

INFORMED BUDGETEER: DON'T DUCK THIS BULLETIN

TARGETED DUCKS

- As summer turns to fall today (duck hunting season), it is also a reminder of the change in the federal government’s fiscal year that looms next week. And as many budgeteers have already spoken to the confused outlook for fiscal policy, the *Bulletin* contributes its assessment of the current murky state of affairs.
- Barring an unexpected breakthrough, it appears not one appropriations bill for FY 2003 (with the possible exception of the Defense bill) will be enacted within the next week. The most-cited reason for this is that the Senate bills amount to \$12 billion more than the President and some in the House want to spend, and thus the President has targeted the Senate bills for a veto. This 0-for-13 performance, while not unprecedented (see following table), suggests much more work remains than is likely to be accomplished over the first two weeks of October before the Congress breaks for the election, which begs the question – when will the work get done?

Appropriations Acts: FY 1977-2002 (Regular, Continuing and Omnibus)						
FY	President	Bills enacted by start of FY	Number of CRs	Omnibus Act or full year CR	Lame Duck	Shutdown duration
1977	Ford	13	2	no	–	–
1978	Carter	9	3	yes	–	28 days
1979	Carter	5	1	yes	–	17 days
1980	Carter	3	2	yes	–	11 days
1981	Carter	1	3	yes	yes	–
1982	Reagan	0	4	yes	–	2 days
1983	Reagan	1	2	yes	yes	4 days
1984	Reagan	4	2	yes	–	3 days
1985	Reagan	4	5	yes	–	3 days
1986	Reagan	0	5	yes	–	–
1987	Reagan	0	6	yes	–	1 day
1988	Reagan	0	5	yes	–	1 day
1989	Reagan	13	0	no	–	–
1990	Bush	1	3	no	–	3 days
1991	Bush	0	5	no	–	–
1992	Bush	3	4	yes	–	–
1993	Bush	1	1	no	–	–
1994	Clinton	2	3	no	–	–
1995	Clinton	13	0	no	yes	–
1996	Clinton	0	14	yes	–	26 days
1997	Clinton	7	0	yes	–	–
1998	Clinton	1	6	no	–	–
1999	Clinton	1	6	yes	yes	–
2000	Clinton	4	7	no	–	–
2001	Clinton	2	21	yes	yes	–
2002	Bush	0	8	no	–	–
2003	Bush	0	?	?	?	?

SOURCE: Calendars of the US House of Representatives (final edition) 82-107th Congresses; Congressional Research Service. Tabulated by SBC Republican Staff.

- Apparently, it is nearly a fait accompli that one or two Continuing Resolutions (CRs) will be enacted to keep the entire government operating through October 11. Then what happens? Is there a CR through November or December, and the Congress then tries again to complete all 13 appropriation bills before Christmas, or does a longer CR just kick it all over to the 108th Congress in February or March? Or both? The OMB Director recently suggested that the President would consider a CR that would keep the government running into next year if Congress did not attempt to increase spending beyond the 2002 levels and if Congress completed work on the Defense appropriations bill first.

WHY A (LAME) DUCK?

- Much ink has already been spilled assessing the desirability and likelihood of a lame duck, which is a session of an existing Congress that occurs after the new Congress has been elected in November but before it convenes its first session in January. The *Bulletin* has little to add to such speculation except a look back in history, based on work done by CRS.

- Modern day Congressional terms, beginning January 3 of every odd-numbered year, were created with ratification of the 20th Amendment to the Constitution in 1933. Prior to that amendment, lame duck sessions were routine since regular Congressional sessions began each December while the Congressional terms began on March 4 of every odd-numbered year. The following table outlines the main reasons for each of the 13 lame ducks that have occurred since 1935.

Reasons for the 13 Lame Duck Sessions between 1935 and 2000		
Reason	Number of Sessions Called	Session Year
Incomplete Approps bills	4	1970, 1980, 1982, 2000
Incomplete major legislation	1	1974 (also 1970 and 1980)
War - Internat'l Concerns	4	1940, 1942, 1944, 1950
Other ^a	4	1948, 1954, 1994, 1998

Source: CRS Report 98-872 GOV
^aOther reasons chronologically include summer resolution to reconvene on Dec. 31 to conclude 80th Congress, censure by the Senate of Senator Joseph McCarthy, passage of the bill implementing a new General Agreement on Tariffs and Trade (GATT), and proceedings in the House for the impeachment of President Clinton.

- Well over half of the lame duck sessions have been held to move remaining appropriations bills through Congress or to deal with war or other international concerns. And of the four sessions that focused on appropriation bills, all of them ended with an omnibus appropriations bill. If history is any guide – with no appropriation bills finished and congressional debate on war with Iraq still expected – a lame duck session this year looks inevitable.

WOUNDED DUCKS

- What a long-term CR would look like will depend, in part, on how “long-term,” which depends on whether there is a lame duck. Without definitive answers about that, the *Bulletin* has assembled several scenarios to illustrate how various CRs would stack up.
- While even part-time budgeteers already know what a continuing resolution is, it may still be useful to review the details. Cribbing heavily from OMB’s Circular No. A-11, CRs, which have been around in some form since the 1880s, are “joint resolutions that provide continuing appropriations for a fiscal year” when the regular appropriations bill has not yet been enacted. CRs are temporary appropriation acts that are intended to be only stop-gap measures, with the expectation that regular appropriation acts will eventually replace the budget authority contained in the resolution.
- A CR does not appropriate a specified sum of money, but rather uses a formula to provide for continuing projects or activities at a certain rate of operations. In the eight CRs needed for FY 2002 to avoid a shutdown in the agencies that had not yet had their regular appropriations bill enacted, the following language set the level: each “project or activity shall be continued at a rate for operations not exceeding the current rate.”
- What is a “rate for operations not exceeding the current rate”? OMB told agencies last year that a simple “**current rate**” **should be calculated by taking the net amount enacted in FY 2001, adding any 2001 supplemental appropriations** and subtracting any rescissions of 2001 BA, and adding any unobligated balance carried forward to 2001. The “rate of operations not exceeding” that current rate is arrived at by then subtracting the unobligated balance at the end of FY 2001.
- The current rate of operations is an annual amount, and normally a CR makes amounts available subject to the same terms and conditions that are specified in an appropriations act for the prior fiscal year. No new projects or activities (for example, for homeland security purposes) can be started or terminated under a CR, unless the CR has established additional terms and conditions that would allow for such action.
- Certainly plenty of CRs have been written in the past with alternative formulas that have lots of hemming and hawing about the “higher of”

DEAD DUCK

or “lower of” the President’s request or the House or Senate-passed bills, but current-rate CRs have predominated of late. The table below shows how a current-rate CR for 2003, as defined by OMB, would compare to the President’s 2003 budget request and to the current status of the 13 bills in the Senate.

- Some have suggested, however, that because of the extraordinary number and size of supplementals enacted in 2002 to respond to terrorism (\$20 billion and \$24 billion), one might consider a CR that excluded either some or all of these amounts from the 2002 base that is used to determine current rate. Those who suggest excluding supplemental amounts from the 2002 base argue that the supplementals include a lot of one-time spending, such as aid to New York for recovery from last September 11 terrorist attacks, which should not be carried forward in a current rate. For illustrative purposes, the last column in the table outlines a scenario that excludes all of the supplemental amounts from the base that is used to determine a current rate.

CBO Estimate of Current Rate Compared to the President’s Budget Request and Senate Current Status for FY 2003 (BA, \$ in Billions)				
Subcommittee	President’s Request ^a	Current Status ^b	Current Rate w/ Supps	Current Rate w/o Supplementals
Ag	17.1	18.0	17.2	16.4
CJS	40.8	43.5	43.6	40.8
Defense	0.6	0.6	0.6	0.6
Nondefense	40.3	42.9	43.0	40.3
Defense	366.5	355.1	334.2	317.4
DC	0.4	0.5	0.6	0.4
Energy-Water	5.5	26.3	25.3	24.6
Defense	15.9	15.9	15.2	14.7
Nondefense	9.7	10.4	10.2	9.9
Foreign Ops	16.5	16.4	16.6	15.4
Interior	19.0	19.3	19.2	19.1
Labor-HHS	131.0	134.4	128.4	124.6
Leg. Branch	3.4	3.4	3.3	3.0
Mil-Con	9.7	10.6	10.7	10.6
Transportation ^c	20.4	21.3	23.1	17.0
Defense	0.3	0.3	0.4	0.4
Nondefense	20.1	21.0	22.6	16.6
Treasury-Postal	18.0	18.5	18.5	17.1
VA-HUD	92.4	92.9	96.7	85.1
Defense	0.1	0.1	0.2	0.2
Nondefense	92.3	92.8	96.6	84.9
Advance Approps.	–	2.2	–	–
TOTAL	760.5	762.5	737.3	691.5
Defense	393.1	382.8	361.2	343.8
Nondefense	367.4	379.8	376.1	347.6

Source: CBO

^a The President’s FY 2003 Budget Request includes all budget amendments transmitted through September 13.

^b The Defense, Legislative and Military Construction Appropriations bills for FY 2003 have been passed by the Senate. The remaining ten FY 2003 bills have been reported by the Senate Appropriations Committee.

^c Includes mass transit budget authority of \$1.445 billion.

- Note that by adjusting the President’s request for the \$10 billion in defense reserve funds that congressional appropriators will not consider because it is inadequately specified, the President’s request of \$750.5 billion is \$12 billion less than the total Senate level.
- Under either current-rate scenario for a 2003 CR, OMB’s advice to agencies would apply – OMB suggests agencies focus on the questions: “What can I delay doing until after I receive my regular appropriation? [and] What are my minimal level requirements?” Perhaps agencies that have to operate under such conditions could be said to be limping along like a....well...wounded duck?

- The poster child for the \$12 billion dispute between the Senate, on the one hand, and the House and the President, on the other, is embodied by the House’s continuing labors over the ever-contentious Labor-HHS-Education bill. Fiscal conservatives want a bill at the President’s level of \$131 billion, while House appropriators and a majority of all House members insist that additional funding is needed.

- The Senate appropriators approved a Labor-HHS bill on July 18 with discretionary funding of \$134.4 in BA, which at first blush appears to be \$3.4 billion above the President’s request. *The Bulletin* decided to take a closer look at the Labor-HHS bill and assess the major differences between the President’s request and Senate-reported bill.

Senate-Reported vs. President’s Request in Labor HHS for FY 2003: Discretionary BA for Programs with Major Differences (\$ in Billions)			
Program/Agency	Senate Reported	President’s Request	Difference
School Improvement Programs	6.5	5.0	1.5
Health Resources and Services Admin.	6.2	5.4	0.8
Employment and Training Admin.	3.2	2.5	0.7
Centers for Disease Control	4.5	3.9	0.6
Student Financial Assistance	13.2	12.8	0.4
LIHEAP	2.0	1.7	0.3
Agency for Healthcare Research & Quality	0.2	–	0.2
Education for the Disadvantaged ^a	5.5	6.0	-0.5
Special Education ^b	3.6	4.6	-1.0
Other	89.5	89.1	0.4
TOTAL	134.4	131.0	3.4
Additional Adv. Appropriations in 2004	2.2	–	2.2
TOTAL w/Advance	136.6	131.0	5.6

Source: SBC Republican Staff, based on CBO

Totals may not add due to rounding

^a When advance appropriations for FY 2004 are included in the funding for Education for the Disadvantaged, the Senate bill includes \$14.1 billion compared to the President’s request of \$13.4 billion, a difference of \$0.7 billion.

^b When advance appropriations for 2004 are included with the funding for Special Education, both the Senate bill and the President’s request total \$9.7 billion.

- The differences include an additional \$300 million in the Senate-reported bill for the Low Income Home Energy Assistance Program (LIHEAP). The Senate designates this \$300 million as a contingent emergency even though that designation serves only rhetorical, not legal, purposes. With no caps or allocations in place for FY 2003, there is nothing for an emergency designation to adjust.

- Beyond this difference, the Senate bill also exceeds the President’s request of advance appropriations for FY 2004 by \$2.2 billion, all in the Department of Education. So the effective difference between the Senate bill and the President’s request is \$5.6 billion, which accounts for almost half of the total difference between the President and the Senate bills.

- The differences between the two proposals are clearly significant and span a wide array of programs. The stymied Labor-HHS bill in the House clearly illustrates that the current situation is not at all “ducky.” While the overall difference is small (only about 1 percent of discretionary spending), the two sides are far apart, with negotiations yet to start and an election still to be held.