
January 30, 2019

Automatic Continuing Resolutions Not a Good Solution for Government Shutdowns

By Paul N. Van de Water and Richard Kogan

The partial government shutdown that ended January 25 imposed substantial costs on individuals and families in general and federal employees in particular, and it has heightened interest in finding a way to avoid future shutdowns. But one type of proposal, an automatic continuing resolution (CR), raises significant concerns and would cause serious problems of its own, undermining sound budgeting and diminishing Congress' role in setting national priorities.

Automatic CR proposals would automatically extend funding whenever Congress and the President fail to enact full-year or temporary funding for a fiscal year. Many of these proposals set the automatic CR's funding levels equal to the prior year's level, though some automatic CR proponents would have funding levels decrease if an automatic CR remains in place for several months, while others would increase funding with inflation or economic growth.

By allowing the government to keep operating without any action by Congress and the President, an automatic CR mechanism would significantly reduce pressure to reach agreement on full-year appropriation bills and thus would tend to prolong budgetary uncertainty. Most important, it likely would significantly increase the instances in which the previous year's appropriation levels and priorities remain in place for a year or more while pressing, new needs go unattended and areas that no longer need as much funding are overfunded. In addition, by freezing funding at last year's levels (as an automatic CR would likely do), it would strengthen the hand of those who want to shrink the size of government.

An automatic CR could be particularly problematic in fiscal year 2020. As explained below, it could make it more difficult to secure a sound budget agreement that sets the appropriations caps at levels sufficient to maintain progress made under the last budget agreement in a range of areas and address pressing needs, including the decennial census and the recently enacted veterans' health legislation known as the Mission Act.

In addition, while some have suggested a time-limited automatic CR mechanism that would sunset in the next few years, there is a good chance that future Congresses would extend the automatic CR authority and that automatic CRs could increasingly come to replace regular appropriation bills.

Automatic Mechanism Could Prolong Disruptive, Inefficient CRs

Congress employs continuing resolutions when it has failed to enact all the regular annual appropriations needed to fund government operations before the fiscal year begins on October 1. CRs provide temporary authority for agencies to continue operating at some specified rate of spending, usually based on the prior year's funding level. CRs have specific expiration dates, typically lasting no more than two to three months and sometimes as little as one day; they are automatically superseded when regular appropriations are enacted. Often, successive CRs are needed before Congress finishes regular appropriations.

Even though CRs avoid shutdowns, they can cause considerable uncertainty, inefficiency, and disruption. Their effects extend well beyond the federal government, as state and local governments, nonprofit agencies, scientific researchers, and the many other recipients of federal financial support can't fully plan or proceed with that work until full-year funding decisions are made.

Yet if legislation made CRs *automatic*, they would likely become the default approach, with an automatic CR remaining in place unless Congress and the President enacted something else. Given the highly contentious nature of appropriation debates in recent years, with major disagreements over funding levels and legislative "riders" that would change underlying laws, long delays in enacting full-year appropriations are already common even though the looming expiration of short-term CRs pressures policymakers to come to agreement and creates definite deadlines for doing so. An automatic CR with no deadline, and no votes needed to create or extend it, would have no such action-forcing event. Negotiations over difficult funding issues might drift along indefinitely, as those who prefer inaction would face no pressure to resolve appropriations disputes.

An automatic CR would also create uncertainties and inefficiencies like regular CRs. Agencies would not know if the automatic CR level represented their final appropriation or if Congress would eventually agree on different funding levels for various programs.¹

Automatic CRs Could Entirely Replace Regular Appropriations in Some Cases

In addition to prolonging appropriations negotiations, an automatic CR could lead to some appropriation bills never being enacted in some years, as it would remove the threat of a significant disruption to government operations if policymakers battling over one or more appropriations bills failed to come to agreement. The threat would be greatest for those bills that have been the most contentious, such as the Interior and State-Foreign Operations bills, which fund programs critical for addressing climate change and maintaining diplomatic relations around the world. Congress would have less compelling need to pass annual appropriation bills, and the President would have less compelling need to sign them.

If that happened, policymakers would have no mechanism to increase funding for high-priority needs, end funding for projects that are completed and shift resources to new projects, or reform or end poorly performing activities. The previous year's programs, funding allocations, and priorities would remain fixed in place.

¹ An automatic continuing resolution may not be able to apply to the Army, since Article I, Section 8, of the Constitution provides that "no appropriation of money [to raise and support Armies] shall be for a longer term than two years."

Also, an automatic CR would not allow for any of the “anomalies” that Congress typically includes in a CR — that is, spending increases above a freeze level to pay for pressing needs in particular programs or spending reductions reflecting reduced funding needs. Even short-term CRs typically include a number of anomalies. When Congress has enacted CRs for a full fiscal year, those measures have included many pages of upward and downward adjustments to reflect changes in needs.² But by their automatic nature, automatic CRs would contain none of these adjustments.

In addition, the prior year’s level of spending would be inadequate for almost all mandatory appropriations, which typically grow with caseloads (which often fluctuate depending on the state of the economy) and inflation.³

Automatic CRs Would Shift Power to the Executive

Enacting an automatic CR would shift power from Congress to the executive branch. In some cases today, Congress appropriates money for broad budget accounts (for example, “Aircraft Procurement, Air Force”) and provides more explicit instructions in the accompanying committee and conference reports. This practice is employed particularly in defense appropriations. Under an automatic CR, however, congressional report language would no longer constrain the way appropriations are spent, effectively giving extensive new authority to the Administration over how to use the funds.

Automatic CRs Would Make It Easier to Shrink Government

Some automatic CR proposals would freeze funding at the previous year’s level; others would require cuts the longer the CR remained in place.⁴ Either approach would give a powerful new tool to those who want to cut funding for programs and services. Others have suggested setting funding at the prior year’s level adjusted for inflation or economic growth.⁵

Consider what would likely be viewed as the “middle ground” proposal: freezing funding at the previous year’s level. If a freeze under an automatic CR became the default, lawmakers opposed to funding increases for particular agencies or programs could prevail simply by blocking any appropriations bill providing those increases (such as by filibustering it or refusing to bring it to the

² The full-year continuing appropriation for fiscal year 2011 (Public Law 112-10) covered the entire government and contained 94 pages of anomalies and other adjustments. <https://www.congress.gov/112/plaws/publ10/PLAW-112publ10.pdf>. The full-year continuing appropriation for fiscal year 2013 (P.L. 113-6) covered seven appropriation bills and included 23 pages of anomalies. <https://www.congress.gov/113/plaws/publ6/PLAW-113publ6.pdf>.

³ Some mandatory programs are funded through the annual appropriations process and hence would be at risk: those include Medicaid; veterans’ compensation, pensions, and educational assistance; Supplemental Security Income (SSI); the Supplemental Nutrition Assistance Program (SNAP); child nutrition; and funding for Medicare’s Supplementary Medical Insurance.

⁴ S. 104, introduced by Senator Portman, calls for funding levels to decrease by 1 percentage point every 90 days if the automatic CR remains in place for more than 120 days, a formula that would result in a cut of nearly 3 percent after one year and 7 percent after two years. <https://www.congress.gov/bill/116th-congress/senate-bill/104/>.

⁵ S. 198, introduced by Senator Warner, would freeze funding in the first year under an automatic CR and increase it by the rate of growth of gross domestic product in subsequent years. <https://www.scribd.com/document/398006535/Stop-the-Shutdowns-Transferring-Unnecessary-Pain-and-Inflicting-Damage-In-The-Coming-Years-Act>.

floor). Similarly, if the President preferred a funding freeze to a regular appropriation bill, he would only need to veto the bill, and the bill's opponents would only have to sustain the veto.

Of course, a freeze is really a *cut* in purchasing power, as it doesn't adjust for rising costs (including wage increases for federal employees) and a growing population. (The effects would be even larger under an automatic CR that gradually cut funding rather than simply freezing it.)

Currently, appropriation levels are set through the give and take of the legislative process. But with an automatic CR, policymakers could bring about freezes or cuts without ever actually voting for them, simply by voting against the alternatives. Opponents of funding increases could take a "hands off" approach to shrinking government, with little incentive to reach agreement on appropriations.

An alternative approach to an automatic CR — setting funding at the previous year's level adjusted for inflation or economic growth — would reduce this problem but wouldn't solve the other problems that an automatic CR poses. Funding priorities wouldn't adjust to reflect new realities, and in years when budget negotiations are needed to set overall funding levels, opponents of new investments could simply hold out for an automatic CR rather than negotiate new levels and funding priorities.

Automatic CR Would Be Particularly Problematic in Fiscal Year 2020

Extending an automatic CR into fiscal year 2020 would be particularly problematic. The 2020 defense and non-defense discretionary caps established by the 2011 Budget Control Act (BCA), as reduced by the BCA's sequestration provisions, are far below the caps for 2019. (The 2018 Bipartisan Budget Act raised the caps for 2018 and 2019, but without new legislation, the funding levels will revert in 2020 to the BCA sequestration levels.) With an automatic CR, and without a new budget agreement, funding would initially be set at the 2019 levels but would then be cut substantially across the board through sequestration: defense funding would be cut by 13 percent, and non-defense discretionary funding by 12 percent, below the 2019 level adjusted for inflation.

If the automatic CR legislation overrode the existing discretionary appropriation caps for 2020 and 2021, the existence of an automatic CR mechanism would still likely make it more difficult to negotiate a new budget agreement that addressed emerging needs, such as the decennial census and the new veterans' Mission Act. Opponents of any increase in overall discretionary spending would have little incentive to compromise, since inaction would freeze overall discretionary funding at the 2019 level.

And, if lawmakers failed to reach a budget agreement and an automatic CR took effect, the needs of the census and the Mission Act would be in jeopardy, as both programs require large funding increases over the 2019 level. If an automatic CR were in place, Congress would have to pass other stand-alone legislation to fund these areas, presumably with substantial and controversial offsetting cuts to other areas.

Conclusion

While design changes to an automatic CR might moderate some of these problems, the biggest problems would remain. An automatic CR would make it more difficult to revise discretionary

funding levels each year to respond to pressing national needs and would diminish Congress' role in establishing national priorities.

Shutdowns cause substantial damage. But as painful as shutdowns are, automatic CRs could cause the longer-term unraveling of the annual appropriations process and inflict damage that, while less dramatic than a shutdown, could have more significant long-term negative consequences. If automatic CRs become the norm for significant parts of the federal government, funding is likely to become less adequate and less efficiently allocated over time.