
November 18, 2019

Portman Proposal for Automatic Continuing Resolution Not a Good Solution for Government Shutdowns

By Paul N. Van de Water and Richard Kogan

The Senate may soon consider a proposal by Senator Rob Portman to provide for an automatic continuing resolution (CR), which would extend funding at the prior year's level, whenever the President and Congress fail to enact full-year or temporary funding for a fiscal year.¹ 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 an automatic CR, such as Senator Portman proposes, raises significant concerns and would cause serious problems of its own, undermining sound budgeting and diminishing Congress' role in setting national priorities.

By allowing the government to keep operating without any action by the President and Congress, an automatic CR 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, the Portman proposal would strengthen the hand of those who want to shrink the size of government.

An automatic CR would be particularly problematic in fiscal year 2020 since it would not provide the large funding increases required for the decennial census and the recently enacted veterans' health legislation known as the Mission Act. If an automatic CR were in place, Congress would have to pass other stand-alone legislation to fund these areas, possibly with substantial and controversial offsetting cuts in other areas.

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

¹ *End Government Shutdowns Act (S. 2593)*, <https://www.congress.gov/bill/116th-congress/senate-bill/2593>.

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 the President and Congress 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. And this is the case 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.²

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.

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

² 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.”

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.³ But by their automatic nature, automatic CRs would contain none of these adjustments. For example, an automatic CR would not include a Census funding anomaly providing the Bureau with the additional resources it needs to conduct the decennial count if Congress has not previously provided the Bureau with its full-year funding. Because the needs of the Census increase significantly during a decennial year, the absence of such an anomaly would significantly hinder the Bureau's ability to conduct a full and accurate count.

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.

If automatic CRs became the norm, Congress might also find it necessary to provide the President with additional authority to transfer funds between budget accounts, since the appropriations process would not respond to changing needs.

Automatic CRs Would Make It Easier to Shrink Government

The Portman proposal would give a powerful new tool to those who want to cut funding for programs and services. 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 floor). Similarly, if the President preferred a funding freeze to a regular appropriation bill, a simple veto would do the trick 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. For example, a funding freeze lasting five years would reduce per-person purchasing power by about 15 percent.

Currently, appropriation levels are set through the give and take of the legislative process. But with an automatic CR, policymakers could bring about freezes 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

³ 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. See <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. See <https://www.congress.gov/113/plaws/publ6/PLAW-113publ6.pdf>.

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.

Conclusion

While design changes to an automatic CR might moderate some of the problems with this mechanism, the biggest problems would remain. An automatic CR, such as Senator Portman proposes, 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 a longer-term unraveling of the annual appropriations process and inflict damage that, while less dramatic than a shutdown, could have even more severe long-term 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.