

An hourglass-shaped graphic with a globe in the top bulb and another globe in the bottom bulb. The hourglass is light blue and has a dark blue cap at the top. The globe in the top bulb is dark blue, while the globe in the bottom bulb is light blue. The hourglass is centered on the page.

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*Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution*

Robert Keith, Government and Finance Division

Updated May 19, 2000

**Abstract.** This report examines the concept of the automatic continuing resolution, outlines legislative action on such proposals in the 105th and 106th Congresses, and provides background information on the incidence of continuing resolutions and funding gaps.

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# CRS Report for Congress

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## **Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution**

**Updated May 19, 2000**

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# Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution

## Summary

Over the past several decades, the tardy enactment of regular appropriations bills has been a persistent problem in the annual appropriations process. When action on such bills is delayed, Congress turns to one or more *continuing resolutions* (CRs) to provide interim funding. The interval during the fiscal year when agency appropriations are not enacted into law, either in the form of a regular appropriations act or a CR, is referred to as a *funding gap*. When a funding gap occurs, the federal government begins a *shutdown* of the affected agencies, as required by the Antideficiency Act, which entails the furlough of “non-emergency” employees.

During the 24 fiscal years from FY1977 through FY2000, there were 17 funding gaps. In order to avoid the occurrence of funding gaps and government shutdowns, proposals have been made to establish an *automatic continuing resolution* (ACR) that would provide a fallback source of funding for activities, at a restricted level, in the event the timely enactment of appropriations is disrupted. The funding would become available automatically and remain available as long as needed so that a funding gap would not occur and the furlough of federal employees would be avoided (or at least severely limited).

During the 105<sup>th</sup> Congress, an ACR proposal was included in a supplemental appropriations bill (H.R. 1469), but the bill was vetoed by President Clinton on June 9, 1997, in part because he objected to the inclusion of the ACR provision. The proposal would have provided automatic continuing appropriations for activities, during FY1998 only, at 100% of the FY1997 level.

So far during the 106<sup>th</sup> Congress, ACR proposals have been reported in both the House and Senate, but only the House has considered one on the floor. House bill H.R. 853, the leading proposal in the House, was reported by the House Appropriations, Budget, and Rules Committees (H.Rept. 106-198, Part 1, June 24, 1999, and Parts 2 and 3, August 5, 1999, respectively); the House Appropriations Committee filed an adverse report and recommended that the ACR proposal be dropped from the bill. On May 16, 2000, the House considered and failed to pass H.R. 853 by a vote of 166-250. Under the terms of consideration set by a special rule (H.Res. 499), the ACR proposal was stripped from base text but was made in order as an amendment. Representative Gekas offered the ACR amendment, but it was defeated by a vote of 173-236.

Senate bill S. 558, the leading proposal in the Senate, was reported by the Senate Governmental Affairs Committee on March 16, 1999 (S.Rept. 106-15).

The two bills represent different approaches to establishing an automatic continuing resolution (as part of Title 31 of the *United States Code*). While H.R. 853 proposed a permanent ACR, S. 558 would limit its application to 2 fiscal years only. Second, S. 558 would fund activities at the lower of the prior-year level or the amount proposed in the President’s budget, unlike H.R. 853, which would have funded activities only at the prior-year level.



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# Preventing Federal Government Shutdowns: Proposals for an Automatic Continuing Resolution

For several decades, difficulties in enacting regular appropriations acts and continuing resolutions in a timely manner periodically have resulted in funding gaps. In 1980 and 1981, revised interpretations of the law governing agency behavior during funding gaps led to more aggressive enforcement of the law, causing the federal government to shut down affected agencies during funding gaps. In an effort to ameliorate the consequences of the tardy enactment of appropriations, some Members have proposed that an automatic continuing resolution be set in place so that funding gaps would not occur and federal government shutdowns would be prevented. Congressional interest in automatic continuing proposals was spurred by two especially troublesome funding gaps that occurred in late 1995 and early 1996. This report examines the concept of the automatic continuing resolution, outlines legislative action on such proposals in the 105<sup>th</sup> and 106<sup>th</sup> Congresses, and provides background information on the incidence of continuing resolutions and funding gaps.

## Background

**The Annual Appropriations Process.** The routine activities of most federal agencies are funded by means of annual appropriations provided in one or more of the 13 regular appropriations acts. When action on the regular appropriations acts is delayed, Congress turns to a *continuing resolution* (CR) to provide stop-gap funding.<sup>1</sup> The CR is so named because it provides continuing appropriations in the form of a joint resolution. (Occasionally, however, continuing appropriations are provided in bill form.)

CRs usually fund activities under a formula-type approach that provides spending at a restricted level, such as the lesser of the amount passed by the House or the Senate in appropriations bills not ready for transmittal to the President. In many instances, the amount of funding available for particular activities is increased when the regular appropriations act is subsequently enacted. Congress is not bound by these conventions in determining funding levels, however, and there have been many variations in practice in recent CRs. Further, CRs usually do not allow new activities to be initiated — funding is available only for activities conducted during the past year — and existing conditions and limitations on program activity are retained.

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<sup>1</sup> For general information, see: CRS Report RL30343, *Continuing Appropriations Acts: Brief Overview of Recent Practices*, by Sandy Streeter, (Washington: December 14, 1999), 10 p.

Over the past several decades, the timing patterns for congressional action on regular appropriations acts have varied considerably, but tardy enactment has been a persistent problem. Congress and the President were not able to enact all of the regular appropriations acts on time in any year during the 25-year period running from FY1952 through FY1976. As a result, one or more CRs were enacted each year during this period, except for FY1953.<sup>2</sup>

In an effort to reduce the reliance on CRs, the Congressional Budget Act of 1974 lengthened the time available for Congress to act on annual appropriations measures by moving the start of the fiscal year back three months, from July 1 to October 1.<sup>3</sup> Notwithstanding this change, there have been only four instances beginning with FY1977 (when procedures under the 1974 Congressional Budget Act first were implemented fully) in which all of the regular appropriations acts were enacted on time — FY1977, 1989, 1995, and 1997. Consequently, one or more CRs were needed each year during this period, except for FY1989, 1995, and 1997.<sup>4</sup>

In most years, more than one CR was needed as Congress worked to complete action on the regular appropriations acts. The number of CRs enacted during the period ranged from zero to seven, except for FY1996, when 14 separate measures providing continuing appropriations were enacted.<sup>5</sup> In some years, especially during the 1980s, the final CR provided funding for one or more of the regular appropriations acts for the remainder of the fiscal year.

**The Legal Underpinning for Funding Gaps and Shutdowns.** The Antideficiency Act (31 *U.S.C.* 1341-1342, 1511-1519) generally bars agencies from continued operation in the absence of appropriations.<sup>6</sup> Exceptions are made under the act for certain activities, primarily those involving “the safety of human life or the protection of property.” The interval during the fiscal year when agency appropriations are not enacted into law, either in the form of a regular appropriations act or a CR, is referred to as a *funding gap*. Although funding gaps may occur on

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<sup>2</sup> Although regular appropriations measures for FY1953 were enacted into law after the start of the fiscal year on July 1, 1952, no continuing appropriations were provided. Section 1414 of P.L. 82-547 (July 15, 1952), a supplemental appropriations measure for FY1953, resolved technical legalities arising from the tardy enactment of appropriations for that year.

<sup>3</sup> Section 501 (88 Stat. 321) of P.L. 93-344; July 12, 1974. This section later was replaced by the Federal Credit Reform Act of 1990, but the start of the fiscal year remains October 1.

<sup>4</sup> Although all of the regular appropriations acts were enacted on time for FY1977, two continuing resolutions were needed to fund certain unauthorized programs that had been omitted from one of the regular appropriations acts.

<sup>5</sup> See the following two reports: (1) CRS Report 95-78 GOV, *Continuing Appropriations Acts: Summary Data for Fiscal Years 1977-1995*, by Edward Davis and Robert Keith, (Washington: December 30, 1994), 5 p.; and (2) CRS Report 96-652 GOV, *FY1996 Continuing Resolutions: List of Measures, Chronology, Citations*, by Sandy Streeter (Washington: July 25, 1996), 5 p.

<sup>6</sup> For a discussion of the features and legislative history of the Antideficiency Act, see: CRS Report RL30267, *General Management Laws: A Selective Compendium* (Washington: July 28, 1999), pages 127-131.

October 1, at the beginning of the fiscal year, they may occur any time a CR expires and another CR (or the regular appropriations act) is not enacted immediately thereafter. Also, multiple funding gaps may occur for a fiscal year.

In 1980 and 1981, Attorney General Benjamin Civiletti issued opinions regarding the Antideficiency Act clarifying the need for federal agencies to begin terminating regular activities immediately upon the occurrence of a funding gap.<sup>7</sup> The narrowness of the exceptions allowed under the act was reaffirmed by the Budget Enforcement Act of 1990, which in part stated that the exceptions do 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.”<sup>8</sup>

Accordingly, when a funding gap occurs, the federal government begins a *shutdown* of the affected agencies. A shutdown entails the prompt furlough of non-emergency personnel<sup>9</sup> and curtailment of agency activities, including the provision of most services to the public.<sup>10</sup> The general practice of the federal government over the years has been to pay furloughed employees, after the shutdown has ended, for time missed, even when no work was performed.

When a funding gap is expected to occur, the affected agencies are given guidance on the preparation for a shutdown by the Office of Management and Budget (usually in the form of a *bulletin*) and the Office of Personnel Management.

**History of Recent Funding Gaps.** As shown in **Table 1**, there were 17 funding gaps during the 24 fiscal years covering FY1977 through FY2000. One or more funding gaps occurred in 12 of these years, but there were no funding gaps in the remaining 12 years. In three instances (for FY1983, FY1985, and FY1996), there were two funding gaps for one fiscal year, and in one instance (for FY1978) there were three funding gaps.

The gaps ranged in duration from one to 21 full days. Six of the seven lengthiest funding gaps, lasting from 8 to 17 days, occurred between FY1977 and FY1980, before the Civiletti opinions were issued. In general, the duration of funding gaps shortened considerably after the issuance of these opinions (ranging from one to three days, with the longer gaps occurring over a weekend). However, a five-day and a 21-day funding gap for FY1996 occurred between mid-November of 1995 and early January of 1996.

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<sup>7</sup> See, in particular, 43 Op. Atty. Gen. 293 — January 16, 1981.

<sup>8</sup> See Section 13213 of P.L. 101-508 (104 Stat. 1388-621), the Omnibus Budget Reconciliation Act of 1990 (Title XIII of the act, which contains this section, is known as the Budget Enforcement Act of 1990).

<sup>9</sup> Until recently, such personnel were usually referred to as “non-essential,” but this term has come to be regarded as demeaning.

<sup>10</sup> See CRS report 98-844 GOV, *Shutdown of the Federal Government: Causes, Effects, and Process*, by Sharon S. Gressle (Washington: November 8, 1999), 6 p.



**Table 1. Appropriations Funding Gaps: FY1977-2000**

<b>Fiscal year</b>	<b>Date gap commenced<sup>1</sup></b>	<b>Full day(s) of gaps</b>	<b>Date gap terminated<sup>2</sup></b>
1977	Thursday, 09-30-76	10	Monday, 10-11-76
1978	Friday, 09-30-77 Monday, 10-31-77 Wednesday, 11-30-77	12 8 8	Thursday, 10-13-77 Wednesday, 11-09-77 Friday, 12-09-77
1979	Saturday, 09-30-78	17	Wednesday, 10-18-78
1980	Sunday, 09-30-79	11	Friday, 10-12-79
1981	— -	— -	— -
1982	Friday, 11-20-81	2	Monday, 11-23-81
1983	Thursday, 09-30-82 Friday, 12-17-82	1 3	Saturday, 10-02-82 Tuesday, 12-21-82
1984	Thursday, 11-10-83	3	Monday, 11-14-83
1985	Sunday, 09-30-84 Wednesday, 10-03-84	2 1	Wednesday, 10-03-84 Friday, 10-05-84
1986	— -	— -	— -
1987	Thursday, 10-16-86	1	Saturday, 10-18-86
1988	Friday, 12-18-87	1	Sunday, 12-20-87
1989	— -	— -	— -
1990	— -	— -	— -
1991	Friday, 10-05-90	3	Tuesday, 10-09-90
1992	— -	— -	— -
1993	— -	— -	— -
1994	— -	— -	— -
1995	— -	— -	— -
1996	Monday, 11-13-95 Friday, 12-15-95	5 21	Sunday, 11-19-95 Saturday, 01-06-96
1997	— -	— -	— -
1998	— -	— -	— -
1999	— -	— -	— -
2000	— -	— -	— -

<sup>1</sup> Gap commenced at midnight of the date indicated.

<sup>2</sup> Gap terminated during the date indicated due to the enactment of regular appropriations or further continuing appropriations measures.

In six cases (two occurring after the Civiletti opinion), the funding gaps were due to the failure to enact the initial continuing resolution by the start of the fiscal year on October 1. In the remaining 11 cases (nine occurring after the Civiletti opinion), the funding gaps occurred between continuing resolutions, as the fiscal year already was underway. Although nine funding gaps occurred at the start of the fiscal year or during October, another eight occurred as late as November or December.

In some instances, funding gaps resulted in the widespread furlough of federal employees and the shutdown of federal agencies. The disruption was minimized most of the time because the funding gap occurred during a weekend.

One of the most dramatic of the earlier shutdowns occurred in November 1981.<sup>11</sup> A funding gap began at midnight on Friday, November 20, when a continuing resolution expired. President Reagan vetoed a further continuing resolution on the morning of Monday, November 23, prompting a shutdown. The budgetary confrontation between the President and Congress was resolved later that day and a further continuing resolution was signed into law that evening, ending the shutdown. Another notable shutdown occurred during the Columbus Day weekend in October of 1990.<sup>12</sup>

Perhaps the most dramatic of all shutdowns involved a five-day and 21-day shutdown for FY1996 occurring between late 1995 and early 1996. The shutdowns were due to unusually difficult and protracted negotiations between President Clinton and Congress over appropriations and other budgetary issues.<sup>13</sup> During the first of the two shutdowns, about 800,000 federal employees were furloughed.

## Automatic Continuing Resolution

Extensive reliance on CRs, and the occurrence of funding gaps and federal government shutdowns, have been persistent features of the annual appropriations process. Proposals have been made from time to time over the years to alleviate

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<sup>11</sup> The circumstances surrounding the shutdown are discussed in detail in the Congressional Quarterly Weekly Report of November 28, 1981 (Vol. 39, No. 48); see “Weekend Contest Produces 3-Week Funding Accord; Government Shutdown Ends” and “Funding Gap Led to Sweeping Shutdown . . . But No Lapse in Essential U.S. Services,” pages 2324-2327.

<sup>12</sup> Information on the consequences of the Columbus Day shutdown is provided in the following two reports of the General Accounting Office: (1) *Data on Effects of 1990 Columbus Day Weekend Funding Lapse*, GAO/GGD-91-17FS, October 19, 1990, 36 pages; and (2) *Permanent Funding Lapse Legislation Needed*, GAO/GGD-91-76, June 6, 1991, 56 pages.

<sup>13</sup> For a discussion of these funding gaps, see the 1995 *Congressional Quarterly Almanac*, “Government Shuts Down Twice Due to Lack of Funding,” pages 11-3 through 11-6. Also, a lengthier and more colorful discussion of the political circumstances surrounding the funding gaps may be found in *Mirage: Why Neither Democrats Nor Republicans Can Balance the Budget, End the Deficit, and Satisfy the Public*, by George Hager and Eric Pianin, Random House (New York: 1997), see especially pages 258-303.

these problems by establishing an *automatic continuing resolution (ACR)*.<sup>14</sup> The common feature of these proposals is the establishment of a mechanism to ensure a fallback source of funding for activities, at a restricted level, in the event the timely enactment of appropriations is disrupted. The funding would become available automatically and remain available as needed so that a funding gap would not occur and the furlough of federal employees would be avoided (or at least severely limited).

**Features of ACRs.** The two major variables in the design of an automatic continuing resolution are funding level and duration. With regard to funding level, most ACR proposals would set funding for the new fiscal year at a level consistent with the rate of operations for the prior fiscal year or some percentage of that rate. This would allow agencies to continue operating at close to the “status quo,” without prejudging which programs should be increased or scaled back.

On the issue of duration, ACR proposals range from providing continuing appropriations for a short interval, like a month, to the full fiscal year, or even indefinitely (so that continuing appropriations would become available automatically year after year as needed). Some proposals stop short of providing comprehensive automatic continuing appropriations and instead focus on continuing only basic civilian and military pay and benefits.

**Arguments For.** Proponents of ACR proposals identify several categories of problems that could, they assert, be avoided if funding gaps and the ensuing federal government shutdowns were not allowed to occur. First, shutdowns may incur significant costs to the federal government for various reasons, including program inefficiencies that arise from the disruption and from making payments to federal employees, after the shutdown has ended, for a period when work was not performed. If the shutdown is fairly large in scale, as occurred in late 1995 and early 1996, the cost to the federal government runs into hundreds of millions of dollars. In addition, federal employees themselves may have to contend with delayed or reduced paychecks, the interruption of official travel, and similar problems.

Second, shutdowns may incur significant costs to private sector entities that have business arrangements with the federal government or otherwise are closely aligned with federal activities. A lengthy shutdown may impede the timely payment of federal contractors, for example. Less directly, businesses dependent on federally sponsored activities, such as hotels and restaurants that service visitors to national parks and monuments, may suffer economic losses when these facilities shut down.

Third, shutdowns may disrupt the provision of services to program beneficiaries and the general public. Certain benefit payments, involving such programs as veterans’ assistance and Medicare payments to health maintenance organizations, may not be paid when a shutdown lasts for any significant period. Citizens intending

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<sup>14</sup> See, for example, the report of the General Accounting Office, *Funding Gaps Jeopardize Federal Government Operations* (PAD-81-31), March 3, 1981; the print of the House Government Operations Committee, *Reform of the Federal Budget Process: An Analysis of Major Proposals*, June 1987 (pages 4-7); and the print of the Senate Governmental Affairs Committee, *Proposed Budget Reforms: A Critical Analysis*, April 1988 (pages 32-35).

to travel overseas may not be able to obtain passport services; tourists making long-planned vacations may be barred from entry at many public sites.

Fourth, many ACR proponents believe that shutdowns create a strong, negative perception regarding the ability of elected officials to govern effectively and that the onus falls principally on Congress rather than the President.

Finally, an ACR, in the view of some, may promote an atmosphere at the end of the session more conducive to the constructive resolution of negotiations over legislation. Too often, they assert, the crisis atmosphere surrounding funding gaps late in the year pressures Members into accepting less-than-desirable solutions to break legislative impasses.

**Arguments Against.** The major concern of opponents of ACR proposals is that they could serve as a disincentive to enact the regular appropriations bills in a timely manner, or even at all. By knowing that a “fail-safe” funding mechanism in the form of an ACR exists, which would prevent the disruption from a government shutdown, negotiations over annual appropriations could slow down considerably as different sides see an advantage in taking more time to pursue their goals. If negotiations extended weeks past the beginning of the fiscal year without clear signs of impending agreement, an acceptance of the status quo, or something near to it, and adjournment might be the most appealing option to many at that time. In this view, an ACR, therefore, could offer Congress a convenient “escape hatch” from a difficult situation when time has run out.

Further, ACR critics maintain that supporters of reduced funding levels for annual appropriations might very well see thwarting action on the regular appropriations bills (at least those that would increase spending) as an important means of achieving their goal. A funding formula set much lower than 100 percent of the prior year’s level probably would encourage a congressional majority to seek enactment of the regular bills; but the 98-percent or 100-percent formula may be seen by many as an adequate funding level given the interest in constraining spending growth. Reliance upon an ACR could allow Congress to achieve this goal without actually taking any “tough votes” to cut discretionary spending significantly.

Finally, the chief drawback to a formula-based approach, opponents of an ACR assert, is that it may engender inequities and undermine accountability. Many would argue that the notions of congressional accountability and responsibility in exercising the “power of the purse” entail the exercise of deliberate choice. The development of annual appropriations bills through the regular legislative process entails making thousands of separate decisions. The effects of increasing funding or decreasing funding for each account, and the programs, projects, and activities within those accounts, are carefully weighed according to various criteria. All Members have an opportunity to take part in this process at some level. Resort to a formula-based approach, however, treats all items the same. Programs in need of significant increases are treated in the same manner as programs that can be cut significantly, if not eliminated altogether. From this perspective, when Members are denied the opportunity to influence outcomes for particular programs, they may not be held as clearly accountable for them.

## Recent Congressional Action on ACR Proposals

**Action in the 105<sup>th</sup> Congress.** During the 105<sup>th</sup> Congress, the House and Senate acted on an ACR proposal included in legislation providing supplemental appropriations for FY1997. The legislation was vetoed by President Clinton on June 9, 1997. A subsequent supplemental appropriations measure, which did not contain an ACR provision, was enacted into law (P.L. 105-18).

The Senate initiated consideration of the supplemental appropriations bill, S. 672. An ACR provision, pegged at 98-percent of the prior year's funding level and effective for the duration of FY1998, was included in the bill as developed in the Senate Appropriations Committee.<sup>15</sup> The provision was sponsored by Senators John McCain and Kay Bailey Hutchison and was based upon a free-standing ACR proposal they had introduced earlier, S. 547. Pursuant to the provision, the 98-percent funding level could remain in effect for as long as the entire fiscal year, but would have no effect beyond FY1998. Several provisions, dealing with such matters as the terms and conditions, coverage, and charging of expenditures under continuing appropriations also were included in the proposal; these provisions essentially were "boilerplate" from recent continuing resolutions. According to Senators McCain and Hutchison, the funding formula — 98 percent of the prior year's level — was consistent with past budget resolution policy aimed at balancing the budget by FY2002. Accordingly, if circumstances dictated that the funding formula remain in effect for all programs during the entire fiscal year, that action would not undermine balanced-budget efforts.

An unsuccessful motion to strike the provision was made in committee by Senator Robert Byrd. On May 5, 1997, during Senate consideration of S. 672, Senator Byrd again offered an amendment (#59) to strike the provision from the bill. During discussion of the proposal, Senator McCain obtained unanimous consent to modify the provision, raising the funding formula from 98 percent to 100 percent. He explained that the recent budget summit agreement, which provided for modest increases in discretionary spending, made the adjustment reasonable. The Byrd amendment was tabled the next day by a vote of 55-45 and the modified provision was retained in the bill.

The House considered its version of the supplemental appropriations measure, H.R. 1469, on May 15. Representative George Gekas offered an amendment (#7) proposing an ACR that was identical to the Senate provision. The Gekas amendment was adopted by the House by a vote of 227-197.

The ACR proposal, as passed by both the House and Senate, was included in the final version of H.R. 1469 (as Title IX), which passed both chambers on June 5.<sup>16</sup> President Clinton vetoed the measure on June 9, 1997. The President cited several objections to the measure, the first being the inclusion of the ACR proposal. He

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<sup>15</sup> See Title VII, the Government Shutdown Prevention Act, on pages 81-85 of S. 672 as reported on April 30, 1997 (S.Rept. 105-16).

<sup>16</sup> See the conference report on H.R. 1469 (H.Rept. 105-119, June 4, 1997), pages 67-69 (legislative text) and 125 (brief explanation).

indicated that the ACR, if it funded all appropriations for the entire fiscal year, would have resulted in funding levels \$18 billion below the levels contained in the budget agreement he had reached earlier with Congress.<sup>17</sup>

In the House, other measures dealing with ACRs and related issues included H.R. 342 (Stearns), H.R. 638 and H.R. 1916 (Gekas), H.R. 987 (J. Peterson), H.R. 1326 (Bunning), H.R. 1372 (Cox), H.R. 1537 (Meek), H.R. 1785 (Kleczka), and H.R. 1912 (T. Davis). Similar proposals in the Senate included S. 228 and S. 547 (McCain) and S. 396 (Mikulski).

**ACR Proposals in the 106<sup>th</sup> Congress.** So far during the 106<sup>th</sup> Congress, ACR proposals have been reported in both the House and Senate, but only the House has considered one on the floor. Two of the leading proposals — H.R. 853 and S. 558 — are discussed separately below.

**H.R. 853.** In the House, H.R. 853 (the Comprehensive Budget Process Act of 1999) was introduced on February 25, 1999 by Representatives Jim Nussle and Benjamin Cardin.<sup>18</sup> The measure was cosponsored by a bipartisan coalition of Members that includes, among others, Representative John Kasich (chairman of the House Budget Committee), Representative David Dreier (chairman of the House Rules Committee), and Representative Porter Goss (chairman of the Legislative and Budget Process Subcommittee of the House Rules Committee). It represented the culmination of efforts begun in the 105<sup>th</sup> Congress by the Task Force on the Budget Process (the so-called Nussle-Cardin task force) of the House Budget Committee and concurrent efforts by the House Rules Committee.

The Budget and Rules Committees marked up H.R. 853 on June 17 and June 23, respectively, and reported it on August 5 (H.Rept. 106-198, Parts 2 and 3). In addition, H.R. 853 also was referred to the House Appropriations Committee for consideration of that portion of the bill setting forth an automatic continuing resolution. The Appropriations Committee filed an adverse report on June 24 (H.Rept. 106-198, Part 1), recommending that the ACR provision be dropped from the bill.

As reported by the Budget and Rules Committees, Section 641 of H.R. 853 would have permanently established an automatic continuing resolution as part of Title 31 (Money and Finance) of the *United States Code*. The ACR would have providee funding at the prior year's level (*i.e.*, the amount provided in annual appropriations acts enacted for the preceding fiscal year).<sup>19</sup> The proposals of the two committees essentially were the same, except that the Rules Committee's proposal

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<sup>17</sup> For the text of the President's veto message, see the *Congressional Record* of June 10, 1997, at pages H3633-34.

<sup>18</sup> For a detailed summary of H.R. 853, see: CRS Report RL3023, *H.R. 853, The Comprehensive Budget Process Reform Act: Summary of Provisions*, by James V. Saturno, 6 (Washington: May 4, 2000), 17 pages.

<sup>19</sup> The ACR proposal is discussed in detail in the reports of the Budget and Rules Committees (H.Rept. 106-198) on pages 74-79 (in Part 2) and on pages 101-103 (in part 3), respectively.

would have excluded designated emergency spending from the calculation of the prior-year level.

On May 16, 2000, the House considered and failed to pass H.R. 853 by a vote of 166-250. Under the terms of consideration set by a special rule (H.Res. 499), the ACR proposal was stripped from the base text but was made in order as an amendment. Representative George Gekas offered the ACR amendment, but it was defeated by a vote of 173-236.

**S. 558.** On March 16, 1999, the Senate Governmental Affairs Committee reported S. 558, the Government Shutdown Prevention Act (S.Rept. 106-15). As in the case of the House bill discussed above, S. 558 built upon ACR proposals considered in the preceding several years. In particular, Senator Pete Domenici, the chairman of the Senate Budget Committee, had introduced a comprehensive budget process reform measure, S. 93 (the Budget Enforcement Act of 1999), on January 19, 1999. On January 27, the Budget and Governmental Affairs Committees held a joint hearing on S. 93 (and S. 92, Senator Domenici's biennial budgeting proposal). Subsequently, the Governmental Affairs Committee decided to report the ACR proposal in Title IV of S. 93 as a free-standing measure, S. 558.

Senate bill 558, like H.R. 853, establishes an automatic continuing resolution as part of Title 31 of the *United States Code*. However, S. 558 differs from H.R. 853 in two fundamental ways. First, while H.R. 853 proposed a permanent ACR, S. 558 limits the application of the ACR to FY2000 and FY2001 only (although in this session, the FY2000 funding is now moot). The Senate Governmental Affairs Committee indicated that its duration should be limited because the procedure is untried. Second, S. 558 would fund activities at the lower of the prior-year level or the amount proposed in the President's budget (unlike H.R. 853, which would have funded activities only at the prior-year level).

**Implication of CBO Scoring of H.R. 853 and S. 558.** In addition to issues pertaining to the advantages or disadvantages of particular approaches to framing an ACR, cost estimates for the two proposals developed by the Congressional Budget Office (CBO) raise important implications.

Under traditional scoring practices, CBO regarded both bills as providing direct spending in the form of a permanent appropriations. Accordingly, CBO estimated FY2000 budget authority for H.R. 853 and S. 558 at \$566 billion and \$550 billion, with FY2000 outlays of \$338 billion and \$330 billion, respectively.<sup>20</sup>

Under current budget enforcement procedures,<sup>21</sup> the enactment of measure containing significant direct spending would require a significant sequester of spending for such programs at the end of the session in which enactment occurred,

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<sup>20</sup> The CBO cost estimates are included in the committee reports on H.R. 853 and S. 558 (see H.Rept. 106-198, Part 2, pages 142-143, and S.Rept. 106-15, pages 7-9, respectively).

<sup>21</sup> Current budget enforcement procedures are described in: CRS report 98-720, *Manual on the Federal Budget Process*, by Robert Keith and Allen Schick (Washington: August 24, 1998), 184 p.

unless the costs were not offset by comparable reductions in other direct spending programs, increases in revenues, or a combination of the two.