

End Government Shutdowns and Budgeting by Crisis, But Do it Right

By **Alison Acosta Winters** | *November 19, 2019*

The federal government is operating on a short-term funding bill that expires November 21. Congress failed to get all 12 annual appropriations bills to the president for his signature before the beginning of the fiscal year on October 1. Instead, it had to rely on a continuing resolution, or CR, to fund the government at last year's spending levels. This might sound familiar, and it is no wonder. Last fiscal year (FY 2019), there were two CRs before budget negotiations broke down altogether, resulting in the longest shutdown on record at 35 days.

While action in Congress has largely been focused on just a few aspects of the federal budget in trying to avert another government shutdown, the biggest drivers of spending continue to grow without reform and the national debt has skyrocketed to more than \$23 trillion.

We must ask if there is a better way.

One alternative to this high-stakes budget drama is to prevent a government shutdown through an automatic continuing resolution, or auto-CR.

WHAT IS A GOVERNMENT SHUTDOWN?

A government shutdown occurs when Congress has failed to pass appropriations to fund the operations of government. There are 12 appropriations bills that must be signed into law before the end of the fiscal year, September 30. These appropriations bills fund the operations for most government agencies. Without appropriations, these agencies cease operations, and employees do not report to work.

Shutdowns are a relatively new phenomenon. The first occurred in 1981 under President Ronald Reagan. Before that, the government kept its doors open even without funding in place. Attorney General Benjamin Civiletti issued two opinions in 1980 and 1981 that found this practice violated the Antideficiency Act, which bars the government from operating without appropriations. Civiletti did note exceptions for the safety of human life or the protection of property, and where appropriations are authorized by law such as the permanent appropriations afforded to Social Security and Medicare, or when appropriations are a small supplement to agency funding such as the U.S. Postal Service. For these reasons, the government is never totally shut down.

When some appropriations bills are signed into law before funding expires, a partial government shutdown can occur. Even after the Civiletti opinions, a lapse in funding has not always lead to a shutdown. If a funding gap occurs over a weekend, or if there is a reasonable expectation that funding will quickly be enacted, the government does not necessarily shut down. There have been 21 funding gaps since the 1974 budget act was passed, and ten government shutdowns.¹

THE COST OF PAST GOVERNMENT SHUTDOWNS

Washington must get a handle on the burgeoning federal budget. Unfortunately, Congress has been unable to make even routine budget decisions in a timely way, so it has increasingly relied on CRs to keep things running. Even so, government shutdowns occur despite the relative ease of writing and passing a CR (many are just one page long.)² The first shutdown occurred in fiscal 1981, and five more shutdowns occurred over the next 15 years. Following the second-longest shutdown of 21 days in fiscal 1996, Congress was able to avoid shutdowns for nearly 18 years. Shutdowns have become more frequent recently, with four shutdowns over the last five years.³

Shutdowns impose even more costs on an already bloated government. Worse, none of these costs add any intrinsic value to society. Agency management must plan and execute a shutdown which entails analyzing complicated requirements for determining what if any agency operations are exempted. All employees must be notified whether to show up for work. This is a time consuming and costly diversion of resources that yields no direct benefit to society. Salary and benefits for furloughed employees who were prohibited from working during a shutdown are typically paid retroactively. While this is intended to protect federal workers from being caught in a political conflict, it yields no benefit for the vast majority of Americans. After the government reopens, agencies must work through the backlogs accumulated during a shutdown while also processing current workloads, requiring additional working hours.

Other costs include fees and interest on late payments to third parties, project delays, canceled travel, and delayed maintenance and repairs to government facilities including at the border. Beyond this, there are the losses government activities such as investigations at the Department of Justice, immigration hearings, and FAA safety inspections temporarily cease to function.

A recent report released by the Senate Homeland Security and Governmental Affairs Permanent Subcommittee on Investigations found that agency costs for the last three government shutdowns were \$4 billion, including \$3.7 billion in back pay for furloughed workers and over \$330 million in other costs, such as late fees and administrative costs.⁴ The real figure is even higher because a number of larger departments, such as the Department of Defense, were unable to calculate the costs associated with these shutdowns. This should not be surprising. As this report and others note, government agencies are not well prepared to quantify the costs of a shutdown.

In addition to the costs imposed on taxpayers, shutdowns – particularly lengthy shutdowns – are highly disruptive for others such as businesses and their workers that sell to the government because they cannot receive payments, or in some instances, even provide services and products, during a shutdown. For some, these costs are never recovered.⁵

1. "[Shutdown of the Federal Government: Causes, Processes, and Effects.](#)" Congressional Research Service, December 10, 2018.

2. "[Continuing Resolutions: Overview of Components and Practices.](#)" Congressional Research Service, April 19, 2019

3. "[Shutdown of the Federal Government.](#)" Congressional Research Service; "[Looking Back: Previous Government Shutdowns.](#)" The New York Times, November 11, 1995; "[Federal Funding Gaps: A Brief Overview.](#)" Congressional Research Service, February 4, 2019 "[Q and A: Everything You Should Know About Government Shutdowns](#)" Center for Responsible Federal Budget, February 12, 2019; NOTE: This includes a confusing and very brief shutdown on Friday February 9, 2018, which lasted only hours

4. Staff Report, "[The True Cost of Government Shutdowns.](#)" Permanent Subcommittee on Investigations, United States Senate, September 17, 2019

5. "[Chamber of Commerce Says Shutdown has Cost Small Businesses \\$2.3 Billion.](#)" NextGov, January 24, 2019

Other costs are less tangible, but perhaps more insidious. Americans do not view shutdowns favorably. High-stakes, must-pass, win-or-lose spending bills, and government shutdowns erode faith in government, one of the key institutions in our society. A flourishing society needs strong institutions, including government, although better constrained to its constitutional role.

DO GOVERNMENT SHUTDOWNS ACHIEVE POLICY GOALS?

Shutdowns have a poor track record of achieving policy victories. The shutdown this past winter over the administration's demands for border wall funding did not yield results. The administration ultimately pursued other approaches to funding the wall and it remains an unresolved question nearly one year later.⁶ The prior shutdown in 2018 over Sen. Chuck Schumer's demands to protect Dreamers suffered a similar failure. The 2014 shutdown was a bruising fight over defunding the Affordable Care Act that ended in total capitulation by Republicans.⁷

Earlier shutdowns yielded similar results. The two shutdowns in fiscal 1996 did not lead to policy victories. President Bill Clinton vetoed the Republican balanced budget bill in November 1995, shutting down the government for five days. Republicans' continued balanced budget demands quickly led to the second-longest shutdown, 21 days, starting December 16 of that year. Eventually, Republicans accepted modest spending cuts and tax increases, but no balanced budget plan.⁸ Notably, this was so painful a failure that no shutdowns occurred for the next 18 years.

Only two shutdowns resulted in anything that could be claimed as a victory. Reagan demanded a crime bill and opposed water projects favored by Congress. Congress passed the crime bill and stripped the water projects during the October 1984 shutdown. President George Bush demanded a deficit reduction plan during the three-day October 1990 shutdown, and Congress delivered.⁹ At best, only 20 percent of government shutdowns have achieved their intended policy goals, but none have succeeded since 1990.

WHY AN AUTO-CR?

Sadly, Congress cannot or will not follow its own rules. The existing federal budget process, established under the Budget and Impoundment Control Act of 1974, is meant to not only fund the government but is also to ensure that fiscal policy is affordable and sustainable. The budget process complements regular congressional program oversight and review, which should also ensure programs fit within the constitutional role of government. Congress has failed to comply.

In the 45 years since the Budget Act established the modern budget process, Congress has enacted all spending bills on time just four times.¹⁰ Congress and the president have frequently relied on passing a CR, but too often allowed spending gaps and shutdowns to occur.

One idea is to prevent shutdowns from occurring in the first place through a kind of "fail-safe" mechanism called an automatic continuing resolution, or auto-CR, which would provide continuing funding for any appropriations bills not passed and signed into law.

6. ["Trump Declares National Emergency on Southern Border in Bid to Build the Wall,"](#) Washington Post, February 15, 2019; ["Trump Wall Endangers Must-Pass Defense Bill,"](#) The Hill, October 27, 2019

7. ["Congress Sends Obama Bill to End Shutdown,"](#) Washington Post, October 17, 2013

8. Brian Riedl, ["Getting to Yes: A History of Why Budget Negotiations Succeed, and Why They Fail,"](#) The Manhattan Institute, June, 2019; ["1995-96 Government Shutdown,"](#) Slaying the Dragon of Debt, The Bancroft library, University of California Berkeley ; ["Here is Every Previous Government Shutdown, Why They Happened and How They Ended,"](#) The Washington Post, September 25, 2013

9. Every Previous Shutdown, Washington Post; ["Winners and Losers: Past Government Shutdowns and How They Ended,"](#) NBC News, January 4, 2019

10. ["Congress has long struggled to pass spending bills on time,"](#) Pew Research Center, January 16, 2018

An auto-CR would prevent shutdowns and the unnecessary and wasteful costs for taxpayers, businesses, and families. It would also eliminate situations leading to high-stakes, must pass legislation that typically drive up spending and can be filled with pork.

An additional silver lining is that an auto-CR would keep spending under control, at least for a short period, because continuing resolutions typically fund the government at the same level as the previous year – an improvement over most spending bills. The auto-CR would remove the inflection point that is often used to force spending higher year after year.

Federal spending is higher than ever, deficits are soaring, and over the long term, debt is unsustainable and unaffordable. Hundreds of programs operate without authorization, yet Congress routinely funds these programs year after year with no accountability.¹¹ But, high-stakes government shutdowns are not a solution for any of these problems and end up distracting attention away from important issues. The auto-CR would allow Congress to instead focus on the biggest drivers of the federal budget.

POTENTIAL CR PITFALLS

As with any policy, long-term costs and benefits must both be evaluated. Avoiding a costly shutdown would benefit Americans in the shorter term, and potentially over the longer-term. However, the wrong approach to an auto-CR could be even worse if it released Congress from all responsibility for funding and oversight. Three key potential pitfalls must be avoided:

1) Automatically increase spending. Government spending should not be put on an intractable upward path. Annual appropriations fund only discretionary spending, which is just 30 percent of government spending. The rest, mandatory spending, is on budgetary auto-pilot. Programs such as Social Security and Medicare, already the first and third largest, are allowed to grow ever larger without any budgetary constraints or required evaluation by Congress.

Any auto-CR must not put the rest of the budget on an automatic upward path through built-in indexing, inflation adjustments, or other metrics.

2) Give a free pass. Lawmakers must bear responsibility for providing for the core constitutional responsibilities of government. They must also be accountable for how they carry out this responsibility. An automatically growing base of discretionary spending – on top of today’s autopilot mandatory spending – could incentivize Congress to skip voting on regular appropriations altogether while allowing members to say they believe in fiscal responsibility.

An auto-CR must not incentive lawmakers to avoid writing comprehensive appropriations bills every year.

3) Incentivize even faster spending growth. An auto-CR could incentivize lawmakers to add even more new spending on top of growing “base” spending. Congress would be unlikely to take a free pass on discretionary spending without passing any additional appropriations. The lack of a comprehensive budget plan that establishes annual targets for discretionary spending would make it easier for Congress to do so. Additionally, without the time-consuming and challenging work of writing and passing massive appropriations bills, lawmakers would be free instead to focus on ad hoc increases to the budget. Without an overarching spending plan, it could be harder to decline special-interest demands.

An auto-CR should not remove incentives to keep a modicum of fiscal discipline and drive up spending further.

11. [“Expired and Expiring Authorizations of Appropriations: Fiscal Year 2019.”](#) Congressional Budget Office, March 2019

A PATH FORWARD

Senator Rob Portman's "End Government Shutdowns Act" has an elegant solution to avoid these pitfalls.¹²

Portman's approach immediately provides continuing auto-CR funding for all discretionary spending with appropriations starting at the prior year's level. Every three months, spending is then decreased by one percent unless or until regular appropriations bills are signed into law.

This will ensure that spending will not be put on autopilot with unchecked growth. It will also create incentives for lawmakers to set priorities across the budget and pass annual appropriations bills in a timely manner, hopefully, consistent with the budget process. It could even be used to phase out wasteful, unnecessary, and obsolete programs.

One problem that the End Government Shutdowns Act does not address is the large number of unauthorized programs that receive appropriations. All programs should receive regular oversight and authorization before they can receive taxpayer funding. To hold lawmakers accountable for this vital function, auto-CR funding could apply only to programs that have current authorization. Alternatively, some other mechanism could be used, such as providing funding for only three months or reducing unauthorized spending in increments higher than 1 percent.

NOT AN EXCUSE FOR CONGRESS TO IGNORE THE NATION'S PRIORITIES

An auto-CR must not be an excuse for Congress to ignore the nation's most pressing needs. Nor is it a silver bullet for solving the shortcomings of the budget process or ignoring our deficit and debt problems. Instead, it should be seen as one tool to improve the budget process and push Congress to address those pressing needs.

An auto-CR is ill-equipped to deal with emerging issues or to make the necessary trade-offs across the government to ensure the priorities of the times are being met. The right model of auto-CR would be a short, stop-gap measure to keep the government operating without disruptions while incentivizing lawmakers to quickly come to the table to address the most critical funding needs first.

Nor will an auto-CR address the biggest drivers of our spending and debt, mandatory spending programs, including Social Security and Medicare. That will require decisive, purposeful bipartisan action by Congress. However, an auto-CR, such as the End Government Shutdowns Act, would contribute to a better functioning budget process and help Congress focus on these important issues.

THE RIGHT APPROACH

Done right, an auto-CR would incentivize lawmakers to execute their responsibilities consistent with the budget process and the Constitution, and not to lead to more autopilot spending growth. It could even incentivize a gradual ramping down of obsolete, unnecessary, or wasteful programs. But any auto-CR that does not avoid the potential pitfalls would be fatally flawed and could have more harmful long-term implications than a government shutdown.

The current continuing resolution will expire on November 21, and Congress has not passed a single appropriations bill. The longest shutdown on record ended just over ten months ago. An auto-CR done right could help prevent another.

12. S. 104, "[End Government Shutdown Act](https://www.congress.gov/bills/115/104)," congress.gov