



THE DIRECTOR

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

October 16, 2002

BULLETIN NO. 02-06, Supplement No. 2

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Apportionment of the Continuing Resolution(s) for Fiscal Year 2003

1. Purpose and Background. P. L. 107-229 (H. J. Res. 111) and P.L 107-235 (H. J. Res. 112) together provided continuing appropriations for the period October 1 through October 11. Bulletins No. 02-06 and Supplement No. 1 to that Bulletin provided instructions on calculating the amount provided by that continuing resolution (CR) and the amount automatically apportioned. H. J. Res. 122 extends the CR through midnight on Friday, October 18. The portion of the year covered by the CR is now 4.93 percent. Through this Supplement (No. 2) I am providing an automatic apportionment for amounts provided by this continuing resolution (CR), and any extensions of this CR, as specified in section 2. This Bulletin supplements instructions for apportionment of CRs in OMB Circular No. A-11.

2. Automatic Apportionments. Calculate the amount automatically apportioned through the period ending October 18 (and any extensions of that period) by multiplying the rate (amount) provided by the CR by the lower of:

\$ the percentage of the year covered by the CR, or

\$ the historical seasonal rate of obligations for the period of the year covered by the CR.

See the Attachments A, B, C and D to this Bulletin for more detailed instructions on calculating the amount provided by the CR and the amount automatically apportioned. Under an automatic apportionment, all of the footnotes and conditions placed on the prior year apportionment remain in effect.

3. Written Apportionments. If a program requires an amount different from the total amount automatically apportioned, you must request a written apportionment.

4. Changes from Bulletin No. 02-06 Supplement No. 1. This Supplement provides additional guidance on OMB authority to grant exceptions to the automatic "Rate of operations not exceeding the current rate"/written apportionments.

Mitchell E. Daniels, Jr.
Director

Attachments

Calculating the Amount Made Available by the CR and the Automatic Apportionment

Calculate the amount automatically apportioned through the period ending October 18, 2002 (and any extensions of that period) by multiplying the **rate (amount) provided by the CR** by the lower of:

- \$ the **percentage of the year** covered by the CR (rounded to the nearest hundredth); or
- \$ the **historical seasonal rate** of obligations for the period of the year covered by the CR.

1) **What is the rate (amount) provided by the CR? The rate (amount) provided by the CR for all accounts is the rate of operations not exceeding the current rate, calculated as follows:**

- ▶ take the net amount enacted in FY 2002, i.e., add any supplemental appropriations and subtract any rescissions;
- ▶ add the unobligated balance carried forward to FY 2002 (if any) -- do not include any unobligated balance of funds appropriated in P.L. 107-38 other than funds transferred by division B of Public Law 107-117;
- ▶ subtract the unobligated balance at the end of FY 2002 (if any); and
- ▶ subtract any other unobligated balances carried forward into FY 2002 or enacted in FY 2002 that were available for one-time non-recurring purposes, as described in section 3 below.

Note: **Agencies are required to use current estimates of unobligated balances.** Use the most recent approved estimate for the unobligated balance at the end of FY 2002. Specifically, use the unobligated balances carried forward and apportioned to FY 2003. If you have a more recent estimate of actual unobligated balances carried forward, you must have the amount apportioned before you can use it to calculate the rate provided by the CR.

2) **Does the continuing resolution affect the availability of funds that would be available if H. J. Res. 122 had not been enacted?**

No. The availability of any part of the budgetary resources for an account that is not determined by current action of the Congress (such as permanent appropriations, public enterprise and other revolving funds, reimbursements and other income, and balances of prior year budget authority) are not affected by H. J. Res. 122.

Most of these budgetary resources must be apportioned by OMB before obligation.

3) Funds available for FY 2002 one-time non-recurring purposes should not be included in the calculated rate.

The intent of a CR is to fund on-going projects and activities in such a way as not to impinge on final funding prerogatives. See Attachment B for principles for determining one-time expenditures. See Attachment C for the list of one-time items that are required to be excluded from the calculated rate in accordance with section 135 of H. J. Res. 122. Additional funding for one-time recurring purposes that an agency determines should be excluded from the calculated rate should be discussed with your OMB representative. [Note: One-time projects may involve funds from P.L. 107-38 that are already excluded from the calculation of the rate, so, when deducting the one-timers, agencies should be sure to exclude any P.L. 107-38 funds to avoid deducting them from the rate twice.]

Specific questions on one-time expenditures should be addressed to your OMB representative.

Principles for Determining What is a One-Time, Non-Recurring Project/Activity

Continuing resolutions (CRs) are stop-gap measures that allow ongoing agency programs to function, generally at a level comparable to that in the previous fiscal year. CRs attempt to remain “policy neutral” by continuing the terms and conditions of the previous year’s appropriations into the period covered by the CR. Agencies are prohibited from beginning new programs under the CR.

However, given the unprecedented investment in one-time recovery and emergency preparedness activities since September 11th, the CR does not compel agencies to spend money needlessly – i.e., to rebuild New York or the Pentagon twice or to stockpile small pox vaccines yet again.

The principles for determining whether a project is one-time and non-recurring in nature are:

- Specific projects/activities that are strictly limited in purpose and duration are one-time activities;
- Projects/activities that are an integral part of an ongoing activity are not one-time projects/activities, consistent with GAO’s description below (GAO, Principles of Federal Appropriations Law, p. 8-19):

"... in the previous fiscal year funds were available generally for construction of buildings, including plans and specifications. However, a specific construction project was not actually underway during the previous year. Nonetheless, it was decided that, because funds were available generally for construction in the previous year, this specific project was not a new project or activity and thus could be funded under the continuing resolution."

- Supplemental appropriations to fund ongoing activities, such as wildland firefighting efforts, are also not one-time projects/activities.

**One-Time Items That Are To Be Excluded
New York Recovery**
(BA in millions of dollars)

FEMA

From Fall FY 2002 Supplemental (HR 3338)	4,357
From Summer FY 2002 Supplemental (HR 4775)	2,651
<i>Subtotal--FEMA</i>	7,008

HUD and SBA

From Fall FY 2002 Supplemental (HR 3338)	
SBA	75
CDBG	2,000
From Summer FY 2002 Supplemental (HR 4775)	783
<i>Subtotal--HUD and SBA</i>	2,858

DOT

From Fall FY 2002 Supplemental (HR 3338)	
Improvements to NYC area transit systems	100
Repairs to highways and for enhancing ferry service	175
Repairs to Amtrak tunnels under the Hudson and East Rivers	100
From Summer FY 2002 Supplemental (HR 4775)	
Transit upgrades	1,800
Federal Highways	167
<i>Subtotal--DOT</i>	2,342

Other Federal Agencies

From Fall FY 2002 Supplemental (HR 3338)	
Labor Worker compensation assistance	175
Labor Job training and retraining	32
Labor Unemployment Insurance admin	4
Labor Facilities	2
Labor OSHA safety/health monitoring	1
DOJ Crisis Counseling	37
HHS Reimbursements to hospitals	140
HHS CDC	12
HHS National Institute of Environmental Health Sciences	11
GSA Relocating/Enhancing Federal Facilities	41
Commerce TV/Radio Tower	8
CFTC Facilities	17
SEC Facilities	21
EEOC Facilities	1
<i>Subtotal--Other Federal Agencies</i>	502

Total

12,710

One-Time Items That Are To Be Excluded
(BA in millions)

<u>Program/Account</u>	<u>Amount</u>
Department of Defense	
Pentagon Reconstruction.....	1,338
<p>Funding provided to repair the damage to the Pentagon resulting from 9-11, to cover associated costs (rental space, relocation costs, replacing damaged equipment, etc.) and the construction of military command centers in the Pentagon.</p>	
Department of Agriculture	
Office of the Secretary.....	81
<p>Funding provided to support various Department of Agriculture activities to improve overall security. Most activities were related to purchasing equipment (x-ray machines, cameras, etc.), improving telecommunications, increasing cyber security, and performing risk reviews.</p>	
Department of Health and Human Services	
Smallpox Vaccine Purchase.....	412
<p>\$412 million is available as non-recurring because \$512 million was appropriated in FY 2002, but \$100 million was requested in the FY 2003 Budget to assist state efforts to distribute if necessary, and to purchase VIG in order to treat those who experience complications from the vaccine.</p>	
National Pharmaceutical Stockpile.....	345
<p>\$345 million is available as non-recurring because \$645 was appropriated in FY 2002 to increase to capacity of the stockpile, but only \$300 was requested in the FY 2003 Budget for improved state capacity to distribute stockpile allotments, and for stockpile maintenance.</p>	
HHS Facilities Security.....	141
<p>The CDC and NIH received a one-time appropriation of \$141 million for security upgrades to their facilities.</p>	

One-Time Items That Are To Be Excluded

(BA in millions)

<u>Program/Account</u>	<u>Amount</u>
Department of State	
Embassy Construction (with emergency funds).....	201
<p>State was given emergency funds to build two embassies (Kabul, Dushanbe), These one-time projects will not have to be repeated in 2003, and consequently the funds will not be needed in the CR.</p>	
Department of Justice	
Crime Victims Fund.....	31
<p>For victim counseling programs in New Jersey, Virginia, Pennsylvania, and other states affected the terrorist attacks.</p>	
District of Columbia	
Federal Payment for Emergency Planning and Security Costs.....	200
<p>\$200 million was provided to the District of Columbia, for the purchase of first responder equipment and training, improvements in emergency traffic management, and increased security at District facilities and the metropolitan subway and bus system.</p>	
Postal Service	
Payment to the Postal Service.....	500
<p>\$500 million in one-time expenditures were provided for irradiation equipment to sanitize the mail, protect personnel (gloves, masks, etc.), site clean-up and medical goods and services, and public education material.</p>	
Subtotal, One-Time Costs, Non-New York Funds	3,249
Subtotal, New York One-Time Costs	12,710
Total, One-Time Costs	15,959

General Guidance on OMB Authority to Grant Exceptions to the Automatic “Rate of Operations Not Exceeding the Current Rate”/Written Apportionments

Under this bulletin agencies are automatically apportioned an amount equal to the proportional “rate for operations not exceeding the current rate.” (See Attachment A) Without other specific authority granted in a CR, OMB has limited authority to grant a higher rate of expenditure than the proportional rate.

Under general principles of appropriations law, the pattern of obligations in prior years provides a framework for determining the pattern of obligations under a CR. For example, OMB may grant a higher rate if the program’s past pattern of obligations, for cyclical or seasonal reasons, exceeds the proportional share and the higher rate is urgently required to meet existing program goals. This past pattern must be evident from historical data for the program or activity. If OMB concurs that the data justifies a higher rate, the program may be apportioned a higher rate. However, the program must remain within the annual total provided in the CR, e.g., if a program exceeds its proportional share in one period, the agency must be apportioned a rate lower than the proportional share in a later period (assuming the CR is still in effect). OMB cannot legally grant higher rates to allow for pressures created by ongoing programmatic factors. For example, OMB cannot grant a higher rate for exceptions for fiscal pressures, such as growth in discretionary program costs or an increase in the cost of salaries and expenses.

For more information about apportionments under a CR, please consult the GAO Red Book, *Principles of Federal Appropriations Law*, and your OMB representative.