



Here comes the shutdown: key points

Federal Affairs Alert

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Welcome to the government shutdown.

As of noon today, there is hope that this shutdown of the government will not last very long (some are forecasting only one or two days). But Congress has proven to be quite unpredictable (and the situation could change at any moment). Plus, this battle is a precursor to the next big battle over efforts to raise the debt ceiling.

What impact will the shutdown have? Here are some of the highlights.

- The government shutdown will affect every department, agency and program that relies on discretionary funding through the annual appropriations process.
- About 800,000 “non-essential” federal workers will be furloughed beginning Tuesday, October 1.
- The Congress has exempted most of the military personnel at the Department of Defense.

In the past 36 years, the United States has experienced a series of government funding crises. **Since 1977, the government has had 17 government shutdowns** (none since 1996) and enacted numerous continuing resolutions (CRs) to fund operations and avoid shutdowns. In fact, to keep the lights on, Congress has resorted to the frequent use of CRs. It has passed at least one CR in every year since 1997.

Given this history, the government has experience in preparing for funding gaps and government shutdowns.

Since 1980, the Office of Management and Budget (OMB) has required every department and agency to develop and maintain a plan for “an orderly shutdown” in case of a lack of an appropriations. Last week, OMB sent a memo to all executive branch departments and agencies providing additional guidance for planning for a potential shutdown and ordering managers at all federal agencies to conduct reviews and make contingency plans to see which of their employees are deemed essential vs. non-essential. The agency plans are at this link.

If a shutdown occurs, essential workers continue to work without pay (more on this below) and non-essential workers will go home after a half-day of preparing to close up.

Many key government functions will carry on during a shutdown, including anything related to national security, public safety or programs written into permanent law (like Social Security), including:

- **Any employee or office that “provides for the national security**, including the conduct of foreign relations essential to the national security or the safety of life and property,” such as the US military. *Note: on September 30, the Senate passed HR 3210 to pay the military in the event of a shutdown.*

- **Any employee who conducts "essential activities to the extent that they protect life and property,"** like air traffic control, emergency medical care, food-safety inspections, border patrol, federal prisons, law enforcement, emergency and disaster assistance, overseeing the banking system, operating the power grid and guarding federal property.
- **Agencies that have to keep sending out benefits and operating programs written into permanent law** or get multi-year funding, such as sending out Social Security checks and providing certain types of veterans' benefits.
- **All agencies with independent sources of funding,** including the US Postal Service and the Federal Reserve.
- **Congress,** since its funding is written into permanent law. Some White House employees may have to go home.

Essential employees will not receive a paycheck during the shutdown; however, they will receive retroactive pay when Congress decides to fund the government again. **Pay for nonessential employees is less clear.** The last time this occurred, those that reported to work on the first day of the shutdown to secure various files and make preparations necessary to halt their programs received retroactive pay by Congress when the government reopened.

For government contractors and grantees, this memo from OMB (mentioned above) has a thorough examination in the FAQs of how they are to be treated and what activities will continue (or not) during a shutdown.

We will keep you apprised of developments.

For more information, please contact Steven R. Phillips and Sarah Donovan.

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