
Updated July 22, 2020

Protecting SNAP and Child Nutrition Programs From Appropriations Shortages or Lapses

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The Supplemental Nutrition Assistance Program (SNAP) and the Child Nutrition Programs (school, summer, and child care meals) are the only major entitlement programs whose beneficiaries risk two types of failures in the annual appropriations process: annual funding that proves inadequate to cover the programs' needs for the entire fiscal year, or a government shutdown, especially at the beginning of the fiscal year. Such failures can leave low-income families and children unable to afford food and cause confusion and harm for food retailers and schools. The House and Senate Appropriations Committees can address this problem by extending to these programs the same basic protections given to other key entitlement programs.

For many other entitlement programs that Congress funds through the annual appropriations process — such as Medicare Parts B and D, Medicaid, Supplemental Security Income (SSI), veterans' compensation and pensions, and crop insurance — the Appropriations Committees provide protection against one or both types of appropriations failures. Table 1 lists 22 annually appropriated programs paying in-kind or cash entitlement benefits to families or individuals. Other than SNAP, Child Nutrition, and crop insurance — the three programs in Table 1 funded by the Agriculture subcommittees — the table shows \$987 billion of funding for fiscal year 2020, 51 percent of which the Appropriations Committees have protected from inadequate funding *and* shutdowns and 99.8 percent of which they have protected from at least one such failure. SNAP and the Child Nutrition Programs are exceptions; they are protected from neither. In a shutdown, SNAP faces the greater risk because of features of the Child Nutrition Programs' operations and funding structure.¹

¹ There are several reasons why the Child Nutrition Programs face less risk. Their funding is available for two years, so any unspent prior-year funds can be drawn on during a funding shortfall or shutdown. Also, school districts and other providers receive reimbursements for the meals they serve after the fact, so they are likelier to continue serving meals during periods with funding gaps. And funding is distributed quarterly under a continuing resolution (CR), so if a CR (or the 30-day window it covers) includes the start of a quarter, funding will be provided for the full quarter. Finally, a provision of permanent law known as Section 32 dedicates 30 percent of annual customs receipts to farm sector support. In recent years, this has generated around \$10 billion annually, approximately \$9 billion of which has been transferred to the Child Nutrition Programs. The transferred funds are commingled with annually appropriated funds and used to reimburse schools and other entities for meals provided through the Child Nutrition Programs. Section 32 constitutes a permanent appropriation and the funds can be transferred to the Child Nutrition Programs without an annual appropriations law. The amount transferred has generally exceeded the cost of operating the Child Nutrition

The rapid and severe recession triggered by the COVID-19 pandemic illustrates that program needs in open-ended programs, and especially those that assist low-income households and are intended to expand to meet increased needs during economic downturns, can be highly unpredictable. If needs outstrip available appropriations in a fiscal year, households will be left stranded. If appropriations outstrip needs, however, no problems arise; households will receive promised benefits and the excess funding will remain unused.

The best method of funding such programs is by appropriating “such sums as may be necessary” — open-ended funding for open-ended benefits, which shrink or grow as caseloads and the depth of poverty shrink or grow. Indeed, five-eighths of the open-ended appropriated entitlements funded outside the Agriculture subcommittees received such-sums appropriations, as does the crop insurance program.

Additionally, the month-long shutdown that began in December 2018 illustrated the importance of exempting open-ended benefit programs from shutdowns. In that episode, the Department of Agriculture (USDA) asked states to scramble to issue February 2019 SNAP benefits prematurely, in late January. If the shutdown had not been resolved, USDA suggested that SNAP benefits would have fallen short by about half for March 2019 benefits; if it had continued even another week or two, USDA, states, and retailers likely would have begun preparing for deep SNAP cuts in March 2019 and for ceasing SNAP operations altogether in subsequent months.²

Even though SNAP remained open during that shutdown, state and county SNAP agencies had to divert resources from basic program operations to manage the early issuance. In addition, 15 million SNAP households experienced a gap of more than 40 days between monthly SNAP benefits. This created heightened difficulties for some households whose budgets already are extremely tight and placed additional strain on the emergency food network and other community resources, which are stretched thin every month.³

The Need for Such-Sums Protection and Advance Appropriations

Some entitlement programs that provide cash or in-kind benefits (such as health insurance) to all eligible people who enroll, in the amounts prescribed by law, do not require annual appropriations because the laws establishing them directly provide funding. These programs are not at risk of funding shortfalls or funding lapses. Examples are Social Security, military retirement, and the Earned Income Tax Credit.⁴ Certain Agriculture Committee entitlement programs, such as farm

Programs for the first quarter of the fiscal year, though it would run out under a more protracted shutdown. Funding was provided this way during the 2013 shutdown.

² See Dorothy Rosenbaum, “USDA to Fund SNAP for February 2019, But Millions Face Cuts if Shutdown Continues,” Center on Budget and Policy Priorities, updated January 10, 2019, <https://www.cbpp.org/research/food-assistance/usda-to-fund-snap-for-february-2019-but-millions-face-cuts-if-shutdown>.

³ Dorothy Rosenbaum, “Many SNAP Households Will Experience Long Gap Between Monthly Benefits Despite End of Shutdown,” Center on Budget and Policy Priorities, February 4, 2019, <https://www.cbpp.org/research/food-assistance/many-snap-households-will-experience-long-gap-between-monthly-benefits>.

⁴ Other entitlement programs funded outside the annual appropriations process include civil service retirement; Medicare Part A; the Defense Department’s Medicare-eligible retiree health care; unemployment insurance; deposit insurance through the Federal Deposit Insurance Corporation; the Pension Benefit Guarantee Corporation; the Children’s Health Insurance Program; Temporary Assistance for Needy Families; the child care entitlement to states; and

price supports through the Commodity Credit Corporation and conservation programs, fall into this category because their funding derives from permanent law.⁵

But various similar entitlement programs receive funding through the annual appropriations process. Examples of these “appropriated entitlements” include payments to Medicare’s Supplemental Medical Insurance (SMI) trust fund; Medicaid; veterans’ disability compensation, pensions, and education benefits; SSI; foster care; child support enforcement and family support; federal retiree health and life insurance benefits; and federal employee unemployment insurance. Within the Agriculture subcommittees, crop insurance, SNAP, and the Child Nutrition Programs fall into this category.⁶ Such programs⁷ can be subject to the vagaries of the annual appropriations process, which entails two separate risks for them:

- **Inadequate funding.** The Appropriations committees might specify a funding level for a given appropriated entitlement that seems adequate when the appropriations legislation is being considered but turns out to be inadequate, e.g., if the economy weakens and more people become eligible for benefits. What happens if funding proves inadequate?⁸

The solution is simple: appropriations bills can include language providing “such sums as may be necessary” to fulfill the requirements of the underlying entitlement law. Some key

the refundable portions of the Child Tax Credit, the American Opportunity Tax Credit for college, and the premium (health insurance) tax credit.

⁵ Although annual appropriations are made to the Commodity Credit Corporation, those payments reimburse the corporation for prior losses and are not needed to finance current benefits because the corporation can borrow as needed from the Treasury as long as its outstanding debt does not exceed \$30 billion.

⁶ Under some legal interpretations, SNAP may have a permanent appropriation under the Food and Nutrition Act that would fund the program during lapses in appropriations and that provides some additional protection against inadequate appropriations. See David A. Super, “Continuing SNAP in a Government Shutdown,” Georgetown University Law Center, January 9, 2019, <https://www.law.georgetown.edu/wp-content/uploads/2019/01/SNAP-Govt-Shutdown-Memo-Jan-2019.pdf>. The analysis set out in this paper assumes Congress and the Administration continue to treat SNAP as an appropriated entitlement, as they have to date.

⁷ We exclude appropriated entitlements from Table 1 when there is a looser relationship between beneficiaries and funding, so inadequate funding or a shutdown would be less harmful. For example, we exclude capped block grants to states, such as Rehabilitation Services and the Social Service Block Grant, because they do not entail an open-ended entitlement benefit. And some other annual appropriations constitute accrual payments or other subsidies paid to retirement trust funds where there is no risk of trust fund inadequacy even if the annual appropriation is insufficient or delayed. However, we *include* payments to Medicare’s SMI trust fund, which finances Medicare’s physician (Part B) and prescription drug (Part D) benefits. Although those benefits nominally come from a trust fund rather than from the direct appropriation, the SMI trust fund has little or no balances built up over prior years and instead depends on premiums collected during the year and annual appropriations by the Labor-Health and Human Services-Education subcommittees to finance its benefits. Without those annual appropriations, the fund could not pay for physician or prescription drug benefits.

⁸ The SNAP authorizing law, Section 18(b) of the Food and Nutrition Act of 2008, instructs the Secretary of Agriculture to reduce SNAP benefits across the board if appropriations are determined to be insufficient. This provision has never been used; Congress enacted supplemental appropriations in the late 1970s and 1980s and appropriations since then have always been sufficient. In the current political environment, however, supplemental appropriations are a rarity, so across-the-board cuts could be necessary if appropriations prove inadequate. (Amendments to Section 18 have left the benefit-reduction mechanism unclear, raising the likelihood of litigation blocking an attempt to scale back benefits.) In any event, it would be far preferable for the appropriation to provide sufficient funding so that low-income families avoid a benefit cut and other stakeholders (such as food retailers, debit card processors, and program administrators) avoid the disruption and confusion from across-the-board benefit cuts.

appropriated entitlements receive such-sums funding: Medicaid; payments financing Medicare Parts B and D;⁹ SSI; health and life insurance benefits for federal annuitants; and important social service benefits such as foster care, child support enforcement, and family supports, for example. (See Table 1.) Such-sums funding is not new; Medicaid has had this protection since 1971 and SSI since 1974. (See Appendix A for examples of language providing such-sums funding, including for crop insurance within the Agriculture subcommittees' jurisdiction.)

SNAP's \$3 Billion Benefit Reserve Is Inadequate to Address the Risks of Both Types of Funding Shortfalls

For many years the Appropriations Committees have addressed possible funding shortfalls by making available \$3 billion as a benefit reserve “for use...as may become necessary to carry out program operations.” The availability of the benefit reserve has extended beyond the end of the current fiscal year. For example, at the beginning of fiscal year 2020 SNAP had \$6 billion available as a benefit reserve: \$3 billion from the benefit reserve from the fiscal year 2019 appropriation and \$3 billion from the benefit reserve from the fiscal year 2018 appropriation.

The appropriators have intended this \$3 billion to protect against both types of funding shortfalls: inadequate funding in the current year brought on by a change in economic conditions or a natural disaster, and a lack of any funding if a new appropriation is not in place at the beginning of the next fiscal year. In many years, especially recent years when caseloads and spending have been falling and so there has been a lower risk of inadequate funding in the prior years, this approach would provide a sufficient “cushion” for at least one month.

However, in times when the economy is deteriorating rapidly and there is a high degree of uncertainty about the number of households that will be eligible for and will seek help from the program, a “such sums as are necessary” appropriation would be a far more effective way of ensuring adequate funding. The economic crisis brought on by the COVID-19 pandemic showed how quickly SNAP spending can change. In February 2020, SNAP served about 37 million people and benefits totaled about \$4.5 billion. By May 2020, based on preliminary data, about 43 million people participated in SNAP and, including the increased “emergency allotments” Congress authorized in the Families First Act, SNAP benefits increased by at least \$3 billion.

And a first-quarter or full-year advance appropriation would be better protection against a government shutdown, because: 1) a shutdown could exceed one month; 2) new fiscal years fall at the height of hurricane season and the benefit reserve would not be sufficient to cover both a month of benefits and a major hurricane; and 3) over time, \$6 billion will not be sufficient to cover a month of SNAP benefits as food price inflation and the potential for higher participation raise SNAP's nominal benefit costs.

- **No funding due to a shutdown.** A political impasse over one or more of the 12 appropriations bills might preclude their enactment by the October 1 start of the fiscal year, leaving no funding for a wide variety of activities. This would seriously disrupt many programs. But an interruption of funding would be of particular concern for appropriated entitlements (such as SNAP) that provide direct assistance to needy individuals and families, who rarely can get by for the days or weeks it may take to resolve such disputes. A shutdown starting later in the fiscal year is somewhat easier for USDA to manage but by no means is

⁹ See footnote 7.

problem-free, as the 2019 shutdown demonstrated. (See the box, “Shutdowns and Continuing Resolutions.”)

Again, a simple solution exists: appropriations bills can provide funding for the budget year and, via an “advance appropriation,” funding for some or all of the following fiscal year. That way, even if political gridlock leads to a shutdown at the start of the fiscal year, entitlement programs with advance appropriations would already be funded (for at least the first part of the year) and so would not shut down. (See the box, “SNAP’s \$3 Billion Benefit Reserve Is Inadequate to Address the Risks of Both Types of Funding Shortfalls.”) Here again, many key appropriated entitlements receive such advance appropriations: Medicaid; SSI; and veterans’ compensation, pension, burial, and education benefits, for example.¹⁰ (See Table 1.) Advance appropriations for this purpose are not a recent innovation; Medicaid has received them since 1971 and SSI since its creation in 1974. (See Appendix B for examples of language making advance appropriations.)

Shutdowns and Continuing Resolutions

In addition to the changes this paper recommends for regular appropriations bills, we suggest that, in any future temporary, stop-gap appropriations bills (known as continuing resolutions or CRs), the provision providing funding for appropriated entitlements cover the *three* monthly payments that occur after the CR’s general expiration, not just the next such monthly payment.

Policymakers generally first enact CRs by the October 1 start of the fiscal year and often extend them one or more times if the political or logistical logjam preventing the enactment of full-year appropriations continues. Shutdowns can come either if the first CR is not enacted by October 1 or if it expires before being extended.

The biggest risk to SNAP and the Child Nutrition Programs occurs if no CR is enacted and a shutdown begins on October 1. Later shutdowns entail less risk because, ever since fiscal year 2004, temporary CRs have included a provision effectively extending funding for most appropriated entitlements for 30 days *beyond* the CR’s general expiration date. For instance, if a general shutdown started November 5 after a first CR expired, entitlement payments due on or about December 1 would still be paid. While a shutdown at this point would seriously disrupt *non*-entitlement programs, it would have to last a month or more before putting funding for appropriated entitlements at risk.

For this reason, the main shutdown threat to appropriated entitlements occurs at the beginning of October, when a shutdown would mean a lack of *both* regular appropriations *and* the CR provision granting an extra 30 days of funding for most entitlements. But recent experience teaches that even a shutdown that starts later in the year will, if it extends too long, risk severe harm to SNAP and child nutrition; hence our suggestion to extend the 30-day period in CRs to 90 days.

¹⁰ The advance appropriations that the Military Construction-Veterans Affairs subcommittee provides for most veterans’ entitlement benefits cover all of the next fiscal year. Thus, full-year 2021 funding for these programs was enacted in the fall of 2019. Note also that ever since the 2010 appropriations bill, the veterans’ health care system, which is not an entitlement as such, likewise receives full-year advance appropriations and so is not at risk under a government shutdown. The advance appropriations for appropriated entitlements funded by the Labor-HHS-Education subcommittee cover the first three months of the next fiscal year. As explained below, an advance appropriation for the first part of the fiscal year may be almost as effective as a full-year advance appropriation in protecting against a potential shutdown.

TABLE 1

Treatment of Appropriated Entitlements in Annual Appropriations Legislation

Programs providing in-kind or cash benefits

Program	Subcommittee	2020 funding, in billions ^a	Such-sums funding?	Advance funding?
Grants to states for Medicaid	Labor-HHS	\$423	Yes	Yes
Payments to health care trust funds (Medicare Parts B and D)	Labor-HHS	355	Yes	No
Veterans' compensation, pensions, and burial benefits	MilCon-VA	107	No	Yes
Supplemental Nutrition Assistance Program (SNAP)	Agriculture	78	No	No
Supplemental Security Income (SSI)	Labor-HHS	57	Yes	Yes
Child Nutrition Programs	Agriculture	33	No	No
Veterans' readjustment (education) benefits	MilCon-VA	14	No	Yes
Government payments for annuitants, employees' health benefits	Financial Services	13	Yes	No
Payments for foster care and permanency	Labor-HHS	9	Yes	Yes
Federal crop insurance corporation fund	Agriculture	8	Yes	No
Payments for child support enforcement and family support	Labor-HHS	4	Yes	Yes
Retired pay, Coast Guard	Homeland	2	No	No
Retirement pay and medical benefits for commissioned officers	Labor-HHS	1	Yes	No
Federal unemployment benefits and allowances	Labor-HHS	1	Yes	No
Various judicial salaries and expenses	Financial Services	*	Yes	No
Black lung disability trust fund	Labor-HHS	*	Yes	No
Vaccine injury compensation program trust fund	Labor-HHS	*	Yes	No
Special benefits (Federal Employee Compensation Act)	Labor-HHS	*	Yes	No
Public safety officer benefits	Justice	*	Yes	No
Veterans' insurance and indemnities	MilCon-VA	*	No	Yes
Special benefits for disabled coal miners	Labor-HHS	*	Yes	Yes
Government payments for annuitants, employees' life insurance	Financial Services	*	Yes	No

^a Congressional Budget Office estimates as of March 2020, plus additional amounts provided for SNAP and Child Nutrition by the CARES Act.

* Less than \$500 million.

Appendix A:

Examples of Fiscal Year 2020 Appropriations Language Providing Such-Sums Funding

Language providing such-sums funding varies in form but not substance. For example, such-sums funding for payments of federal annuitants' health and life insurance benefits, crop insurance, retirement pay and medical benefits for retired public health service officers, public safety officers' benefits, the salaries and pensions of certain federal judges, black lung disability benefits, and vaccine injury compensation payments are simple such-sums appropriations covering the entire fiscal year. Examples include (*italics added*):

- **Federal crop insurance corporation fund**

For payments as authorized by section 516 of the Federal Crop Insurance Act (7 U.S.C. 1516), *such sums as may be necessary*, to remain available until expended.

- **Retirement pay and medical benefits for commissioned officers**

For retirement pay and medical benefits of Public Health Service Commissioned Officers as authorized by law, for payments under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan, and for medical care of dependents and retired personnel under the Dependents' Medical Care Act, *such amounts as may be required* during the current fiscal year.

- **SEC. 619.**¹¹ (a) There are appropriated for the following activities the *amounts required under current law*: (1) Compensation of the President (3 U.S.C. 102). . . .

- (3) Payment of Government contributions—

- (A) with respect to the health benefits of retired employees, as authorized by chapter 89 of title 5, United States Code, and the Retired Federal Employees Health Benefits Act (74 Stat. 849); and

- (B) with respect to the life insurance benefits for employees retiring after December 31, 1989 (5 U.S.C. ch. 87). . . .

In apparent contrast, Medicaid, SSI, foster care, and child support enforcement, among other programs, receive a definite appropriation (a specified dollar amount) intended to cover most of the fiscal year as well as a such-sums appropriation for the last few weeks or months of the fiscal year.

- **Grants to states for Medicaid**

For carrying out, except as otherwise provided, titles XI and XIX of the Social Security Act, \$273,188,478,000, to remain available until expended.

For making, after May 31, 2020, payments to States under title XIX or in the case of section 1928 on behalf of States under title XIX of the Social Security Act for the last quarter of fiscal year 2020 for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

And the SMI trust fund, covering the costs of Medicare Parts B and D, receives a definite appropriation as well as a such-sums appropriation to cover amounts “not anticipated in budget estimates.”

¹¹ This language is extracted from §619 in the general provisions of the Financial Services and General Government appropriations bill.

- **Payments to the health care trust funds**

For payment to the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as provided under sections 217(g), 1844, and 1860D–16 of the Social Security Act, sections 103(c) and 111(d) of the Social Security Amendments of 1965, section 278(d)(3) of Public Law 97–248, and for administrative expenses incurred pursuant to section 201(g) of the Social Security Act, \$410,796,100,000.

In addition, for making matching payments under section 1844 and benefit payments under section 1860D–16 of the Social Security Act that were not anticipated in budget estimates, such sums as may be necessary.

The three approaches are really the same. If the definite appropriation cannot stretch for the whole fiscal year, the such-sums funding will take effect in time to guarantee that total funding for the year will be sufficient even if caseloads or benefit levels prove higher than initially expected.

Appendix B:

Examples of Fiscal Year 2020 Appropriations Language Providing Advance Funding

An advance appropriation is one that becomes available for obligation in the fiscal year following that of the appropriations bill. Thus, 2020 appropriations bills provided some funding that first becomes available on October 1, 2020, i.e., the first day of fiscal 2021. The Military Construction-Veterans Affairs subcommittees provide full-year advance funding for some of their key programs, including compensation, pensions, and burial benefits; readjustment benefits (higher education); and veterans' insurance programs. For example (*italics added*):

- **Compensation and pensions (including transfer of funds)**

For the payment of compensation benefits to or on behalf of veterans and a pilot program for disability examinations as authorized by section 107 and chapters 11, 13, 18, 51, 53, 55, and 61 of title 38, United States Code; pension benefits to or on behalf of veterans as authorized by chapters 15, 51, 53, 55, and 61 of title 38, United States Code; and burial benefits, the Reinstated Entitlement Program for Survivors, emergency and other officers' retirement pay, adjusted-service credits and certificates, payment of premiums due on commercial life insurance policies guaranteed under the provisions of title IV of the Servicemembers Civil Relief Act (50 U.S.C. App. 541 et seq.) and for other benefits as authorized by sections 107, 1312, 1977, and 2106, and chapters 23, 51, 53, 55, and 61 of title 38, United States Code, \$1,439,931,000, which shall be in addition to funds previously appropriated under this heading that become available on October 1, 2019, and, *\$118,246,975,000 shall become available on October 1, 2020;...*

In contrast to full-year advance appropriations, for many of their key programs the Labor-HHS-Education subcommittees make advance appropriations available in an amount intended to cover the first quarter of the subsequent fiscal year. These programs include Medicaid, SSI, foster care and permanency, child support enforcement and family support, and benefits for disabled coal miners. For example:

- **Grants to states for Medicaid**

For carrying out, except as otherwise provided, titles XI and XIX of the Social Security Act, \$273,188,478,000, to remain available until expended.

For making, after May 31, 2020, payments to States under title XIX or in the case of section 1928 on behalf of States under title XIX of the Social Security Act for the last quarter of fiscal year 2020 for unanticipated costs incurred for the current fiscal year, such sums as may be necessary.

For making payments to States or in the case of section 1928 on behalf of States under title XIX of the Social Security Act *for the first quarter of fiscal year 2021, \$139,903,075,000, to remain available until expended.*

Advance funding obviates the risk of a shutdown even more effectively when it covers the entire subsequent fiscal year, not just the first quarter. In that respect, the approach taken by the Military Construction-Veterans Affairs subcommittees is even more effective than that of the Labor-HHS-Education subcommittees. The latter subcommittees, however, largely cover both of the risks that SNAP faces by providing such-sums funding *and* (part-year) advance appropriations for Medicaid and each of the other programs listed above.