

Recommendation 50: Enact regular appropriations bills on time.

Problem

CRs continue to undermine strategic execution of funds in the defense acquisition system.

Background

Congress is the sole entity with constitutional authority to fund the government:

The Congress shall have Power... to pay the Debts and provide for the common Defence and general Welfare of the United States... No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.¹

If the DoD acquisition system is to be resourced at all, it is Congress's fundamental constitutional responsibility to manage that resourcing process. Despite efforts by congressional leadership and the appropriations committees, Congress does not appear able to reliably pass defense appropriations bills on an annual basis prior to the start of the fiscal year.

Discussion

Although there is bipartisan acknowledgement of the problems associated with CRs, Congress continues to use CRs as a regular means of funding DoD. This state of affairs points to the intractability of the CR issue. Virtually all stakeholders agree that CRs are detrimental to the defense acquisition system, but Congress appears to lack the collective action capacity needed to ensure lasting change.

Conclusions

Ideally, the only recommendation for addressing the effect of CRs on defense acquisition would be for Congress to pass regular defense appropriations bills via the established process. If the appropriations process functioned as intended, CRs would be unnecessary and the Section 809 Panel's CR-related recommendations would be irrelevant. The process appears, however, to be broken. Unless Congress can find a way of repairing it, the subsequent recommendations in this section may serve as alternatives.

There are no easy solutions. CRs are a product of political gridlock and resulting congressional inaction. This problem is particularly intractable because of Congress's fundamental constitutional responsibility for appropriations. The only real solution to the problem of CRs is for the various factions of Congress to begin working together to pass appropriations in a timely manner each year (before October 1).² Until timely appropriations occur regularly, however, Congress could consider several options for mitigating the harmful effects of CRs on defense acquisition.

¹ U.S. Constitution, Article I, Section 8(12) and Section 9(7).

² Congress has shown a desire to develop a long-term, bipartisan solution to the CR problem. Attached to the fifth CR bill enacted in FY 2018, Congress included a provision establishing a Joint Select Committee on Budget and Appropriations Process Reform. The purpose of the joint committee is to "provide recommendations and legislative language that will significantly reform the budget and appropriations process." See Title IV, Subtitle B of the Bipartisan Budget Act of 2018, Pub. L. No. 115-123 (2018).

One way of avoiding future CRs might be to create a strong disincentive for Congress to rely on them. This approach could potentially be implemented without impinging on Congress's constitutional power of the purse.

For example, Congress could pass a law automatically exempting agencies, when operating under a CR, from certain oversight and reporting requirements (or loosening those requirements).³ This approach would presumably shorten acquisition timetables and free up limited manpower that would otherwise be dedicated to meeting reporting requirements. This manpower could then be reallocated to addressing the administrative challenges associated with CRs. Another approach would be to loosen DoD's deadlines and budget line-item rules for execution of funds under CRs. This approach is outlined in Recommendations 51 through 54 of this report.

Implementation

Legislative Branch

- Enact defense appropriations and authorization laws prior to the start of the fiscal year on October 1.

Executive Branch

- There are no regulatory changes required for this recommendation.

Implications for Other Agencies

- There are no cross-agency implications for this

³ As an example, Congress could enact a law exempting DoD, in years without regular appropriations enacted by October 1, from completing its inventory of contracted services reporting requirements under 10 U.S.C. § 2330a. This is just one of many defense acquisition reporting requirements from which DoD could be exempted in the event of a CR.