

FISCAL YEAR 2007 CONTINUING RESOLUTIONS

- Pub. L. No. 110-5, ___ Stat. ___ (Feb. 15, 2007) (current CR in effect through Sept. 30, 2007)
- Pub. L. No. 109-289, div. B, 120 Stat. 1257, 1311 (Sept. 29, 2006) (first CR in effect through Nov. 17, 2006), *as extended by* Pub. L. No. 109-369, 120 Stat. 2642 (Nov. 17, 2006) (extending first CR through Dec. 8, 2006) *and* Pub. L. No. 109-383, 120 Stat. 2678 (Dec. 9, 2006) (further extending first CR through Feb. 15, 2007).

Available resources:

- ✓ OMB Bulletin No. 07-03, *Guidance on Estimating Funding Levels under the Revised Continuing Appropriations Resolution, 2007 (H.J. Res. 20)* (Feb. 16, 2007) *available at* www.whitehouse.gov/omb/bulletins/fy2007/b07-03.pdf
- ✓ OMB Memorandum No. 07-10, *Guidance to Departments and Agencies about obligating FY 2007 funds under a full-year Continuing Resolution (CR) with no Congressional earmarks* (Feb. 15, 2007) *available at* www.whitehouse.gov/omb/memoranda/fy2007/m07-10.pdf
- ✓ B-308773, Jan. 11, 2007 *United States Capitol Police—Current Rate for Operations under the 2007 Continuing Resolution available at* www.gao.gov/decisions/appro/308773.htm
- ✓ GAO, *Principles of Federal Appropriations Law*, vol. 2, 3rd ed., Ch. 8 (Continuing Resolutions), GAO-06-382SP (Washington, D.C.: Feb. 2006) *available at* www.gao.gov/special.pubs/d06382sp.pdf
- ✓ OMB Bulletin No. 06-04, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2007* (Sept. 29, 2006) *available at* www.whitehouse.gov/omb/bulletins/fy2006/b06-04.pdf
- ✓ OMB Bulletin No. 06-04, Supp. No. 1, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2007* (Dec. 21, 2006) *available at* www.whitehouse.gov/omb/bulletins/fy2006/b06-04_supp1.pdf

1. What is a “Continuing Resolution?”

Often referred to simply as a “CR,” a Continuing Resolution is an appropriation act that provides budget authority for federal agencies, specific activities, or both to continue in operation when Congress and the President have not completed action on the regular appropriation acts by the beginning of the fiscal year. Enacted in the form of a joint resolution, a continuing resolution is passed by both houses of Congress and signed into law by the President. A continuing resolution may be enacted for the full year, up to a specified date, or until regular appropriations are enacted. A continuing resolution usually specifies a maximum rate at which obligations may be incurred based on levels specified in the resolution. For example, the resolution may state that obligations may not exceed the “current rate” or must be the lower of the amounts provided in the appropriation bills passed in the House or Senate. GAO, *A Glossary of Terms Used in the Federal Budget Process*, GAO-05-734SP (Washington, D.C.: Sept. 2005), at 35–36.

2. Rate of operations under a CR

CRs typically continue funding for programs, projects or activities at the “current rate,” that is, the total amount of money which was available for an activity during the fiscal year immediately preceding the one for which the CR was enacted. Congress often uses the term “current rate” as part of a formula to indicate a level of spending that it desires for a program for the duration of the continuing resolution. The current rate typically does not allow agencies to fund new initiatives, programs, or both requested for the current year unless Congress specifically authorizes them to be funded. *See generally* GAO, *Principles of Federal Appropriations Law*, vol. 2, 3rd ed., Ch. 8.B (Continuing Resolutions—Rate for Operations), GAO-06-382SP (Washington, D.C.: Feb. 2006) *and cases cited therein*.

3. Program, Project or Activity under a CR

The term “programs, projects or activities” or “projects or activities” as used in continuing resolutions can have several meanings. When determining which government programs are covered by the resolution, and the rate for operations limit, the term “project or activity” refers to the total appropriation rather than to specific activities. When determining whether an activity was authorized or carried out in the preceding year, the term “project or activity” may refer to the specific activity. Occasionally Congress will use only the term “activities” by appropriating sufficient funds “for continuing the following activities, but at a rate for operations not in excess of the current rate.” When used in this context, “projects or activities” or simply “activities” does not refer to specific items contained as activities in the administration’s budget submission or in a committee report. Rather, the term refers to the appropriation for the preceding fiscal year. For more information, see GAO, *Principles of Federal Appropriations Law*, vol. 2, 3rd ed., Ch. 8.C (Continuing Resolutions—Projects or Activities) and cases cited therein.

Full-Year CR Calculation FY 2007

Appropriations for FY2006

Plus

Funding for 50% of the cost of any 2007
increase in rates of pay

Minus

Rescissions in FY2006

(1% Govt Wide, 0.476% Interior Approp., 1.28% Science, State, Justice,
Commerce Approp.)

OR

Specific Amount Set Out In Pub. L. No. 110-5

(plus funding for 50% of the cost of 2007 increase in rate of pay)

Note: Additional budgetary resources available to agencies include unobligated
balances carried over from FY 2006, offsetting collections, and transfers
(terms and conditions of FY 2006 appropriations).



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

February 26, 2007

BULLETIN NO. 07-03, Supplement 1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Guidance on Estimating Funding Levels Under the Revised Continuing Appropriations Resolution, 2007 (H.J. Res. 20)

Purpose. This supplement revises items 5 and 6 under “How should the adjustment for pay be calculated?” in Attachment A to Bulletin 07-03.

Action. Agencies should replace the original attachment A to Bulletin 07-03 with the revised attachment A.

Contact. Questions regarding this bulletin should be directed to the agency’s OMB representative.


Rob Portman

Attachment

**INSTRUCTIONS FOR ACCOUNTING AND BUDGET OFFICES
RELATED TO EXECUTING AND REPORTING
REVISED CONTINUING APPROPRIATIONS RESOLUTION, 2007 OF H.J. RES. 20**

OMB, working with the Treasury Financial Management Service, has prepared the following instructions related to executing and reporting the FY 2007 full year continuing appropriations of H.J. Res. 20.

What accounting event happened that must be acted on?

The Revised Continuing Appropriations Resolution, 2007 (HJ.Res. 20) provides full year continuing appropriations for FY 2007.

What amount do I have to report in the Treasury Appropriation Fund Symbol (TAFS) for the FY 2007 full year continuing appropriations amount?

For each account that is funded by the CR, you need to complete attachment B, on a TAFS level. The amounts shown on attachment B at the TAFS level must add to the amounts shown in the Continuing Resolution Calculations by Account, Treasury Run report at the OMB budget account level, rounded in whole dollars.

What action do I take if I do not agree with the FY 2007 full year continuing appropriations amount shown in the Continuing Resolution Calculations by Account, Treasury Run report?

Contact your OMB representative with an explanation of the reasons for the difference.

In general, what must I do?

When executing the FY 2007 continuing appropriations, ensure that the FY 2007 full year continuing appropriation amount shown on Attachment B is consistently reported on the SF 132, SF 133, and the actual column of the Program and Financing (P&F) schedule for the FY 2009 Budget.

Specifically, what must I do?

1. OMB Bulletin. Provide the data requested by this Bulletin by no later than 5 PM, Thursday, February 22nd.
2. FMS 6200 Warrant. The Department of the Treasury's Financial Management Service (FMS) Budget Reports Division will use the list of accounts and FY 2007 full year continuing appropriations amounts that agencies provide on Attachment B to calculate the amounts to be warranted. FMS will issue the FMS 6200 appropriation warrants for affected TAFSs appropriated from the General Fund of the Treasury or associated with unavailable receipt accounts. No appropriation warrants will be processed for TAFSs that are not included on Attachment B.

Treasury will not accept any appropriation warrant requests related to the FY 2007 continuing appropriations that have not been agreed to by OMB.

3. SF 132 Apportionment. Prepare a SF 132 Apportionment with the FY 2007 continuing appropriations amount on the applicable line number. Refer to the Treasury Financial Manual, U.S. Government Standard General Ledger (USSGL) Supplement or consult your agency's USSGL representative to identify the specific USSGL account codes. See OMB Circular No. A-11, Section 121 and Appendix F for further guidance.
4. USSGL/FACTS II. Record the FY 2007 continuing appropriations amount using the appropriate USSGL account codes in your accounting system so that the proper amounts will be reported via FACTS II. FACTS II will then create the SF 133 and initial set of data for the P&F schedule. See Treasury Financial Manual, USSGL Supplement or consult your agency's USSGL representative for further guidance.
5. SF 133 Report on Budget Execution and Budgetary Resources. By using FACTS II appropriately, the amounts will crosswalk to SF 133 line 3A1 "Appropriation". See OMB Circular No. A-11, Section 121 and Appendix F for further guidance.
6. Budget Program and Financing (P&F) schedule. As a result of correctly reporting the amounts via FACTS II for the fourth quarter of FY 2007, they will be automatically crosswalked to the appropriate P&F line number. The accounting and the budget offices must work together to ensure that the actual column of the FY 2009 Budget P&F schedule accurately reflects the FY 2007 continuing appropriations amounts. See OMB Circular No. A-11, section 82 for further guidance.

How should the adjustment for pay be calculated?

Section 111 provides for additional BA for one-half of the cost of the 2007 pay raises. This amount should reflect the increase in pay costs for 2007 due to the pay raises received by employees under Executive Order 13420, Adjustments of Certain Rates of Pay, dated December 21, 2006.

1. For employees not covered by statutory pay systems under Executive Order 13420, the amount of the adjustment should be calculated as if such employees received pay raises equal to General Schedule employees on the first pay period in January 2007.
2. The amount of the adjustment should include the effect of increases in basic pay rates as well as in locality-based comparability pay for the employees of the agency. For large agencies with employees located in many pay localities, an acceptable alternative to calculating the pay raise by locality for each account is to assume the Government-wide average for all employees, subject to prior approval by the OMB representative with budget responsibility for that agency. The amounts shown as pay in the Continuing Resolution Calculations by Account, Treasury Run report assume the 2.2 percent Government-wide average pay raise.
3. The adjustment should include one half of the increased cost of agency contributions for employee benefits resulting from the 2007 pay raises, such as agency contributions for employee retirement, Social Security and Medicare contributions, and life insurance. It should not include benefits that are not directly increased by the 2007 pay raises, such as health

insurance. Unless agencies have better data, they should assume that only 72 percent (the government-wide average) of benefits are directly affected by pay raises.

4. In general, the amount of the adjustment should be based on the number and distribution of each agency's workforce, as reflected by actual 2006 obligations reported in the 2008 Budget, since agencies should have been operating at no more than that level under the previous CR.
5. The adjustment covers pay raises for employees whose pay is funded directly by appropriations provided by the CR, and for reimbursable employees who provide services to accounts that are funded by the CR. It does not include the cost of pay raises that would be recovered by fees charged to non-federal entities.
6. Accounts that provide services to other agencies are to show the pay raise adjustment as BA in the servicing account. However, if the account provides services only to other accounts within the same agency, the pay raise adjustment can be recorded as BA within the servicing account, or, subject to the approval of the OMB representative, it can be spread among the customer accounts within that agency. If the pay raise adjustment is spread among the customer accounts, the agency must provide documentation to OMB showing that the amount, in total, equals one-half of the pay raise for the reimbursable employees of the servicing account. To the extent that the pay raise adjustment for reimbursable employees is shown as BA in the servicing account, agencies should not build this portion of the pay raise into the fees they charge to federal customers for goods and services, and they should provide documentation to OMB that this cost is not included in the fees. The cost of pay raises for reimbursable employees involved in providing services to non-federal customers should be recovered by the fees they charge.

Could you give me an example of how the pay adjustment should be calculated?

The calculation involves two components -- the effect of the pay raise on employees' salaries, and the effect on agency contributions for employees' benefits.

To calculate the effect on employees salaries, add the amounts in the 2006 column of the 2008 budget for object classes 11.1, 11.3, 11.5, and 11.7 and multiply by 1/2 of the 2007 pay raise (e.g., 1.1% if using the Government-wide average) times 3/4 (since the pay raise is effective for 9 months of the fiscal year).

$$[\text{sum of object classes 11.1, 11.3, 11.5, 11.7}] \times 1/2 \times [\text{percent pay raise}] \times 3/4$$

To calculate the effect on agency contributions for employees' benefits, take the amount in the 2006 column of the 2008 budget for object class 12.1 and 12.2, multiply by 72% (the Government-wide average for the share of benefits directly affected by pay raises) times 1/2 of the 2007 pay raise (e.g., 1.1% if using the Government-wide average) times 3/4 (since the pay raise is effective for 9 months of the fiscal year).

$$[\text{sum of object class 12.1 and 12.2}] \times .72 \times 1/2 \times [\text{percent pay raise}] \times 3/4$$



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

The Director

February 16, 2007

BULLETIN NO. 07-03

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

SUBJECT: Guidance on Estimating Funding Levels Under the Revised Continuing Appropriations Resolution, 2007 (H.J. Res. 20)

Purpose. This bulletin provides guidance for estimating funding levels under the full-year Revised Continuing Appropriations Resolution, 2007 (H.J. Res. 20).

Background and coverage. Division B, Title I, of H.J. Res. 20 provides full-year funding for accounts not funded by the Department of Defense Appropriations Act, Division A (Public Law 109-289) and the Department of Homeland Security Appropriations Act (Public Law 109-295). Accounts are generally at the level provided in the applicable FY 2006 Appropriations Acts.

For accounts that are funded at the 2006 level, the level does not include any amount designated as an emergency requirement or for overseas contingency operations, pursuant to section 402 of H. Con. Res. 95 (109th Congress), the concurrent resolution on the budget for FY 2006. It also excludes the effects of any rescission or cancellation of funds or contract authority other than:

- The 1.0 percent Government-wide rescission made by section 3801 of Division B of Public Law 109-148, the Department of Defense, Emergency Supplemental Appropriations to Address Hurricanes in the Gulf of Mexico, and Pandemic Influenza Act, 2006;
- The 0.476 percent rescission made by section 439 of Public Law 109-54, relating to the Department of the Interior, environment, and related agencies; and
- The 0.28 percent rescission made by section 638 of Public Law 109-108, relating to Science, State, Justice, Commerce, and related agencies.

Additional funding is provided for 50 percent of the cost of any 2007 increase in rates of pay for employees funded by the Act. This includes the cost of increased pay received by employees and higher agency contributions for employee benefits resulting directly from such pay raise.

6. Agencies should immediately begin to work with their OMB representative on the content of the operating plans.

Contact. Questions regarding this bulletin should be directed to the agency's OMB representative.

A handwritten signature in black ink that reads "Rob Portman". The signature is written in a cursive, flowing style.

Rob Portman
Director

Attachments

Treasury will not accept any appropriation warrant requests related to the FY 2007 continuing appropriations that have not been agreed to by OMB.

3. SF 132 Apportionment. Prepare a SF 132 Apportionment with the FY 2007 continuing appropriations amount on the applicable line number. Refer to the Treasury Financial Manual, U.S. Government Standard General Ledger (USSGL) Supplement or consult your agency's USSGL representative to identify the specific USSGL account codes. See OMB Circular No. A-11, Section 121 and Appendix F for further guidance.

4. USSGL/FACTS II. Record the FY 2007 continuing appropriations amount using the appropriate USSGL account codes in your accounting system so that the proper amounts will be reported via FACTS II. FACTS II will then create the SF 133 and initial set of data for the P&F schedule. See Treasury Financial Manual, USSGL Supplement or consult your agency's USSGL representative for further guidance.

5. SF 133 Report on Budget Execution and Budgetary Resources. By using FACTS II appropriately, the amounts will crosswalk to SF 133 line 3A1 "Appropriation". See OMB Circular No. A-11, Section 121 and Appendix F for further guidance.

6. Budget Program and Financing (P&F) schedule. As a result of correctly reporting the amounts via FACTS II for the fourth quarter of FY 2007, they will be automatically crosswalked to the appropriate P&F line number. The accounting and the budget offices must work together to ensure that the actual column of the FY 2009 Budget P&F schedule accurately reflects the FY 2007 continuing appropriations amounts. See OMB Circular No. A-11, section 82 for further guidance.

How should the adjustment for pay be calculated?

Section 111 provides for additional BA for one-half of the cost of the 2007 pay raises. This amount should reflect the increase in pay costs for 2007 due to the pay raises received by employees under Executive Order 13420, Adjustments of Certain Rates of Pay, dated December 21, 2006.

1. For employees not covered by statutory pay systems under Executive Order 13420, the amount of the adjustment should be calculated as if such employees received pay raises equal to General Schedule employees on the first pay period in January 2007.

2. The amount of the adjustment should include the effect of increases in basic pay rates as well as in locality-based comparability pay for the employees of the agency. For large agencies with employees located in many pay localities, an acceptable alternative to calculating the pay raise by locality for each account is to assume the Government-wide average for all employees, subject to prior approval by the OMB representative with budget responsibility for that agency. The amounts shown as pay in the Continuing Resolution Calculations by Account, Treasury Run report assume the 2.2 percent Government-wide average pay raise.

ATTACHMENT B

H.J. RES. 20, Continuing Appropriations Resolution, 2007

[Agency Name]

For special or trust fund TAFS where a FMS 6200 warrant is processed, list the associated unavailable receipt account.

Treasury Agency	FY1	FY2	Treasury Account	Treasury Account Title	2006 BA (supps removed) or Legislative/Technical Anomalies (Pre-Transfer Basis)	2006 Rescissions Removed	New Rescissions or MSAVES	Pay Increase	Type of Budgetary Resource	2007 Approps	Does the reduction require a FMS 6200 warrant to be processed by Treasury?	Treasury Agency	Treasury Account
<i>(IN DOLLARS)</i>													
EXAMPLES:													
99		2007	0174	Salaries and expenses	43,352,198	-1,005,432		174,680	Appropriation	42,521,446	Yes	-	-
99		X	0174	Resource management	7,654,367	-450,764	-25,000,000	29,715	Appropriation/Reduction	-17,766,682	Yes	-	-
99		2007	0511	Program management	75,604,656			311,869	Appropriation	75,916,525	Yes	-	-
99	2007 /	2008	0511	Program management			-37,000,000		Reduction	-37,000,000	Yes	-	-
99		2007	8065	Safety program	5,654,756	-3,567		23,311	Obligation Limitation	5,674,500	No	-	-
99		X	5689	Development management	56,754,456			234,112	Appropriation	56,988,568	Yes	80	568910
99		X	5488	Research and development	9,548,745			39,389	Appropriation	9,588,134	No	-	-

Comments:

- FY1 FY1 will include a fiscal year for the first year of availability in a multi-year TAFS only.
- FY2 FY2 will include a fiscal year for an annual TAFS, for the last year of availability in a multi-year TAFS, and a "X" for no-year TAFS.
- Treasury Account Spreadsheet is formatted as text.
- Type of Budgetary Resource The following is a list of possible budgetary resources:
 - Appropriation = SF 132/133 line 3A1
 - Appropriation/Reduction = SF 132/133 lines 3A1 and 5 or 6B
 - Reduction = SF 132/133 line 5 or 6B
 - Obligation Limitation
- 2007 Approps If you have identified another budgetary resource, please contact your agency's OMB representative.
 By components like pay increase, this TAFS amount is required to be reported in dollars and must reconcile to an amount shown on attachment A at the OMB account level.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR
M-07-10

February 15, 2007

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Rob Portman

PURPOSE: To provide guidance to Departments and Agencies about obligating FY 2007 funds under a full-year Continuing Resolution (CR) with no Congressional earmarks.

BACKGROUND

On February 15, 2007, the President signed H.J.Res. 20, a joint resolution passed by the Congress, that provides appropriations for FY 2007, with a moratorium on earmarks. Section 112 of this joint resolution states that any "language specifying an earmark in a committee report or statement of managers accompanying an appropriations Act for FY 2006 shall have no legal effect with respect to funds appropriated" under the joint resolution. The joint resolution provides appropriations as a full-year CR, replacing the three CRs that have been enacted thus far during the current fiscal year.

GUIDANCE

Agencies whose funding is provided by the CRs should adhere to the following:

I. The "Authority and Conditions Provided" and "Projects and Activities" referenced in H.J.Res. 20 refer to prior statutory language only, and not to committee reports or other non-statutory earmarks. In implementing this Memorandum, agencies shall adhere to all applicable laws. With regard to the CR's own statutory language, OMB's General Counsel has determined that the phrase "under the authority and conditions provided," which appears in Section 101(a) of the CR, only refers to items provided in prior *statutes* that were enacted into law. To the extent that the language in Section 101(a) of the CR provides funding for "projects or activities," this phrase likewise applies only to prior statutory language that was enacted into law. Section 112 of H.J.Res. 20 explicitly affirms this, noting that any "language specifying an earmark in a committee report or statement of managers accompanying an appropriations Act for fiscal year 2006 shall have no legal effect with respect to funds appropriated" under the joint resolution. For agencies funded by the CR, this means that unless a project or activity is specifically identified in statutory text, agencies should not obligate funds on the basis of earmarks contained in Congressional reports or documents, or other written or oral communications regarding earmarks. While the Administration welcomes input to help make informed decisions, no oral or written communication concerning earmarks shall supersede statutory criteria, competitive awards, or merit-based decision-making, as set forth in Section II below.

II. Agencies shall fund activities based on authorized, transparent, statutory criteria and merit-based decision-making (including competitive awards). Federal funds shall be expended only for purposes where the CR grants authority in law for this spending or where there are other authorities in statutes to provide this funding. In particular, agencies subject to the CR are advised to fund activities within each account in accordance with authorizing law, using statutory criteria, such as funding formulas, eligibility standards, and merit-based decision-making. In the application of authorized discretion, each agency shall use transparent and merit-based determinations to achieve program objectives, consistent with the purpose of the statute and Administration policy (including the President's Budget). Government-wide and agency regulations and policy governing the selection of grant recipients or contractors will be in effect.

Agencies shall pay particular heed to existing statutes, regulations, and Administration policy with respect to promoting and providing for competition in soliciting offers and awarding contracts and competitive grants. Note, in particular, that 10 U.S.C. 2304, 41 U.S.C. 253, and the Federal Acquisition Regulation require, with certain limited exceptions, that contracting officers promote and provide for full and open competition in soliciting offers and awarding Government contracts. OMB circular A-110 further affirms this requirement: "All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition." With respect to grants, agencies should take note of language from the Federal Grant and Cooperative Agreement Act of 1977 (31 U.S.C. §§ 6301-6308) and its implementing regulations 43 FR 36860, which were enacted and issued to "promote increased discipline in selecting and using procurement contracts, grant agreements, and cooperative agreements, maximize competition in making procurement contracts, and encourage competition in making grants and cooperative agreements." In short, funding decisions should be based on the merits, in accordance with the law.

This memorandum applies to budgetary resources provided under continuing resolutions for FY 2007, including: Public Laws 109-289 (division B), 109-369, 109-383, and H.J. Res. 20; unless and until modified or superseded by a subsequent memorandum.

Questions about this memorandum may be directed to OMB's Associate Directors or to OMB's General Counsel.



THE DIRECTOR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

September 29, 2006

BULLETIN NO. 06-04

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Apportionment of the Continuing Resolution(s) for Fiscal Year 2007

1. Purpose and Background. Division B of H.R. 5631 will provide continuing appropriations for the period October 1 through November 17, 2006. I am automatically apportioning amounts provided by this continuing resolution (CR) as specified in section 2. This Bulletin supplements instructions for apportionment of CRs in OMB Circular No. A-11, section 123, and applies to this CR and any extensions of this CR.

2. Automatic Apportionments. See the attachment to this Bulletin for more detailed instructions on calculating the annualized amount provided by the CR. In order to calculate the amount automatically apportioned through the period ending November 17th (and any extensions of that period) multiply the annualized amount provided by the CR by the lower of:

- the percentage of the year covered by the CR (e.g., for H.R. 5631 use 13.15 percent), or
- the historical seasonal rate of obligations for the period of the year covered by the CR.

With regard to the treatment of FY 2006 supplementals, Sec. 110 of the CR requires that the resolution be implemented so that only the most limited funding action permitted in the CR is taken. The Administration has interpreted this section to mandate that agencies in general spend at a minimum level, so as not to infringe upon the prerogative of Congress to set full-year funding levels. Funding apportioned under the CR excludes one-time, non-recurring projects and activities that were funded by FY 2006 supplementals. Recurring and ongoing projects and activities funded by FY 2006 supplementals may be factored in to the "not to exceed current rate" formula if pre-approved by your OMB representative with budget responsibility for the account.

Under an automatic apportionment, all of the footnotes and conditions placed on the prior year apportionment remain in effect. The CR provides that FY 2006 terms and conditions apply.

3. Written Apportionments. If an agency seeks an amount for a program which is different from the total amount automatically apportioned, you must request a written apportionment from OMB. Only a limited number of written apportionment requests are expected to be granted. Every request must be accompanied by a written justification that includes the legal basis for the exception apportionment. Once a written apportionment is approved, the terms and conditions of the automatic apportionment bulletin cease to apply to the extent changed by the written apportionment.

4. CR Extensions. For accounts where automatic apportionments are in effect, an extension of the CR is automatically apportioned. For accounts with written apportionments, you must request a written reapportionment for each extension of the CR.



Rob Portman

Attachment

Calculating the Amount Made Available by the Continuing Resolution (CR) and the Automatic Apportionment

1. **What is the annualized, full-year amount provided by the continuing resolution (CR)?**

The rate (amount) provided by the CR means one of the three annual amounts:

- The annual amount in the appropriations act for FY 2007 as passed by the House by October 1, 2006.
- The annual amount in the appropriations act for FY 2007 as passed by the Senate by October 1, 2006.
- Annual amount representing the not to exceed the current rate (see below).

Not to exceed current rate:

- take the full year amount enacted in the FY 2006 regular appropriations acts (i.e., regular appropriations net of any reductions, including across-the-board reductions);
- add only the recurring, ongoing supplemental FY 2006 appropriations amounts (pre-approved by the OMB representative with budget responsibility for the account);
- add transfers mandated by law;
- add the discretionary unobligated balance (including those balances from recurring, on-going supplemental projects) *carried forward* to FY 2006 start-of-year (SOY), if any; and
- subtract the discretionary unobligated balance (including those balances from recurring, on-going supplemental projects) *at the end* of FY 2006 end of year (EOY), if any.

2. **What is the amount of the automatic apportionment under a CR?**

Calculate the amount automatically apportioned (whole dollars) through the period ending November 17, 2006, (and any extensions of that period) by multiplying the **annualized amount provided by the CR** by the lower of:

- the **percentage of the year** covered by the CR (rounded to the nearest hundredth) (for a seven-week CR, use $48 \text{ days} / 365 \text{ days} = 13.15\%$); or
- the **historical seasonal rate** of obligations for the period of the year covered by the CR.

3. **Which of the annual amounts do I use?**

If	Then
A. Both the House and Senate have passed the bill by October 1, 2006, and if:	
1. There is no amount in both bills	Discontinue the project or activity.
2. There is an amount in only one bill	Continue at the lower of the amount in the one bill <u>or</u> not to exceed the current rate.
3. The amounts in both bills are the same	Continue at the lower of the House- and Senate-passed <u>or</u> not to exceed the current rate.
4. The amounts in both bills are different	Continue at the lower of the House-passed, the Senate-passed, <u>or</u> not to exceed the current rate.
B. Only the House has passed the bill by October 1, 2006, and if:	
1. No amount is included in the House bill but was funded in FY 2006	Continue at the not to exceed the current rate.
2. There is an amount in the House bill	Continue at the lower of the House-passed <u>or</u> not to exceed the current rate.
C. Neither the House nor the Senate has passed the bill by October 1, 2006:	Continue at the not to exceed the current rate.

4. **Which estimates of FY 2006 (EOY) unobligated balances should agencies use in the calculation?**

Agencies are required to use current estimates of FY 2006 (EOY) unobligated balances as follows:

- FY 2006 SOY unobligated balances: Use the amount shown on the most recent FY 2006 apportionment/reapportionment. This would be shown on line 1A ("Unobligated balance: brought forward, October 1 (actual)") of the SF 132/letter apportionment (not the amount shown in the most recent President's Budget).
- FY 2006 EOY unobligated balances: Again, you must use the most recently approved apportionment. For the majority of the accounts, this should be the FY 2007 initial apportionment.
- You may request OMB to apportion revised estimates of unobligated balances, SOY FY 2007, and if apportioned in writing by OMB, you may then use the revised amounts to calculate the amount available under the CR.

5. **How should the phrase "project or activity" be applied in determining the CR level?**

In the context of determining the rate for operations under the CR, OMB has interpreted the term "project or activity" to refer to the total appropriation, that is, the account level. GAO's view has been consistent with OMB's (see page 8-24 of the Principles of Federal Appropriations Laws, Third Edition, Volume II, issued by GAO).

6. **How should mandatory appropriations and balances be treated?**

A continuing resolution is an appropriations bill. As such, it normally does not affect mandatory appropriations provided in substantive or authorizing legislation. Therefore, for accounts with a mix of discretionary and mandatory appropriations, take the mandatory component out before calculating the amount provided by the CR. This includes both the budget authority and mandatory unobligated balances.

7. **Are entitlement and other mandatory payments whose budget authority was provided in Appropriations Acts for fiscal year 2006 continued at the FY 2006 level or FY 2007 program level?**

Sec. 114(a) of H.R. 5631 allows entitlements and other mandatory payments whose BA was provided in Appropriations Acts for FY 2006 to continue at the "rate to maintain program levels under current law, under the authority and conditions provided in the applicable appropriations Act for fiscal year 2006, etc." In other words, these programs can operate at the FY 2007 program level.

8. **How will section 126 of H.R. 5631 regarding civilian personnel compensation and benefits be apportioned by OMB?**

Section 126 allows OMB limited authority to mitigate furloughs. It does not provide additional total budget authority for the fiscal year (i.e., agency spending during the CR will be charged against their eventual full-year appropriation, even if that appropriation is in the form of a full-year CR). Rather, it allows OMB to apportion the BA at a greater rate than the daily rate. OMB will be applying this authority in the most restrictive fashion. You must be pre-approved by your OMB representative with budget responsibility for the account before requesting a written apportionment from OMB. OMB will require written documentation that the following pre-condition has been satisfied by the agency: *"except that....such authority provided under this section shall not be used until after the department or agency has taken all necessary actions to reduce or defer non-personnel-related administrative expenses."*



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DEPUTY DIRECTOR

December 21, 2006

BULLETIN NO. 06-04, Supplement No. 1

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Apportionment of the Continuing Resolution(s) for Fiscal Year 2007

1. Purpose and Background. P.L. 109-383 (H.J. Res. 102) extended the continuing appropriations for Fiscal Year 2007 to February 15, 2007. The extension also authorizes the use of the Military Construction and Veterans Affairs and Related Agencies Appropriation Bill (as passed by the Senate on November 14, 2006) for purposes of calculating what has been provided by the continuing resolution (CR).
2. Automatic Apportionment. In addition to the automatic apportionments previously described, I am automatically apportioning the amounts calculated using the Military Construction and Veterans Affairs and Related Agencies Appropriation Bill. To calculate the amount automatically apportioned through the period ending February 15th, 2007 (and any extensions of that period) multiply the annualized amount provided by the CR by the lower of:
 - the percentage of the year covered by the CR (e.g., for H.J. Res. 102 use 37.81 percent), or
 - the historical seasonal rate of obligations for the period of the year covered by the CR.

Sincerely,

Stephen S. McMillin
Deputy Director



Decision

Matter of: United States Capitol Police—Current Rate for Operations Under the 2007 Continuing Resolution

File: B-308773

Date: January 11, 2007

DIGEST

When calculating the current rate for operations under the 2007 Continuing Resolution for its General Expenses appropriation, the United States Capitol Police should include \$4,513,671 reprogrammed within its General Expenses appropriation in fiscal year 2006. It should not include \$5,486,329 transferred into its General Expenses appropriation from its Salaries appropriation in fiscal year 2006, nor should it include any unobligated no-year and multi-year balances held in the General Expenses appropriation at the end of fiscal year 2006.

DECISION

The General Counsel of the United States Capitol Police (USCP) has requested a decision regarding the amount appropriated to USCP under the Continuing Appropriations Resolution (CR), 2007, Pub. L. No. 109-289, div. B, 120 Stat. 1257, 1311 (Sept. 29, 2006). Letter from John T. Caulfield, General Counsel, USCP, to Gary L. Kepplinger, General Counsel, GAO, Dec. 19, 2006. Specifically, he asks whether \$10 million of unobligated no-year and multi-year balances that USCP made available for fiscal year 2006 operational needs is part of USCP's fiscal year 2006 "General Expenses" appropriation for purposes of calculating the current rate under the CR. USCP made these amounts available for fiscal year 2006 operational needs via a combination of reprogrammings within its General Expenses appropriation and a transfer from its "Salaries" appropriation to its General Expenses appropriation.

The question arises because of the formula contained in the CR for determining the amount of funds available during the pendency of the CR. For the reasons discussed below, we conclude that no-year and multi-year funds reprogrammed within the General Expenses appropriation are part of USCP's fiscal year 2006 General Expenses appropriation for purposes of calculating the current rate. On the other

hand, the no-year funds that USCP transferred from its Salaries appropriation to its General Expenses appropriation are not. The amount transferred should be used in calculating the current rate under the CR for USCP's Salaries appropriation.

BACKGROUND

All federal agencies are currently operating under a continuing resolution with the exception of the Departments of Defense and Homeland Security. The CR was enacted on September 29, 2006, and funded the agencies, including USCP, through November 17, 2006. Pub. L. No. 109-289, div. B, § 106. Congress has twice extended this CR's duration. The first extension came on November 17, 2006, making the CR effective until December 8, 2006. Pub. L. No. 109-369, 120 Stat. 2642 (Nov. 17, 2006). Congress further extended the CR, with various modifications not relevant here, until February 15, 2007. Pub. L. No. 109-383, § 1, 120 Stat. 2678 (Dec. 9, 2006). USCP is thus funded until February 15, 2007, under the continuing resolution first enacted on September 29, 2006.

USCP has two appropriations relevant to this decision: the General Expenses appropriation and the Salaries appropriation. Congress provided \$32 million in fiscal year funds for USCP's General Expenses appropriation in fiscal year 2006. Legislative Branch Appropriations Act, 2006, Pub. L. No. 109-55, title I, 119 Stat. 565, 572 (Aug. 2, 2005). A subsequent rescission reduced this amount to \$31.6 million. *See* Emergency Supplemental Appropriations Act to Address Hurricanes in the Gulf of Mexico and Pandemic Influenza, 2006, Pub. L. No. 109-148, div. B, title III, ch. 8, § 3801, 119 Stat. 2745, 2791 (Dec. 30, 2005). The conference report accompanying the Legislative Branch Appropriations Act, 2006, stated that, in addition to the \$32 million, "\$10,000,000 from prior year unobligated balances [was] available upon the approval of the" congressional appropriations committees. H.R. Rep. No. 109-189, at 32-33 (2005).

On September 29, 2005, USCP submitted its operating plan for fiscal year 2006 to the congressional appropriations committees. Letter from Anthony J. Stamilio, Chief Administrative Officer, USCP, to The Honorable Jerry Lewis, Chairman, House Committee on Appropriations, *Subject: Approval Request for the FY 2006 United States Capitol Police Operating Plan and reprogramming of unobligated balances*, Sep. 29, 2005 (Stamilio Letter). USCP included in this document a proposal for making \$10 million in prior year unobligated balances available as mentioned in the conference report. *Id.* The \$10 million of no-year and multi-year funds was derived from a combination of reprogrammings within USCP's General Expenses appropriation and a transfer from its Salaries appropriation to the General Expenses appropriation. *Id.* The committees approved the operating plan, and in January 2006 USCP carried out its proposal to make the \$10 million available for General

Expenses.¹ E-mail from Maryjean Buhler, Chief Financial Officer, USCP, to Wesley Dunn, Staff Attorney, GAO, Jan. 5, 2007.

At the beginning of fiscal year 2006, USCP's General Expenses appropriation contained unobligated no-year and multi-year balances in addition to its 2006 fiscal year funds. *Id.* USCP received the no-year funds from supplemental appropriations in fiscal years 2002 and 2003, the Emergency Response Fund in prior fiscal years, and several other sources. *Id.* USCP also had multi-year funds derived from sales of USCP's surplus property made between March and September 2005.² Telephone conversation between Maryjean Buhler; Wesley Dunn; and Thomas H. Armstrong, Assistant General Counsel for Appropriations Law, GAO, Jan. 3, 2007 (Telephone Conversation); E-mail from Maryjean Buhler to Wesley Dunn, Jan. 4, 2007. USCP kept the no-year and multi-year funds in respective subaccounts within the General Expenses appropriation to maintain their identity as no-year and multi-year funds separate from amounts appropriated as fiscal year General Expenses funds. Telephone Conversation. USCP reprogrammed a total of \$4,513,671 of these unobligated balances within its General Expenses appropriation to make this amount available for fiscal year 2006 operating expenses. Stamilio Letter.

At the beginning of fiscal year 2006, USCP's Salaries appropriation had available for obligation an unobligated balance of no-year funds. *Id.* USCP received these funds from the Emergency Response Fund. *Id.* USCP transferred \$5,486,329 from the unobligated no-year balances in its Salaries appropriation to its General Expenses appropriation to make this amount available for fiscal year 2006 operating expenses.³ *Id.*

The question here arises because of the CR's formula for determining the amount of funds available to USCP during the pendency of the CR. The CR provides that when an agency's appropriation act has been passed by only the House of Representatives and not by the Senate as of November 15, 2006, as is the case with USCP's

¹ Specifically, USCP used the reprogrammed and transferred balances to fund its Office of Information Services and pay for fuel costs during fiscal year 2006. Stamilio Letter.

² USCP may sell its surplus property and deposit the proceeds in its General Expenses appropriation. 2 U.S.C. § 1906. The funds remain available for obligation for the purposes of that appropriation during the fiscal year in which they are received and the following fiscal year. *Id.* In the present case, the funds were available for the portion of fiscal year 2005 following the sale, and all of fiscal year 2006.

³ USCP transferred this amount under authority of section 1001 of the 2006 Legislative Branch Appropriations Act. E-mail from Gretchen E. DeMar, Acting General Counsel, USCP, to Wesley Dunn, Jan. 4, 2007.

appropriations, the agency's projects and activities⁴ will continue "at a rate for operations not exceeding the current rate or the rate permitted by the action of the House, whichever is lower." Pub. L. No. 109-289, div. B, § 101(d)(1). USCP receives its funding through the annual Legislative Branch appropriations act, which as of November 15, 2006, had been passed by the House but not the Senate. The version of the Legislative Branch Appropriations Act for fiscal year 2007 passed by the House, H.R. 5521, provides \$38.5 million for General Expenses. If the full \$10 million made available for General Expenses is part of USCP's General Expenses appropriation for fiscal year 2006 for purposes of calculating the current rate, the current rate would be \$41.6 million (the \$31.6 million appropriated for fiscal year 2006 plus the \$10 million). In that case, under the CR formula of section 101(d)(1), the amount available for General Expenses would be \$38.5 million—the rate permitted by H.R. 5521 being lower than the current rate. However, if the full \$10 million is excluded, USCP has \$31.6 million,⁵ the current rate being lower than the rate permitted by H.R. 5521.

ANALYSIS

The issue before us is whether USCP should include the \$10 million for purposes of calculating the current rate under the CR for its General Expenses appropriation. The term "current rate" as used in the CR refers to the total funds appropriated for a program or activity in the previous fiscal year as well as any other amount that Congress made available for use in that fiscal year, such as unobligated no-year and multi-year funds carried forward into the fiscal year, less any unobligated balances available at the end of that fiscal year. 58 Comp. Gen. 530 (1979); B-152554, Oct. 9, 1970.

In determining the current rate for purposes of USCP's General Expenses appropriation, we must distinguish between the \$4,513,671 reprogramming and the \$5,486,329 transfer because reprogramming and transferring are fundamentally different transactions.

A reprogramming is the application of funds already in an appropriation for uses other than those contemplated at the time the funds were appropriated. B-164912, Dec. 31, 1977. In other words, reprogramming is the shifting of funds from one

⁴ When used in a continuing resolution to denote the level of funding provided, the term "projects and activities" refers to the appropriation as enacted in the previous fiscal year, as opposed to the various activities financed by that appropriation. B-204449, Nov. 18, 1981.

⁵ This amount represents only fiscal year funds, and does not include any other balances that may be available for inclusion in the current rate calculation for General Expenses.

object to another within an appropriation. Unless otherwise restricted by statute, agencies may reprogram funds as they wish to adapt to changing circumstances, and no statutory authority is necessary. *See Lincoln v. Vigil*, 508 U.S. 182, 192 (1993). When Congress appropriates funds to an agency, it grants the agency authority to shift and to use the funds within that appropriation however the agency sees fit to accomplish the overall purpose of the appropriation. *Id.*

In fiscal year 2006, USCP reprogrammed \$4,513,671 of unobligated no-year and multi-year funds already held in the General Expenses appropriation to make them available for fiscal year 2006 operational needs, specifically to fund its Office of Information Services and pay for fuel. Because Congress had already made available the \$4,513,671 for General Expenses purposes (albeit without fiscal year limitation), USCP should consider this amount as part of its current rate under the CR. *See, e.g.*, 58 Comp. Gen. at 532-33. USCP properly carried these no-year and multi-year balances in the General Expenses appropriation forward into fiscal year 2006 from prior fiscal years; the only change that USCP effectuated with its reprogramming was to make the \$4,513,671 available for other General Expenses uses (that is, fiscal year 2006 operational needs) than those anticipated at the time Congress appropriated the funds to USCP.⁶

In contrast, a transfer is the shifting of funds between appropriations. *Cf.* 31 U.S.C. § 1532. Agencies may only transfer funds when Congress grants them statutory authority to do so. *Id.*; B-286929, Apr. 25, 2001. As is the case here, Congress frequently leaves to agency discretion the decision whether to transfer funds pursuant to such statutory authority.⁷ *See, e.g.*, B-222686, June 11, 1986 (law providing that Secretary concerned “may transfer” funds grants “broad discretionary authority . . . to transfer funds”); B-167656, June 18, 1971 (“may transfer” is “discretionary language” for purposes of funds transfer). In fiscal year 2006, USCP transferred \$5,486,329 from its Salaries appropriation to the General Expenses appropriation to satisfy fiscal year 2006 operational needs.

USCP also asks whether it may include the transfer from Salaries to General Expenses as part of its fiscal year 2006 General Expenses appropriation for purposes of calculating the current rate under the CR. In 1980, we considered whether an agency may include transfers when calculating the current rate and concluded that

⁶ Indeed, because the reprogrammed amounts were unobligated no-year and multi-year balances carried over into fiscal year 2006, the fact that USCP reprogrammed them is not central to our determination that USCP should include them when calculating the current rate.

⁷ Section 1001 of the 2006 Legislative Branch Appropriations Act provides that amounts appropriated to USCP for Salaries “may be transferred” to the General Expenses appropriation. Pub. L. No. 109-55, § 1001.

transfers made at an agency's discretion pursuant to its general transfer authority, and not directed by law, should not be included in the calculation. *See* B-197881, Apr. 8, 1980. In that case, the Department of the Treasury had asked about amounts appropriated to the Agency for International Development (AID) in fiscal year 1979 which AID transferred, pursuant to statutory authority but at its discretion, to a different account later in the fiscal year. *Id.* We determined that the fiscal year 1979 appropriation for purposes of calculating the current rate consisted of the entire amount originally appropriated in fiscal year 1979, including the amount AID subsequently transferred to another appropriation account. *Id.* Calculating the current rate as anything other than the amount originally appropriated "would distort the intent of Congress." *Id.* We reasoned that since it is for the Congress to decide the amount of an agency's appropriation, U.S. Const. art. I, § 9, cl. 7, and since AID transferred the funds upon an administrative determination, rather than pursuant to direction in law, to deduct the amount of this discretionary transfer from the amount Congress appropriated would in effect diminish Congress's power of the purse. *Id.* The logical corollary of this determination is that AID, when calculating the current rate for the account that *received* the transferred funds, could not include the transferred funds as part of the previous fiscal year's appropriation for the account that received the transfer.⁸

The same principle we formulated in B-197881 applies to the transfer of \$5,486,329 from USCP's Salaries appropriation to its General Expenses appropriation. Congress appropriated \$31.6 million to USCP for General Expenses in fiscal year 2006, as well as the no-year funds in the General Expenses appropriation at the beginning of fiscal year 2006. Pub. L. No. 109-55, 119 Stat. at 572. In contrast, Congress did not transfer in law the \$5,486,329, although the conference report signaled a willingness to consider favorably USCP's decision to transfer that amount. To include the transfer as part of USCP's fiscal year 2006 General Expenses appropriation would be inconsistent with the long-held understanding of "current rate" as the amount that Congress (not the agency) had made available, in this case, in fiscal year 2006. *See generally* 58 Comp. Gen. 530; B-152554. Therefore, for purposes of calculating the current rate for General Expenses under the CR, USCP should not include as part of its fiscal year 2006 appropriation the funds transferred from the Salaries appropriation to the General Expenses appropriation. Of course, consistent with the standard established in B-197881, USCP should include that amount in calculating the current rate for its Salaries appropriation.

Accordingly, to calculate the current rate for General Expenses under the CR, USCP should add \$31.6 million (the amount of fiscal year funds appropriated in fiscal year 2006), plus \$4,513,671 (the amount of no-year and multi-year balances reprogrammed

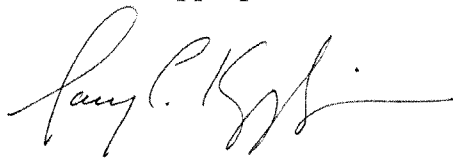
⁸ *Cf.* OMB Bulletin No. 06-04, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2007, Attachment* (Sep. 29, 2006) (when calculating the current rate of an appropriation receiving a transfer, agencies include "transfers mandated by law").

within the General Expenses appropriation), plus any other unobligated amounts in the General Expenses appropriation carried over into fiscal year 2006. To the extent that USCP carried forward into fiscal year 2007 unobligated no-year or multi-year balances in its General Expenses appropriation, these balances must be deducted from USCP's determination of the current rate. *See* 58 Comp. Gen. 530 at 535; *Cf.* OMB Bulletin No. 06-04, *Apportionment of the Continuing Resolution(s) for Fiscal Year 2007, Attachment* (Sep. 29, 2006).

Section 101(d)(1) of the CR, as previously discussed, funds USCP at a rate for operations not exceeding the current rate or the rate permitted by the action of the House (\$38.5 million), whichever is lower. Therefore, if the current rate is greater than \$38.5 million, the CR appropriates \$38.5 million to USCP for General Expenses. If the current rate is less than \$38.5 million, the CR appropriates the lower amount for General Expenses.

CONCLUSION

Consistent with the foregoing analysis, funds reprogrammed in one fiscal year should be considered part of that year's appropriation for purposes of calculating the current rate for that appropriation under a continuing resolution for the following fiscal year. Funds transferred into an appropriation during one fiscal year by other than statutory direction should not be considered part of that year's appropriation when calculating the current rate for the receiving appropriation under a continuing resolution for the following fiscal year. Thus, of \$10 million made available for General Expenses through reprogramming and transfer, USCP should consider the reprogrammed \$4,513,671 as part of its 2006 General Expenses appropriation when calculating the current rate under the CR, but it must exclude the transferred \$5,486,329. USCP should include the \$5,486,329 when calculating the current rate for its Salaries appropriation.



Gary L. Kepplinger
General Counsel