 F.2d 1423 (9<sup>th</sup> Cir. 1986). Faced with the potential exhaustion of appropriations for juror fees, the Administrative Office of the United States Courts, at the direction of the Judicial Conference of the United States, had sent a memorandum to all district court judges advising that civil jury trials would have to be suspended until more money was available.<sup>144</sup> Basing its holding on the Constitution and expressly declining to rule on the Antideficiency Act, the court held that a suspension for more than a “most minimal” time violated the seventh amendment. *Id.* at 1430. *See also Hobson v. Brennan*, 637 F. Supp. 173 (D.D.C. 1986). The court said that “we do not hold that the Anti-Deficiency Act requires the result suggested by the Administrative Office. If it did, its commands would, of course, have to yield to those of the Constitution.”<sup>145</sup> *Armster*, 792 F.2d at 1430 n.13.

Since the appropriation was not yet actually exhausted, and since there was still ample time for Congress to provide additional funds, the court noted that its decision did not amount to ordering Congress to appropriate money. The court noted, but did not address, the far more difficult question of what would happen if the appropriation became exhausted and Congress refused to appropriate additional funds. *Armster*, 792 F.2d at 1430–31 and 1431 n.14.

This, then, is the basic framework. There are a number of exceptions to the Antideficiency Act which would permit certain activities to continue during a funding gap. For activities not covered by any of the exceptions, however, the agency must proceed with prompt and orderly termination or violate the Act and risk invocation of the criminal sanctions. A very brief restatement may be found in 6 Op. Off. Legal Counsel 555 (1982).

Within this framework, GAO and the Justice Department addressed a number of specific problems agencies encountered in coming to grips with funding gaps during the 1980s and early 1990s. For example, toward the

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<sup>144</sup> The Administrative Office noted a combination of factors contributing to its projected shortfall, including Congress’s decision to enact an appropriation in an amount less than the Administrative Office had requested and the appointment of new judges, which increased the number of jury trials. *Armster*, 792 F.2d at 1425 n.3.

<sup>145</sup> Although this case addressed an agency’s projected exhaustion of its appropriations rather than a funding gap, the court’s *dicta* would appear relevant for a funding gap.

end of fiscal year 1982, the President vetoed a supplemental appropriations bill. As a result, the Defense Department did not have sufficient funds to meet the military payroll. The total payroll obligation consisted of (1) the take-home pay of the individuals, and (2) various items the employing agency was required to withhold and transfer to someone else, such as federal income tax and Social Security contributions. The Treasury Department published a change to its regulations permitting a temporary deferral of the due date for payment of the withheld items, and the Defense Department, relying on the “safety of human life or protection of property” exception, used the funds it had available to pay military personnel their full take-home pay. The Attorney General upheld the legality of this action. 43 Op. Att’y Gen. 369, 6 Op. Off. Legal Counsel 27 (1982). The Comptroller General agreed, but questioned the blanket assumption that *all* military personnel fit within the exception. [B-208985, Oct. 29, 1982](#); [B-208951, Oct. 5, 1982](#). The extent to which this device might be available to civilian agencies would depend on (1) Treasury’s willingness to grant a similar deferral, and (2) the extent to which the agency could legitimately invoke the emergency exception.

Additional cases dealing with funding gap problems are:

- Salaries of commissioners of Copyright Royalty Tribunal attach by virtue of their status as officers without regard to availability of funds. Salary obligation is therefore viewed as “authorized by law” for purposes of Antideficiency Act, and commissioners could be retroactively compensated for periods worked without pay during a funding gap. [61 Comp. Gen. 586 \(1982\)](#).
- Richmond district office of Internal Revenue Service shut down for half a day in October 1986 due to a funding gap. Subsequent legislation authorized retroactive compensation of employees affected. GAO concluded that the legislation applied to intermittent as well as regular full-time employees, and held that the intermittent employees could be compensated in the form of administrative leave for time lost during the half-day furlough. [B-233656, June 19, 1989](#).
- Witness who had been ordered to appear in federal court was stranded without money to return home when court did not convene due to funding gap. Cash disbursement to permit witness to return home or secure overnight lodging was held permissible since hardship circumstances indicated reasonable likelihood that safety of witness would be jeopardized. 5 Op. Off. Legal Counsel 429 (1981).

There are also a few cases addressing actions an agency has taken to forestall the effects of a funding gap. In [62 Comp. Gen. 1 \(1982\)](#), the Merit Systems Protection Board, faced with a substantial cut in its appropriation, placed most of its employees on half-time, half-pay status in an attempt to stretch its appropriation through the end of the fiscal year. A subsequent supplemental appropriation provided the necessary operating funds. GAO advised that it was within the Board's discretion, assuming the availability of sufficient funds, to grant retroactive administrative leave to the employees who had been affected by the partial shutdown.

GAO reviewed another furlough plan in [64 Comp. Gen. 728 \(1985\)](#). The Interstate Commerce Commission had determined that if it continued its normal rate of operations, it would exhaust its appropriation six weeks before the end of the fiscal year. To prevent this from happening, it furloughed its employees for one day per week. GAO found that the Commission's actions were in compliance with the Antideficiency Act. While the ICC was thus able to continue essential services, the price was financial hardship for its employees, plus "serious backlogs, missed deadlines and reduced efficiency." *Id.* at 732.

During the 1980s and early 1990s, GAO also issued several reports on funding gaps. The first was *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31 (Washington, D.C.: Mar. 3, 1981). In that report, GAO noted the costly and disruptive effects of funding gaps, and recommended the enactment of permanent legislation to permit federal agencies to incur obligations, but not disburse funds, during a funding gap. In the second report, *Continuing Resolutions and an Assessment of Automatic Funding Approaches*, GAO/AFMD-86-16 (Washington, D.C.: Jan. 29, 1986), GAO compared several possible options but this time made no specific recommendation. The Office of Management and Budget had pointed out, and GAO agreed, that automatic funding legislation could have the undesirable effects of (1) reducing pressure on Congress to make timely funding decisions, and (2) permitting major portions of the government to operate for extended periods without action by either House of Congress or the President. The ideal solution, both agencies agreed, is the timely enactment of the regular appropriation bills.

In *Managing the Cost of Government: Proposals for Reforming Federal Budgeting Practices*, GAO/AFMD-90-1 (Washington, D.C.: Oct. 1, 1989) at 28–29, GAO reiterated its support for the concept of an automatic continuing resolution in a form that does not reduce the incentive to

complete action on the regular appropriation bills. A 1991 GAO report analyzed the impact of a funding gap which occurred over the 1990 Columbus Day weekend and again renewed the recommendation for permanent legislation to, at a minimum, allow agencies to incur obligations to compensate employees during temporary funding gaps but not pay them until enactment of the appropriation. *Government Shutdown: Permanent Funding Lapse Legislation Needed*, GAO/GGD-91-76 (Washington, D.C.: June 6, 1991). The report stated:

“In our opinion, shutting down the government during temporary funding gaps is an inappropriate way to encourage compromise on the budget. Beyond being counterproductive from a financial standpoint, a shutdown disrupts government services. In addition, forcing agency managers to choose who will and will not be furloughed during these temporary funding lapses severely tests agency management’s ability to treat its employees fairly.”

*Id.* at 9.

The history of funding gaps over recent decades reveals several distinct phases, which were captured in an analysis by a Congressional Research Service report to Congress entitled *Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*, No. RL30339 (Washington, D.C.: May 19, 2000) (hereafter “CRS Report”). The first phase, covering fiscal years 1977 through 1980, was a period in which agencies reacted to funding gaps along the lines suggested in GAO’s opinion in [B-197841, Mar. 3, 1980](#), described previously, by curtailing operations but not shutting down. During this period, there were 6 funding gaps that lasted from 8 to 17 days. *See* the CRS Report at 4, Table 1. The second phase, covering fiscal years 1981 through 1995, occurred under the stricter approach to funding gaps reflected in the Attorney General opinions described above. As the CRS Report notes, funding gaps during this period were less frequent and shorter. There were 11 funding gaps in all over this period, many of which took place over weekends. None lasted more than 3 days. *Id.*

The string of shorter funding gaps came to an abrupt halt in fiscal year 1996. As CRS reported, the unusually difficult and acrimonious budget negotiations for that year led to two funding gaps: the first was 5 days and the second, the longest in history, lasted for 21 days. *Id.* at 3, 5. Both of these funding gaps resulted in widespread shutdowns of government

operations. During the first funding gap, an estimated 800,000 federal employees were furloughed. During the second, about 284,000 employees were furloughed and another 475,000 continued to work in a nonpay status under the emergency exception to the Antideficiency Act.<sup>146</sup>

Not surprisingly, the events of 1995–1996 spawned additional legal opinions from the Office of Legal Counsel. These opinions essentially followed the legal framework described previously and did not break much new ground. However, they do illustrate the scope and application of the Antideficiency Act in different funding gap contexts. *See, e.g.*, Memorandum for the Attorney General, *Effect of Appropriations for Other Agencies and Branches on the Authority To Continue Department of Justice Functions During the Lapse in the Department's Appropriations*, OLC Opinion, Dec. 13, 1995 (if a suspension of the Justice Department's functions during the period of anticipated funding lapse would prevent or significantly damage the execution of those functions, the Department's functions and activities may continue); Memorandum for the Attorney General, *Participation in Congressional Hearings During An Appropriations Lapse*, OLC Opinion, Nov. 16, 1995 (Justice Department officials may testify at congressional hearings during a lapse in funding for the Department); Memorandum for the Counsel to the President, *Authority To Employ the Services of White House Office Employees During An Appropriations Lapse*, OLC Opinion, Sept. 13, 1995 (outlined the authorities that permitted White House employees to continue to work, but not actually be paid, during a funding gap); Memorandum for the Director of the Office of Management and Budget, *Government Operations in the Event of a Lapse in Appropriations*, OLC Opinion, Aug. 16, 1995 (reinforced the Justice Department's existing narrow interpretation that the emergency exception

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<sup>146</sup> These figures are based on another CRS report, *Shutdown of the Federal Government: Causes, Effects, and Process*, No. 98-844 (Washington, D.C.: Nov. 1, 2003), at 2–3. For a discussion of the nature, background, and dynamics of the fiscal year 1996 funding gaps and shutdowns, see Anita S. Krishnakumar, *Reconciliation and the Fiscal Constitution: The Anatomy of the 1995–1996 Budget "Train Wreck,"* 35 Harv. J. On Legis. 589 (1998).

applied only in the case of an imminent threat or set of circumstances requiring immediate action).<sup>147</sup>

The 1995–1996 funding gaps also produced at least one lawsuit, although it did not reach a final decision on the merits. In *American Federation of Government Employees v. Rivlin*, Civ. A. No. 95-2115 (EGS) (D.D.C. Nov. 17, 1995), the plaintiffs sought a temporary restraining order to prevent the executive branch from requiring federal employees who had been designated “emergency” personnel to work during the funding gap. They contended that forcing employees to work without pay violated several personnel statutes and also constituted a misapplication of 31 U.S.C. § 1342 since many of the employees did not meet the emergency criteria under section 1342. The court denied the requested relief, observing:

“[T]he court is not convinced at this juncture that plaintiffs will either suffer irreparable harm in the event a temporary restraining order is not issued or that the interests of the public will be best served by the issuance of a temporary restraining order. Plaintiffs essentially concede that if the court were to issue a TRO, the government would indeed be shut down, because the Executive Branch could not require its employees to work without compensation. Although undoubtedly the public has an interest in having the budget impasse resolved and indeed has an interest in the outcome of this judicial proceeding, one could easily imagine the chaos that would be attendant to a complete governmental shutdown. It is inconceivable, by any stretch of the imagination, that the best interests of the public at large would somehow be served by the creation of that chaos.”

*American Federation of Government Employees*, slip. op. at 4.

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<sup>147</sup> The August 1995 opinion was discussed at length and reaffirmed in a Memorandum for the General Counsel, United States Marshals Service, *Continuation of Federal Prisoner Detention Efforts in the Face of a USMS Appropriation Deficiency*, OLC Opinion, Apr. 5, 2000. Current Office of Management and Budget guidance still references the August 1995 opinion as well as the earlier opinions in 43 Op. Att’y Gen. 224 (1980) and 43 Op. Att’y Gen. 293 (1981) as the principal legal authorities governing what agencies can do during a funding gap. See OMB Circular No. A-11, *Preparation, Submission, and Execution of the Budget*, § 124.1 (a) (June 21, 2005).

The court further observed that it was “purely speculative” whether any employees would actually go without pay since Congress had always appropriated funds to compensate employees for services rendered during a government shutdown. *Id.* The lawsuit was eventually dismissed as moot following resolution of the budget impasse. *American Federation of Government Employees v. Rivlin*, 995 F. Supp. 165 (D.D.C. 1998).

The current phase in the history of funding gaps commenced on the heels of the 1995–1996 government shutdowns and has featured, thus far, the total absence of funding gaps. While there have been delays in the enactment of regular appropriations, there has been no funding gap since 1996.

Of course, the potential for future funding gaps still exists and proposals for legislation to cushion their impact have been raised again in recent years. However, such proposals have met with little enthusiasm. GAO was more cautionary in its most recent comments on this subject. See GAO, *Budget Process: Considerations for Updating the Budget Enforcement Act*, GAO-01-991T (Washington, D.C.: July 19, 2001), at 12:

“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.”

For example, GAO pointed out that some negotiators might find the “default position” specified in an automatic continuing resolution to be preferable to proposals on the table.

Likewise, several efforts to enact an automatic continuing resolution in recent years have been unsuccessful. In 1997, President Clinton vetoed a

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supplemental appropriations bill that contained such a provision. In 2000, the House of Representatives rejected such a proposal in a floor vote.<sup>148</sup>

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## D. Supplemental and Deficiency Appropriations

A supplemental appropriation may be defined as “[a]n act appropriating funds in addition to those already enacted in an annual appropriation act.” GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: September 2005) (*Glossary*), at 93. The *Glossary* adds that:

“Supplemental appropriations provide additional budget authority usually in cases where the need for funds is too urgent to be postponed until enactment of the regular appropriation bill. Supplementals may sometimes include items not appropriated in the regular bills for lack of timely authorizations.”

*Id.*

The *Glossary*, at 43, defines a deficiency appropriation as “[a]n appropriation made to pay obligations for which sufficient funds are not available.”

There is an important distinction between supplemental appropriations and deficiency appropriations. A supplemental appropriation “supplements the original appropriation,” 4 Comp. Dec. 61 (1897); that is, it provides additional appropriations to cover additional obligations to meet needs identified by the executive branch and concurred in by Congress *in advance* of the obligational event. A deficiency appropriation is an appropriation made to pay obligations for which sufficient funds were not available *at the time* the obligations were incurred. 27 Comp. Gen. 96 (1947); 25 Comp. Gen. 601, 604 (1946); 4 Comp. Dec. 61, 62 (1897). The need for deficiency appropriations often results from violations of the Antideficiency Act, and they can be made in the same fiscal year as the overobligated appropriation or in a later year. Notwithstanding the

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<sup>148</sup> These legislative actions are described in the Congressional Research Service report, *Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*, cited previously. Other automatic continuing resolution bills have been introduced but died in committee. See H.R. 29, 107<sup>th</sup> Cong. (2000); H.R. 3744, 107<sup>th</sup> Cong. (2001).