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The Antideficiency Act and Continuing Resolutions: The Historical Context

James V. Saturno

Specialist on Congress and the Legislative Process

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Topics

- The fiscal year and the congressional calendar
- Permissiveness and budget execution
- Congressional efforts to exert control over budget execution
- Antideficiency provisions
- Continuing resolutions



Power of the Purse

- Power of the Purse tied to congressional lawmaking authority
“No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law”
-- U.S. Constitution - Article I, section 9



Congress and the Calendar

- Sessions of Congress

“The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.”

-- U.S. Constitution - Article I, section 4

- The Fiscal Year

“ ... the fiscal year of the Treasury of the United States, in all matters of accounts, receipts, expenditures, estimates, and appropriations, shall commence on the first day of July in each year ... terminating on the thirtieth day of June in the succeeding calendar year.”

-- Act of August 26, 1842, Ch. 207, 5 Stat. 536



Budget Execution

- In the early years of the republic, agencies would transfer funds at will between accounts and some even borrowed funds to expand their spending power, assuming future appropriations would be made that would cover the loans. Congress attempted to create restrictions on agency spending actions through the “purpose statute”:

“the sums appropriated by law for each branch of expenditure in the several departments shall be solely applied to the objects for which they are respectively appropriated, and to no other.”

-- Act of March 3, 1809, Ch. 28, 2 Stat. 535



Coercive Deficiencies

- Agencies often undermined congressional fiscal control by either over-obligating to create coercive liabilities which Congress felt compelled to ratify or effectively doing so by obligating at a rate that was likely to produce a need for additional funds before the end of the fiscal year, resulting in enactment of antideficiency provisions:
“it shall not be lawful for any department of the government to expend in any one fiscal year any sum in excess of appropriations made by Congress for that fiscal year, or to involve the government in any contract for the future payment of money in excess of such appropriations”

-- Act of July 12, 1870, Ch. 251, 16 Stat. 251



Further Concerns

- In response to congressional efforts to constrain agency actions, President Grant suggested that congressional action was necessary:
“The near approach of a new fiscal year and the failure of Congress up to this time to provide the necessary means to continue all the functions of Government make it my duty to call your attention to the embarrassments that must ensue if the fiscal year is allowed to close without remedial action on your part.”
-- Special Message of President Grant to Congress, June 17, 1876



Continuing Resolutions

- Continuing resolutions created to provide for temporary availability of funds in order to prevent a funding lapse:
“... for a period not exceeding ten days from and after the thirtieth day of June ... unless the regular appropriations shall have been previously made ..., it shall be lawful to use for the necessary service of the Government, any unexpended balance which may exist ...; and in case no sufficient balance remains at the conclusion of the fiscal year ..., the necessary amount is hereby appropriated out of any money in the Treasury not otherwise appropriated, and no greater amount shall be expended under this act than such proportional sum of the appropriations of the fiscal year ending June thirtieth, eighteen hundred and seventy-six, as ten days time bears to the whole of said fiscal year, and such expenditure shall be only for the necessary operations of the Government under existing laws. All sums expended under this act shall be charged to, and be deducted from, the appropriations for like service for the fiscal year ending June thirtieth, eighteen hundred and seventy seven.”

-- Act of June 30, 1876, Ch. 157, 19 Stat. 65



Funding Lapses

- Persistence of delays in enacting appropriations still resulted in occasional funding lapses so Congress provided for retroactive ratification of agency spending during such a lapse:
“... appropriations for the service of the fiscal year 1920, contained in the Agricultural, Army, District of Columbia, Navy, and Sundry Civil Appropriations Acts, and the “Third Deficiency Appropriation Act, fiscal year 1919,” shall be available from and including July 1, 1919, for the purposes respectively provided in the said appropriations for the service of the said fiscal year. And all obligations incurred pursuant to the terms of such appropriations in the aforesaid Acts as approved are ratified and confirmed from and including July 1, 1919.”
-- Public Resolution No. 7, 66th Congress, July 31, 1919, Ch. 29, 41 Stat. 272



Retroactive Funding

- Standardization of language in continuing resolutions or other appropriations measures following a lapse in funding:

“Sec. 108. All obligations incurred in anticipation of the appropriations and authority provided in this joint resolution are hereby ratified and confirmed if otherwise in accordance with the provisions of this joint resolution.”

-- Public Law 95-482, October 18, 1978, 92 Stat. 1605

