



Federal Funding Gaps: A Brief Overview

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Summary

The Antideficiency Act (31 U.S.C. 1341-1342, 1511-1519) generally bars the obligation of funds in the absence of appropriations. Exceptions are made under the act, including for activities involving “the safety of human life or the protection of property.” The interval during the fiscal year when appropriations for a particular project or activity are not enacted into law, either in the form of a regular appropriations act or a continuing resolution (CR), is referred to as a *funding gap*. Although funding gaps may occur at the start of the fiscal year, they also may occur any time a CR expires and another CR (or the regular appropriations bill) is not enacted immediately thereafter. Multiple funding gaps may occur within a fiscal year.

When a funding gap occurs, federal agencies are generally required to begin a *shutdown* of the affected projects and activities, which includes the prompt furlough of non-excepted personnel. The general practice of the federal government after the shutdown has ended has been to retroactively pay furloughed employees for the time they missed, as well as employees who were required to come to work.

Although a shutdown may be the result of a funding gap, the two events should be distinguished. This is because a funding gap may result in a total shutdown of all affected projects or activities in some instances, but not others. For example, when funding gaps are of a short duration, agencies may not have enough time to complete a shutdown of affected projects and activities before funding is restored. In addition, the Office of Management and Budget has previously indicated that a shutdown of agency operations within the first day of the funding gap may be postponed if a resolution appears to be imminent.

Since FY1977, 18 funding gaps occurred, ranging in duration from one day to 21 full days. These funding gaps are listed in **Table 1**. About half of these funding gaps were brief (i.e., three days or less in duration). Notably, many of the funding gaps that occurred during this period do not appear to have resulted in a “shutdown.” Prior to the issuance of the opinions in 1980 and early 1981 by then-Attorney General Benjamin Civiletti, while agencies tended to curtail some operations in response to a funding gap, they often “continued to operate during periods of expired funding.” In addition, some of the funding gaps after the Civiletti opinions did not result in a completion of shutdown operations, due to both the funding gap’s short duration and an expectation that appropriations would soon be enacted. Some of the funding gaps during this period, however, did have a broader impact on affected government operations, even if only for a matter of hours.

Two of the three most recent funding gaps occurred in FY1996, which amounted to five days and 21 days and led to an initial furlough of about 800,000 federal employees. The chronology of regular and continuing appropriations enacted during FY1996 is illustrated in **Figure 1**.

The most recent funding gap commenced at the beginning of FY2014, on October 1, 2013. This report will be updated after this funding gap is concluded.

For CRS resources related to the FY2014 funding gap, see CRS Report R43250, *In Brief: CRS Resources on the FY2014 Funding Gap, Shutdown, and Status of Appropriations*, by Justin Murray.

For a general discussion of federal government shutdowns, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

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Background

The routine activities of most federal agencies are funded annually by one or more of the regular appropriations acts. When action on the regular appropriations acts is delayed, a continuing appropriations act, also sometimes referred to as a *continuing resolution* or CR, may be used to provide interim budget authority. Measures providing continuing appropriations usually take the form of a joint resolution, rather than a bill.¹

Since FY1952, all of the regular appropriations acts were enacted by the beginning of the fiscal year in only four instances (FY1977, FY1989, FY1995, and FY1997). No CRs were enacted for three of these fiscal years, but CRs were enacted for FY1977 to fund certain unauthorized programs whose funding had been dropped from the regular appropriations acts.² Further, no CRs were enacted for FY1953, even though all but one of the regular appropriations was enacted after the start of the fiscal year.³

The Antideficiency Act (31 U.S.C. 1341-1342, 1511-1519) generally bars the obligation or expenditure of federal funds in the absence of appropriations.⁴ Exceptions are made under the act, including for activities involving “the safety of human life or the protection of property.”⁵ The interval during the fiscal year when appropriations for a particular project or activity are not enacted into law, either in the form of a regular appropriations act or a CR, is referred to as a *funding gap*.⁶ Although funding gaps may occur at the start of the fiscal year, they also may occur any time a CR expires, and another CR (or the relevant regular appropriations bill) is not enacted immediately thereafter. Multiple funding gaps may occur within a fiscal year.

In 1980 and early 1981, then-Attorney General Benjamin Civiletti issued opinions (hereafter, “the Civiletti opinions”) clarifying the need for the federal government to begin terminating regular activities upon the occurrence of a funding gap.⁷ As a consequence of these more strict guidelines, when a funding gap occurs, executive agencies begin a *shutdown* of the affected

¹ For a discussion of continuing resolutions generally, see CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by Jessica Tollestrup.

² P.L. 94-473 made continuing appropriations through March 31, 1977. P.L. 95-16 extended the date of the budget authority contained within P.L. 94-473 through April 30, 1977.

³ Section 1414 of P.L. 82-547 (66 Stat. 661, which was enacted on July 15, 1952, made regular appropriations retroactively available as of July 1 (the first day of FY1953), and ratified any obligations incurred prior to the law’s enactment.

⁴ The Antideficiency Act is discussed in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al. In addition, the Government Accountability Office provides information about the act online at <http://www.gao.gov/ada/antideficiency.htm>.

⁵ See 31 U.S.C. §1342. During a funding gap, personnel and related activities that are determined to be necessary for the “the safety of human life or the protection of property,” or fall under other allowable exceptions, are referred to as “excepted.” Under Department of Justice guidance (discussed later in this report), agencies may incur obligations ahead of appropriations for these “excepted” purposes.

⁶ In most cases, funding provided in regular appropriations acts is available to be obligated only in a single fiscal year, so that in the event that no subsequent budget authority is provided, agencies may not enter into further obligations. In these instances, budget authority that had previously been enacted and available for obligation for longer periods (e.g., multi-year or “no-year” appropriations) would generally remain available.

⁷ The text of the opinions is included in Appendices IV and VIII to the then General Accounting Office (now Government Accountability Office; GAO) report, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981.

projects and activities, which includes the prompt furlough of non-excepted personnel.⁸ The general practice of the federal government after the shutdown has ended has been to retroactively pay furloughed employees for the time they missed, as well as employees who were required to come to work.⁹

Under current practice, although a shutdown may be the result of a funding gap, the two events should be distinguished. This is because a funding gap may result in a shutdown of all affected projects or activities in some instances, but not in others. For example, when a funding gap is of a short duration, agencies may not have enough time to complete a shutdown of affected projects and activities before funding is restored. In addition, the Office of Management and Budget has previously indicated that a shutdown of agency operations within the first day of a funding gap may be postponed if it appears that an additional CR or regular appropriations is likely to be enacted that same day.¹⁰

To avoid funding gaps, proposals have previously been offered to establish an “automatic continuing resolution” (ACR) that would provide a fallback source of funding for activities, at a specified formula or level, in the event the timely enactment of appropriations is disrupted.¹¹ The funding would become available automatically and remain available as long as needed so that a funding gap would not occur. Although the House and Senate have considered ACR proposals in the past, none have been enacted into law on permanent basis.

Funding Gaps Since FY1977

As illustrated in **Table 1**, there have been 18 funding gaps since FY1977.¹² The enactment of a CR on the day after the budget authority in the previous CR expired, which has occurred often, is not counted in this report as involving a funding gap. For example, between FY2000-FY2013, “next-day” CRs were enacted 18 times.

Almost all of the funding gaps occurred between FY1977 and FY1995. During this 19-fiscal-year period, 15 funding gaps occurred.

Multiple funding gaps occurred during a single fiscal year in four instances: (1) three gaps covering a total of 28 days in FY1978; (2) two gaps covering a total of four days in FY1983; (3)

⁸ While, to some extent, what constitutes a “shutdown” may be in the eye of the beholder, it could be argued that, at a minimum, a shutdown would involve agency efforts to distinguish between excepted and non-excepted personnel, to cease non-excepted activities, and furlough associated personnel. For further discussion of what constitutes a “shutdown,” see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

⁹ For a discussion of federal government shutdowns, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*, coordinated by Clinton T. Brass.

¹⁰ See, for example, Executive Office of the President, Office of Management and Budget, “Planning for Agency Operations During a Lapse in Government Funding,” memorandum from Jacob J. Lew, Director of Office of Management and Budget, M-11-13, April 7, 2011, p. 3, and Executive Office of the President, Office of Management and Budget, “Anticipated Enactment of a Continuing Resolution,” memorandum from Jacob J. Lew, Director of Office of Management and Budget, M-11-14, April 8, 2011.

¹¹ For more information on this topic, see CRS Report R41948, *Automatic Continuing Resolutions: Background and Overview of Recent Proposals*, by Jessica Tollestrup.

¹² FY1977 marked the first full implementation of the congressional budget process established by the Congressional Budget Act of 1974, which moved the beginning of the fiscal year to October 1.

two gaps covering a total of three days in FY1985; and (4) two gaps covering a total of 26 days in FY1996.

Six of the funding gaps commenced with the beginning of the fiscal year on October 1. The remaining 11 funding gaps occurred at least several days after the fiscal year had begun. Nine of the funding gaps ended in October, four ended in November, three ended in December, and one ended in January.¹³

Table I. Appropriations Funding Gaps Since FY1977

Fiscal Year	Final Date of Budget Authority ^a	Full Day(s) of Gaps ^b	Date Gap Terminated ^c
1977	Thursday, 09/30/76	10	Monday, 10/11/76
1978	Friday, 09/30/77	12	Thursday, 10/13/77
	Monday, 10/31/77	8	Wednesday, 11/09/77
	Wednesday, 11/30/77	8	Friday, 12/09/77
1979	Saturday, 09/30/78	17	Wednesday, 10/18/78
1980	Sunday, 09/30/79	11	Friday, 10/12/79
1982	Friday, 11/20/81	2	Monday, 11/23/81
1983	Thursday, 09/30/82	1	Saturday, 10/02/82
	Friday, 12/17/82	3	Tuesday, 12/21/82
1984	Thursday, 11/10/83	3	Monday, 11/14/83
1985	Sunday, 09/30/84	2	Wednesday, 10/03/84
	Wednesday, 10/03/84	1	Friday, 10/05/84
1987	Thursday, 10/16/86	1	Saturday, 10/18/86
1988	Friday, 12/18/87	1	Sunday, 12/20/87
1991	Friday, 10/05/90	3	Tuesday, 10/09/90
1996	Monday, 11/13/95	5	Sunday, 11/19/95
	Friday, 12/15/95	21	Saturday, 01/06/96
2014	Monday, 09/30/13	To be determined	To be determined

Source: Compiled by CRS with data from the Legislative Information System of the U.S. Congress.

- a. Budget authority expired at the end of the date indicated. For example, for the first FY1996 funding gap, budget authority expired at the end of the day on Monday, November 13, 1995, and the funding gap of five full days commenced on Tuesday, November 14, 1995. The enactment of a CR on the day after the previous CR expired, which has occurred often, is not counted as involving a funding gap.
- b. Full days are counted as beginning after the final day on which budget authority was available, and ending the day before the gap terminated. For example, for the first FY1996 funding gap, the full days of the gap were from November 14, 1995, through November 18, 1995, for a total of five full days.
- c. Gap terminated due to the enactment of a continuing resolution, or one or more regular appropriations acts.

¹³ The enactment of a series of continuing resolutions for a fiscal year is discussed in CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by Jessica Tollestrup.

Funding gaps have ranged in duration from one to 21 full days. Six of the seven lengthiest funding gaps, lasting between 8 days and 17 days, occurred between FY1977 and FY1980, before the Civiletti opinions were issued in 1980 and early 1981. After the issuance of these opinions, the duration of funding gaps in general shortened considerably, typically ranging from one day to three days. Of these, most occurred over a weekend.

Notably, many of the funding gaps that occurred since FY1977 do not appear to have resulted in a “shutdown.” Prior to the issuance of the Civiletti opinions, while agencies tended to curtail some operations in response to a funding gap, they often “continued to operate during periods of expired funding.”¹⁴ In addition, some of the funding gaps after the Civiletti opinions did not result in a completion of shutdown operations, due to both a funding gap’s short duration and an expectation that appropriations would soon be enacted. For example, during the three-day FY1984 funding gap, “no disruption to government services” reportedly occurred, due to both the three-day holiday weekend and the expectation that appropriations passed by the House and Senate during that weekend would soon be signed into law by the President.¹⁵

Some of the funding gaps during this period, however, did have a broader impact on affected government operations, even if only for a matter of hours. For example, in response to the one-day funding gap that occurred on October 4, 1984, a furlough of non-expected personnel for part of that day was reportedly implemented.¹⁶ The three most recent funding gaps, two in FY1996 and one in FY2014, all resulted in a cessation of non-expected activities and furlough of associated personnel. The legislative history and agency response to these three funding gaps are summarized below.

FY1996

The two FY1996 funding gaps occurred between November 13-19, 1995, and December 15, 1995, through January 6, 1996. The chronology of regular and continuing appropriations enacted during that fiscal year is illustrated in **Figure 1**. In the lead-up to the first funding gap, only three out of the 13 regular appropriations acts had been signed into law¹⁷ and budget authority, which

¹⁴ GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, p. 2. GAO further stated that, “Short of telling employees not to show up for work, Federal officials have responded to gaps by cutting or postponing all non-essential obligations—particular personnel actions, travel, and the award of new contracts—in an attempt to continue the operations of programs for which they are responsible.” Media reports related to funding gaps prior to FY1982 also suggest that little or no shutdown occurred. See, for example, “Continued Funding, 1977,” *Congressional Quarterly Almanac*, vol. XXXII, pp. 789-790; “Conferees Inch Toward Abortion Agreement,” *CQ Weekly*, October 1, 1977, p. 2084; “Payroll Crisis Is Staved Off and HEW, Labor,” *Washington Post*, October 14, 1977; “Congress fails to make appropriations deadline,” *National Journal*, October 8, 1977; “Abortion Agreement Ends Funding Deadlock,” *Congressional Quarterly Weekly*, December 10, 1977, p. 2547; “Funding Lags as Fiscal Year Begins,” *Washington Post*, October 3, 1978; “Congress Fails to Make Appropriations Deadline,” *National Journal*, October 8, 1977, p. 1587; and “Pay, Abortion Issues Delay Hill Funding Bills,” *Congressional Quarterly Almanac*, vol. XXXV, pp. 270-277.

¹⁵ “Congress Clears 2nd Continuing Resolution,” *Congressional Quarterly Almanac* vol. XXXIX, 1983, pp. 528-531.

¹⁶ For further information, see “Last-Minute Money Bill Was Largest Ever,” *Congressional Quarterly Almanac*, vol. XXXX pp. 444-447; Robert Pear, “Senate Works Past Deadline on Catchall Government Spending Bill,” *New York Times*, October 4, 1984, p. A29; and Monica Borkowski, “Looking Back; Previous Government Shutdowns,” *New York Times*, November 11, 1995.

¹⁷ The Military Construction Appropriations Act, H.R. 1817 (P.L. 104-32), was enacted on October 3, 1995. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, H.R. 1976 (P.L. 104-37), was enacted on October 21, 1995. The Energy and Water Development Appropriations Act, H.R. 1905 (continued...)

had been provided by a CR¹⁸ since the start of the fiscal year, expired at the end of the day on November 13. On this same day, President Clinton vetoed a CR¹⁹ that would have extended budget authority through December 1, 1995, because of the Medicare premium increases contained within the measure.²⁰ The ensuing funding gap reportedly resulted in the furlough of an estimated 800,000 federal workers.²¹ After five days, a deal was reached to end the shutdown and extend funding via two CRs through December 15.²² Agencies that had been zeroed out in pending appropriations bills were funded at a rate of 75% of FY1995 budget authority. All other agencies were funded at the lower of the House- or Senate-passed level of funding contained in the FY1996 full-year appropriations bills. The CR also contained an agreement between President Clinton and Congress regarding future negotiations to lower the budget deficit within seven years.²³

During the first FY1996 funding gap and prior to the second one, an additional four regular appropriations measures were enacted, and three others were vetoed.²⁴ The negotiations on the six remaining bills were unsuccessful before the budget authority contained within the CR expired at the end of the day on December 15, 1995.²⁵ Reportedly, about 280,000 executive branch

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(P.L. 104-46), was enacted on November 13, 1995. The Legislative Branch Appropriations Act, H.R. 1854 (104th Cong.) was vetoed on October 12, 1995. As of the end of the day on November 13, 1995, the ten regular appropriations bills that had yet to be enacted were the (1) Department of Transportation and Related Agencies Appropriations Act, (2) Treasury, Postal Service, and General Government Appropriations Act, (3) Legislative Branch Appropriations Act, (4) Department of Defense Appropriations Act, (5) Department of Interior and Related Agencies Appropriations Act, (6) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, (7) Department of Commerce and Related Agencies Appropriations Act, (8) Foreign Operations, Export Financing, and Related Programs Appropriations Act, (9) Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, and (10) District of Columbia Appropriations Act.

¹⁸ H.J.Res. 108 (P.L. 104-31).

¹⁹ H.J.Res. 115 (104th Cong.).

²⁰ Message to the House of Representatives Returning Without Approval Continuing Resolution Legislation,” November 13, 1995, William J. Clinton, Public Papers of the Presidents of the United States, 1995, Book 2, July 1 to December 31, 1995, p. 1755. See also “Clinton Vetoes Stopgap Bill to Keep Federal Government Open,” *CQ Today*, November 14, 1995.

²¹ For example, see U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee on Civil Service, Government Shutdown I: What’s Essential? hearings, 104th Cong., 1st sess., December 6 and 14, 1995 (Washington: GPO, 1997), pp. 6 and 265.

²² H.J.Res. 123 (P.L. 104-54), H.J.Res. 122 (P.L. 104-56).

²³ For a summary of the first FY1996 funding gap and government shutdown, see “Overview: Government Shuts Down Twice Due to Lack of Funding,” *Congressional Quarterly Almanac*, 104th Cong., 1st sess. (1995), vol. LI, pp. 11-3 through 11-6; “Special Report – Budget Showdown: Day by Day,” *CQ Weekly*, November 18, 1995.

²⁴ The Department of Transportation and Related Agencies Appropriations Act, H.R. 2002 (P.L. 104-50), was enacted on November 15, 1995. The Treasury, Postal Service, and General Government Appropriations Act, H.R. 2020 (P.L. 104-52), was enacted on November 19, 1995. The Legislative Branch Appropriations Act, H.R. 2492 (P.L. 104-53) was enacted on November 19, 1995. The Department of Defense Appropriations Act, H.R. 2126 (P.L. 104-61), was enacted on December 1, 1995. The Department of Interior and Related Agencies Appropriations Act, H.R. 1977 (104th Cong.), was vetoed on December 18, 1995. The Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, H.R. 2099 (104th Cong.), was vetoed on December 18, 1995. The Department of Commerce and Related Agencies Appropriations Act, H.R. 2076 (104th Cong.), was vetoed on December 19, 1995.

²⁵ As of the end of the day on December 15, 1995, the six regular appropriations bills that had yet to be enacted were the (1) Department of Interior and Related Agencies Appropriations Act, (2) Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, (3) Department of Commerce and Related Agencies Appropriations Act, (4) Foreign Operations, Export Financing, and Related Programs Appropriations Act, (5) Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, (continued...)

employees were furloughed during the funding gap between December 15, 1995, and January 6, 1996.²⁶ A CR to provide benefits for veterans and welfare recipients and to keep the District of Columbia government operating was passed and signed into law on December 22, 1995.²⁷ The shutdown officially ended on January 6, 1996, when the first of a series of CRs to reopen federal government and provide budget authority through January 26, 1996,²⁸ was enacted.²⁹

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and (6) District of Columbia Appropriations Act.

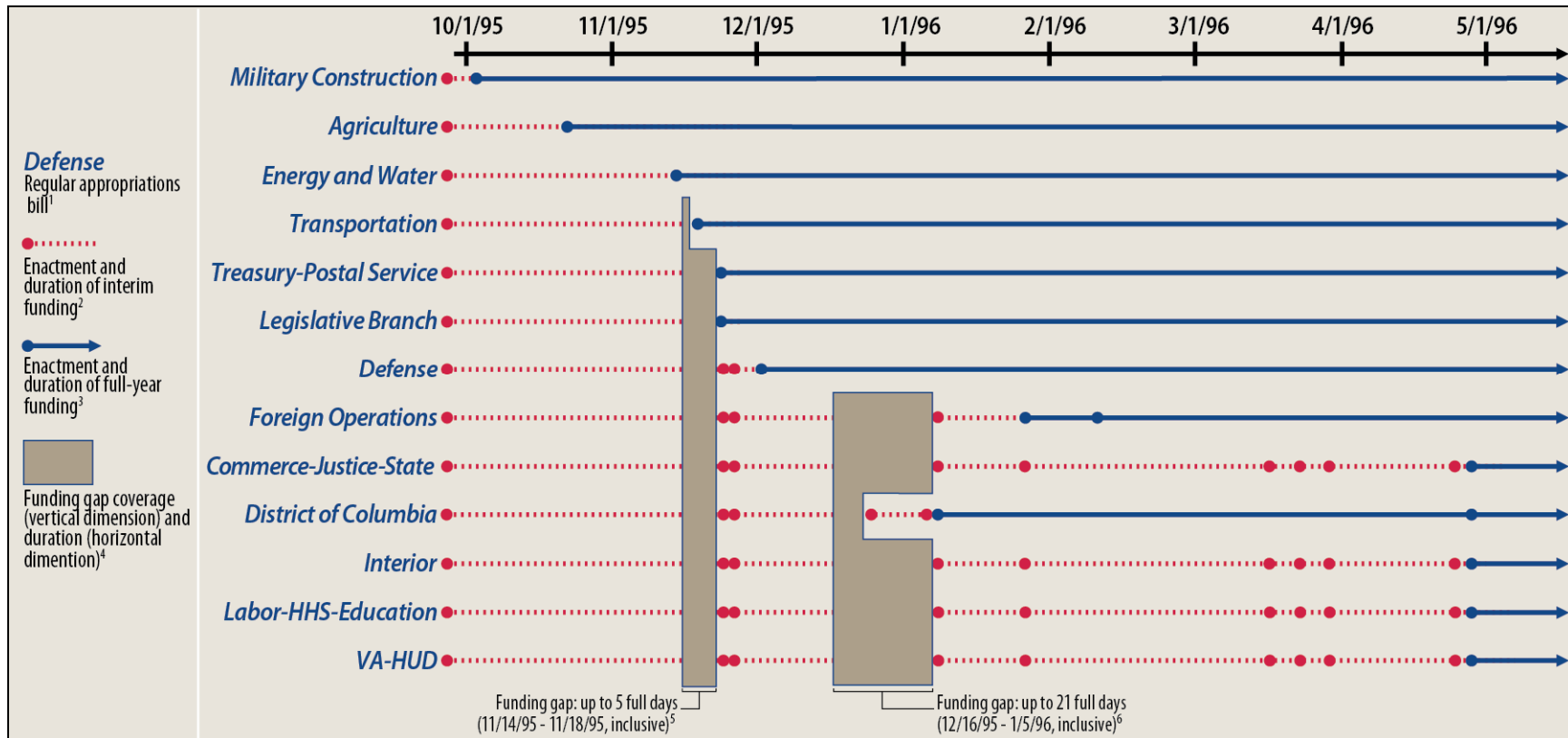
²⁶ For further information on the effects of the second FY1996 funding gap, see Dan Moran and Stephen Barr, "When Shutdown Hit Home Ports, GOP Cutters Trimmed Their Sails," *Washington Post*, January 8, 1996.

²⁷ H.J.Res. 136 (P.L. 104-69).

²⁸ H.J.Res. 134 (P.L. 104-94), H.R. 1358 (P.L. 104-91) and H.R. 1643 (P.L. 104-92) were also enacted on January 6. These two CRs provided budget authority for some federal government activities until the end of FY1996.

²⁹ For a summary of the second FY1996 funding gap and government shutdown, see "Overview: Government Shuts down Twice Due to Lack of Funding," *Congressional Quarterly Almanac*, 104th Cong., 1st sess. (1995), vol. LI, pp. 11-3 through 11-6; "Funding Expires Again in Budget Stalemate," *CQ Weekly*, December 23, 1995; "Congress Clears Bills to Reopen Government," *CQ Today*, January 8, 1996.

Figure I. Chronology of FY1996 Appropriations



Source: CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by Jessica Tollestrup, and CRS analysis of public laws available through the Legislative Information System (LIS, lis.gov).

(1) In FY1996, the annual appropriations process anticipated the enactment of 13 “regular appropriations” bills.

(2) Interim funding was provided through 13 continuing resolutions (CRs) of varying coverage and duration. For a list of these continuing resolutions and their enactment dates, see Table 4 in CRS Report R42647, *Continuing Resolutions: Overview of Components and Recent Practices*, by Jessica Tollestrup.

(3) Full-year funding was provided through eight regular appropriations acts (P.L. 104-32, P.L. 104-37, P.L. 104-46, P.L. 104-50, P.L. 104-52, P.L. 104-53, P.L. 104-61, and P.L. 104-107), two full-year CRs (P.L. 104-92 and P.L. 104-99), and an omnibus appropriations act (P.L. 104-134). For Foreign Operations and District of Columbia, although full-year funding was initially provided in CRs, final action on annual appropriations (P.L. 104-107 and P.L. 104-134) superseded that funding.

(4) The “coverage” of the funding gap refers to those regular appropriations bills that had not been enacted during all or some of the days during which the funding gap occurred. The “duration” of the funding gap is calculated here as the number of full days affected by the lapse in funding. Full days are counted as beginning after the final day on which budget authority was available, and ending the day before funding resumed.

(5) Interim funding was enacted late in the day on November 19, 1995 (P.L. 104-54). As a consequence, in many instances agency operations may not have restarted until the following day.

(6) Three interim funding measures included full-year funding for certain activities (P.L. 104-69, P.L. 104-91, and P.L. 104-92). However, this provision of agency- or program-specific, full-year funding is not reflected in the figure, which focuses on the enactment of entire regular appropriations bills.

FY2014

The most recent funding gap commenced at the beginning of FY2014, on October 1, 2013. None of the 12 regular appropriations bills for FY2014 were enacted prior to the beginning of the funding gap. In addition, as of the beginning of the fiscal year, an interim CR to provide budget authority for the projects and activities covered by those 12 bills was also not enacted. On September 30, however, an automatic continuing resolution was enacted to cover FY2014 pay and allowances for (1) certain members of the Armed Forces, (2) certain Department of Defense (DOD) civilian personnel, and (3) other specified DOD and Department of Homeland Security contractors (H.R. 3210; P.L. 113-39, 113th Congress). The effect of this ACR on the scope of the funding gap is currently unclear.³⁰

For further information with regard to the status of the FY2014 appropriations process, see the *CRS Appropriations Status Table: FY2014*, available at <http://www.crs.gov/pages/AppropriationsStatusTable.aspx>.

This report will be updated once the FY2014 funding gap is concluded.

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This report is based on a prior report written by Robert Keith, formerly a specialist in American National Government at CRS.

³⁰ For further information on H.R. 3210, see CRS Report R41948, *Automatic Continuing Resolutions: Background and Overview of Recent Proposals*, by Jessica Tollestrup.