

**SECTION 32 -- APPORTIONMENT OF AMOUNTS APPROPRIATED UNDER CONTINUING
RESOLUTIONS AND AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS**

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Summary of Changes

Definition of “projects or activities” is now included. (Section 32.1)

Description of the period of availability of continuing resolutions is now included. (Section 32.1)

The Federal Workforce Restructuring Act of 1994 is no longer a factor in determining the amounts available under continuing resolutions. (Section 32.1)

Guidance on agency operations in the absence of appropriations is now included. (Section 32.2)

32.1 Apportionment of amounts appropriated under continuing resolutions.

(a) Purpose.

Joint resolutions that provide continuing appropriations for a fiscal year are called "continuing resolutions" (also known as "CRs"). CRs are enacted when Congress has not yet passed new appropriations bills and a program's appropriations are about to or have expired, or when the President has vetoed congressionally passed appropriations bills. Because of the nature of CRs, you should not ask, “How much can I do under the CR?”, but rather “What can I delay doing until after I receive my regular appropriation?” and “What are my minimal level requirements?”

(b) Amount.

Usually, CRs don't appropriate specific sums of money. Rather, they provide "formulas" for calculating the amounts available for continuing programs at minimal levels. In addition, CRs provide funds for projects or activities. This term has two meanings:

- When determining which government programs are covered by the CR, and the rate for operations limit, the term refers to the total appropriation rather than to specific activities. This is the most common meaning of the term.
- When determining whether an activity was authorized or carried out in the preceding year, the term may refer to the specific activity.

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Each CR should be carefully reviewed to determine the formula provided by the CR. As an illustration, in most past years the formula used to calculate the annual rate has been as follows:

- *When there are House- and Senate-passed versions of the regular appropriations act(s) as of October 1st.* The amount available is the lowest of either the House, Senate, or the current year (prior fiscal year) rates, except where an item is included in only one version, the pertinent project or activity shall be continued at the lower of the current year (prior fiscal year) rate or the rate permitted by the one House.
- *When there is only the House-passed version as of October 1st.* The amount available is the lower of the House or current year (prior fiscal year) rates, except where an item is funded in applicable appropriations act(s) for the prior fiscal year and is not included in the House-passed version, the pertinent project or activity shall be continued at a rate of operations not exceeding the current year (prior fiscal year) rate.
- *When there is no House-passed version as of October 1st.* Funding for projects and activities is provided at the rate of operations included in the applicable appropriations act(s) for the prior fiscal year.

(c) Period of availability.

A CR normally provides temporary funding as a stop-gap measure. A CR could be set to last a day, a few days, two weeks, a month, or any period of time, as specified by the CR. It's generally understood that the normal appropriations process will eventually produce appropriation acts to replace or terminate the CR. In exceptional cases, CRs have been in effect for a whole fiscal year. Amounts are made available by CRs for the length of time specified by the CR or until the enactment of regular fiscal year appropriations, whichever is sooner.

(d) Conditions.

Normally, no new projects or activities or termination of existing projects or activities are permitted. Also, the amounts made available under CRs are normally subject to the same terms and conditions that are specified in the enacted appropriations acts for the prior fiscal year.

(e) Apportionment.

Normally, amounts made available by CRs that expire before the end of the fiscal year are automatically apportioned by an OMB bulletin. Agencies may request written apportionments if amounts automatically apportioned are deemed to be inadequate or if OMB or the agency deems a written apportionment to be necessary.

- *Automatic apportionment.* Under the automatic apportionment of a CR under this section, usually the amount available during the period covered by the CR is the lower of either: (1) a pro-rated level to reflect a constant rate of obligation over the period of availability specified by the CR; or (2) the seasonal rate of obligation.

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The pro-rated level is calculated by multiplying the annualized appropriation (e.g., the lowest of the House, Senate (if any), or current rate) by the number of days the CR is in effect divided by 365 (and carried to three decimal places). For example, if the CR is in effect through the 21st of October, the annualized appropriation will be multiplied by 5.8 percent (21/365).

To determine the seasonal rate of obligation, calculate the historical rate (percentage in tenths) of obligation for the period of the CR of either the prior fiscal year or an average of a number of prior years. Then multiply the historical rate (percentage in tenths) by the annualized appropriation (i.e., the lowest of the House, Senate (if any), or current rate) provided under the CR.

The amount automatically apportioned under the CR is usually the lower of the prorated or the seasonal rate.

Example: If the lowest of House, Senate (if any), and current rate for a program is \$100,000, the CR provides \$100,000 in annualized appropriations for the fiscal year, and the normal pattern of obligation is constant throughout the year, then the proration of obligational authority should be used. Of this amount, \$5,800 (.058 x \$100,000) would be automatically available for the first 21 days of the fiscal year. If, however, the seasonal rate of the 21 days yields an amount lower than \$5,800, then the lower amount is apportioned.

- *Written reapportionment.* In cases where the rate of obligation is affected by seasonality and the normal pattern of obligation exceeds the pro-rated level calculated by using the lowest of the House, Senate (if any), or current levels, the agency may request reapportionment to reflect the seasonality of obligation. A written request for reapportionment with adequate justification should be forwarded to OMB as soon as possible.
- *Footnotes and conditions.* All footnotes and other conditions placed on the latest prior fiscal year apportionments remain in effect under an automatic apportionment. Should an agency desire to seek a modification of such footnotes and conditions, a written reapportionment request should be submitted to OMB.

(f) *Credit programs.*

CRs generally make available budgetary resources to support the costs (appropriations for subsidy amounts) associated with direct and guaranteed loan activities that were conducted in the prior fiscal year. The limitations on credit activity levels also remain, subject to the terms and conditions specified in the prior fiscal year appropriations act(s).

(g) *Enactment of regular appropriations.*

If, during the period covered by the CR, a regular appropriations bill is enacted, agencies will seek reapportionment to reflect the enacted appropriation within ten days of the enactment. (See section 34.3) The total amount subject to reapportionment will equal the total amount made available for the fiscal year in the regular appropriation. At this point, agencies should refer to the following sections for instructions on apportionment under regular appropriations.

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(h) Obligations incurred under a CR.

Under a continuing resolution, certain obligations remain valid even if an annual amount less than the amount obligated is subsequently appropriated. Specifically, the amounts provided under the continuing resolution are available for subsequent liquidation of the valid obligations incurred for goods and services while the continuing resolution was in effect. To comply with the legislative intent of the lower appropriation, agencies will reduce obligations in the most cost-effective way and to the maximum extent possible. For example, goods and services ordered but not yet received will be canceled.

32.2 Funding hiatus

(a) Background.

The Attorney General issued two opinions in the early 1980s that the language and legislative history of the Antideficiency Act unambiguously prohibits agency officials from incurring obligations in the absence of appropriations. (“Applicability of the Antideficiency Act Upon a Lapse in an Agency’s Appropriations” (1980) and “Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations” (1981).) The Office of Legal Counsel of the Department of Justice issued an opinion dated August 16, 1995 that reaffirms and updates the 1981 opinion.

(b) Policies.

This section provides policy guidance and instructions for actions to be taken by Executive Branch agencies when failure by the Congress to enact either regular appropriations, a continuing resolution, or needed supplementals results in an interruption of fund availability.

This section does not apply to specific appropriations action by the Congress to deny program funding.

In the case of partial funding interruptions, e.g., failure of the Congress to act on program supplementals, special procedures beyond those outlined in this section may be warranted. In such cases, you should consult your OMB representative.

In the absence of appropriations:

- Federal officers may incur no obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.
- Federal officers may incur obligations as necessary for orderly termination of an agency’s functions, but no funds may be disbursed.

(c) Prior to Funding Hiatus.

Agency heads are to develop and maintain plans for an orderly shutdown in the event of the absence of appropriations. Submit your plans to OMB whenever they are first prepared or revised. Include the following information in the plan:

- Estimated time to the nearest half day to complete the shutdown.

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- Number of employees expected to be on-board before implementation of the plan.
- Total number of employees to be retained under the plan because:
 - They are engaged in military, law enforcement, or direct provision of health care activities, or
 - Their compensation is financed by other than annual appropriations.
- Number of employees, not otherwise exempt, to be retained to protect life and property.

As you monitor the progress of your appropriations through the Congress, you will need to be sensitive to the possibility of delays, and, in particular, delays caused by issues that have little to do with your agency's programs. You should avoid initiating new activities included in the proposed budget on or before October 1st by using available money in the prior year.

Within the guidance established by the opinions issued by the Department of Justice and this Circular, agency heads are to make such determinations as are necessary to operate their agencies during an appropriations hiatus. Questions that you cannot answer should be addressed to OMB. Address questions about the interpretation of the Antideficiency Act jointly to OMB and the Office of Legal Counsel of the Department of Justice.

If you estimate that more than one-half day would be needed to complete a shutdown or that the number of employees to be retained to protect life and property would exceed five percent of the number of employees on board at the beginning of an hiatus less those exempt, submit policy statements and legal opinions supporting those estimates to OMB.

(d) Implementing Shutdown Plans.

OMB will monitor the status of congressional actions on appropriations bills and will notify agencies if shutdown plans are to be implemented. Whenever it appears that a hiatus in appropriations might occur, agencies should review their shutdown plans, and, if revisions are required, submit the revised plan promptly to OMB.

When, after a hiatus in appropriations has been identified by OMB, all available funds, including reallocated/reallocated funds, are exhausted, you must begin orderly shutdown activities. Each agency head must determine the specific actions that will be taken; however, all your actions must contribute to orderly shutdown of the agency and give primary consideration to protecting life and safeguarding Government property and records. Agency heads will notify OMB immediately when shutdown activities are being initiated.

Agency heads will limit obligations during an absence of appropriations to those needed to maintain the minimum level of essential activities necessary to protect life and property.

Take necessary personnel actions to release employees in accordance with applicable law and regulations of the Office of Personnel Management. Preparation of employee notices of furlough and processing of personnel and pay records in connection with furlough actions are essential shutdown activities. You should plan for these functions to be performed by employees who are retained for orderly termination of agency activities as long as those employees are available.

OMB will notify agencies when the hiatus of appropriations has ended.