



Insight

# Outlawing Shutdowns

GORDON GRAY | NOVEMBER 20, 2019

## Executive Summary

- Congress is debating several measures that would automatically fund the government—and thus prevent government shutdowns – if it fails to reach agreement on funding levels.
- In general, the measures diverge in their approaches, from simply providing automatic funding, to providing automatic funding but with some form of fiscal cost to imposing other restrictions on policymakers and the legislative process.
- Inducements for policymakers to provide for timely appropriations is a balancing act; Congress should be mindful to avoid making the fraught scenario of a future funding lapse worse.

## Introduction

The beginning of the year was not an auspicious occasion for fiscal policy: The federal government experienced the longest funding lapse, or “shutdown,” in history. Such shutdowns are costly to the [government, to citizens, and to the economy in general](#), and there appears to be bipartisan agreement that they should be avoided in the future. Indeed, Congress has been debating several measures that would, in various forms, automatically fund the government if Congress fails to reach agreement on funding levels. The bills have a variety of features for preventing funding lapses, some more elaborate and punitive than others. In considering these measures, Congress appears to recognize that shutdowns are costly and avoidable and make for poor politics. That fact alone is worthy of recognition, but Congress should carefully evaluate the tradeoffs presented by some of these measures before passing one into law.

## Approaches to Preventing Shutdowns

The ideal shutdown prevention would be for Congress to follow the budget process and pass all 12 regular appropriations bills on time, long before the end of the fiscal year. But that is an ideal to which Congress has rarely adhered. Continuing resolutions (CRs), omnibus packages (legislation containing some or all annual appropriations), and other more expedient funding vehicles have been the rule rather than the exception for Congress’s discharge of its power of the purse. Indeed, compared to a shutdown, there is a certain appeal to just having an automatic funding backstop the increasingly common eventuality of a shutdown.

The challenge is designing policy that will preclude the waste of a shutdown, without creating new fiscal mischief along the way. Congress is currently considering a number of measures that attempt this balance. One example is Senator Mark Warner’s and Representative Abigail Spanberger’s legislation – the Stop STUPIDITY (Shutdowns Transferring Unnecessary Pain and Inflicting Damage In The Coming Years) Act – that would provide for an automatic continuing resolution at the prior year’s funding levels plus inflation. Essentially, this bill would place the entire federal government on autopilot.

The problem, of course, is that Congress appears to have lost its appetite for legislating, and one can contemplate Congress defaulting to this approach regularly. Essentially two-thirds of all federal spending is

already outside of annual congressional control. Given the lack of productive legislating in recent years, one could be forgiven for imagining that Congress would get comfortable with regularly letting itself off the hook on the other one-third.

The challenge for legislators is therefore to craft legislation with sufficient inducement for Congress to legislate on funding bills, but without so much pain as to be unsupportable or counterproductive. Senator Rob Portman and Representative Troy Balderson have proposed one approach that could be viable. They have introduced legislation that would also provide for an automatic continuing resolution at the prior year's funding levels. That should be the carrot for legislators and the executive branch – no pointless shutdown, no furloughed employees, and no angry constituents (no more than usual, at least). The stick in this approach is a common one in budget laws: the threat of a future spending cut. The Portman/Balderson approach would reduce spending levels by 1 percent after 120 days and additional reductions 3 months later and thereafter.

This mechanism would give policymakers ample time to negotiate, without attempting to impose fiscal policy changes. This proposal stands in contrast to approaches like that of Senator Rand Paul, whose legislation would impose an immediate spending reduction with follow-on reductions over certain periods thereafter. This approach, while presumably well intentioned, does not appear to have a path to enactment.

Last, one measure, which was reported out of the Homeland Security and Government Affairs Committee over the summer – the Prevent Government Shutdowns Act, sponsored by Senators James Lankford and Maggie Hassan – takes a different approach, looking to processes outside of funding as the “stick” to get Congress to pass funding bills. Instead of fiscal sticks, the bill focuses its pain on policymakers and congressional procedure. The Act would provide for an automatic CR in the event of a funding lapse without the threat of immediate or future reductions. During the period in which the automatic CR is in place, the bill would restrict federal funding for travel expenses for members of Congress and certain executive branch officials. Pay for members of Congress would also be held in escrow. Procedurally, as well, the bill would impose significant restrictions on what could be considered for debate in the House and Senate at the time. While this approach is well intentioned, there is good reason to question whether complicating the legislative process would make a bad situation – the regular funding gap – worse.

These measures also all share an oddity of congressional budgeting: They appear to [increase government spending](#) significantly. But this apparent increase is simply a function of the automatic nature of these bills. They turn what would normally be discretionary funding, which the Congressional Budget Office (CBO) does not score or count in these estimates, into mandatory funding, which CBO does count in its cost estimates. This compositional change in federal spending merely *looks* like a spending hike, but the net budget effect would be either neutral or deficit-reducing.

## Conclusion

Congress's attention to avoiding future shutdowns is commendable. In considering the right approach, however, Congress should avoid measures that encourage its worst traits, such as apathy and inaction. Measures that merely place the entire government on autopilot should be carefully scrutinized, while other measures that introduce labyrinthine procedural hurdles could make rare legislating even more difficult. Nevertheless, with the federal government running into another fiscal deadline, the movement in this debate is encouraging.