

Frequently Asked Questions: Government Shutdown

Congressman Miller remains committed to cutting spending and reducing our nation's unsustainable debt while keeping the government open. However, unless a year-end funding measure or a temporary extension is agreed to, there is a very real possibility of a government shutdown beginning April 9th.

Congressman Miller has prepared this document to address concerns constituents may have about the impact of a shutdown on Social Security and Medicare benefits, our armed forces, veterans' assistance, and other federal agencies and services.

It should be noted however that it is the responsibility of the executive branch – not Congress – to determine which executive branch activities are carried out during a government shutdown. Therefore the information below is subject to change.

As always, please do not hesitate to contact Congressman Miller's Brea Office at (714) 257-1142 with any questions involving a federal agency.

Veterans:

How would a shut down affect veterans' pensions?

According to the House Committee on Veterans Affairs, disabled veterans in receipt of disability compensation or pension checks should continue to receive those payments. Veterans with new or pending claims may be impacted with a delay in their claims until funding for claims processors is appropriated.

How would a shut down affect survivor benefits?

According to the House Committee on Veterans' Affairs, survivor benefits are similar to disability/pension benefits paid to veterans. Thus, survivors currently in receipt of Dependency and Indemnity Compensation or Survivors' Pension will continue to receive those payments. New claims may be delayed. The House Committee on Veterans' Affairs is attempting to confirm this with the Administration.

How would a shut down affect veterans' educational assistance?

The House Committee on Veterans Affairs attempted but was unable to get guidance from the Administration in an April 5th hearing. A bipartisan letter has been sent to the VA Secretary requesting a briefing on a shutdown contingency plan.

How would a shut down affect veterans disability compensation and claims processing?

According to the House Committee on Veterans Affairs, disability compensation would be the same for survivor, education, and pension benefits. Those checks would go out, but no new claims would be adjudicated.

How would a shut down affect veterans housing?

The House Committee on Veterans Affairs attempted but was unable to get guidance from the Administration in an April 5th hearing. A bipartisan letter has been sent to the VA Secretary requesting a briefing on a shutdown contingency plan.

How would a shut down affect veterans Health services – through VA hospitals, reimbursement for other services?

According to the House Committee on Veterans Affairs, the VA received a full year appropriation to operate its health care system for all of FY 2011. Therefore, veterans' medical care would not be affected. Hospitals, clinics, Vet Centers, and homeless domiciliaries would remain open.

What would happen to VA hospitals and clinics? Would they still operate and could veterans receive treatment, including pharmacological? If there was an emergency and the VA Offices were closed would the VA pay the bill if a Veteran went to a civilian hospital for treatment?

According to the House Committee on Veterans Affairs, medical care is already fully funded is not an issue; however additional information is not being released by the Administration. The committee sent a bipartisan letter to the VA Secretary requesting a briefing tomorrow on shutdown contingency planning.

Military:

Would members of the military be paid?

According to the House Committee on Armed Services, Military personnel would serve without pay until funds are appropriated by Congress and signed into law by the President. In any shutdown plan, all military personnel would be deemed exempt and would not be subject to furlough. Accordingly, military personnel on active duty, including reserve component personnel on Federal active duty, would continue to report for duty and carry out assigned duties. Generally, they would accrue pay but not receive a paycheck for any days worked after April 8th until an appropriations bill is passed. Once an appropriation is passed, service members would be paid for the days for which they received no pay.

- *If there is a government shutdown at midnight on April 8th, service members would receive midmonth pay (on April 15th) for the 8 days of April covered by the current continuing resolution (CR).*
- *If there is a 1 week extension of the current CR through April 15th, service members would receive their normal midmonth pay for the first 15 days of April.*

Would military operations overseas be affected? How would it impact operations in the three war theaters?

According to the House Committee on Armed Services, in developing the Department's shutdown plan, the Secretary of Defense would ensure mission accomplishment of critical activities that are needed to prosecute the war in Afghanistan, to complete the military mission in Iraq, and to ensure safety of human life and protection of property including operations for the security of our nation. These activities would be considered "exempt" from shutdown. The Service Secretaries, under the DOD guidance, would also have flexibility to determine what activities should be exempt.

How would services and benefits for military families be impacted?

According to the House Committee on Armed Services, though the shutdown would have a direct impact on families, according to guidance issued by the Department of Defense, among the exempt activities that would continue are:

- *Inpatient care in DOD hospitals and acute and emergency outpatient care in DOD hospitals and treatment facilities, but not things like elective surgeries or other procedures.*
- *Department of Defense schools, "to the extent required by law."*
- *Legal assistance for deploying and deployed service members.*
- *Morale, Welfare and Recreation activities supporting exempt activities. For example, operation of mess halls, physical training, and child care activities required for readiness; and any activity funded solely through non-appropriated funds.*

Would resources be available to troops? (ammunition, vests, equipment, etc)

According to the House Committee on Armed Services, the Department's guidance does not identify every exempt activity, but makes it clear it would be applied in the context of a Department at war, with decisions guaranteeing robust support for those engaged in war, and with assurance that the lives and property of our nation's citizens would be protected.

What would happen to military installations? Would they be closed?

According to the House Committee on Armed Services, the Department of Defense and each of the Service Secretaries would have latitude in determining which operations and activities are exempt from the shutdown. According to DOD guidance, military operations and activities determined necessary for national security, including administrative, logistical, medical, and other activities in direct support of such operations and activities would be exempt.

Would defense contract operations continue?

According to the House Committee on Armed Services, DOD guidance is that contractors performing under a contract that was fully obligated prior to the expiration of appropriations may continue to provide contract services, whether in

support of exempt activities or not. However, new contracts may not be executed unless the contractor is supporting an exempt activity.

Benefits:

Would Social Security checks still go out? If the checks are stopped, would all monies due be paid eventually?

Because Social Security benefits are not subject to appropriation, the Social Security Administration has told the House Committee on Ways and Means that the checks would go out.

Would Medicare payments be made, to doctors, hospitals, including emergency hospitalization and ER visits?

The House Committee on Ways and Means asked the Centers for Medicare and Medicaid Services (CMS) if they have any information as to what would happen if there were a government shutdown and CMS would not give any guidance. According to Ways and Means, CMS had not thought about it.

According to Ways and Means, the House Committee on Financial Services also made a similar request to CMS. CMS did note that Medicare doesn't pay in real time. There's a minimum two week lag time, so if the government is shut down for more than two weeks there could be an issue. CMS could also hold claims like they did with doctors in a previous situation. According to the Congressional Research Service, non-essential services could see an impact. The U.S. Department of Health & Human Services will have to issue guidance on what they deem to be essential

Would Medicaid/SCHIP payments be made?

According to the House Committee on Energy and Commerce, because Medicaid allotments are paid to states in advance on a quarterly basis, it is likely states will not see an immediate impact from a temporary government shutdown and consequently, nor will providers who serve the Medicaid and SCHIP populations.

What would happen with disability benefits (SSDI)?

According to the Committee on Ways and Means, disability benefits would continue to be paid. New benefit applications for retirement, disability, and survivors benefits may be delayed depending on the staffing plan Social Security develops, as the number of staff on hand would determine the amount of work processed. The plan is still with OMB for their review.

What would happen with Unemployment Benefits?

According to the House Committee on Ways and Means, benefits weren't affected during the 1996 shutdown, and as mandatory spending, they would not expect them to be. States were just transferred their quarterly amounts to pay state benefits through at least the next two months. There is a concern about

federally funded state administrative funds, but the Department of Labor just did a major transfer of state administrative funds in anticipation of the shutdown.

What would happen with Work training programs?

According to the House Committee on Education and the Workforce, workforce training programs are funded through June. Unless there is a protracted shutdown there should be no impact.

What would happen with Welfare (TANF)?

According to the House Committee on Education and the Workforce, TANF is shared jurisdiction with Ways and Means. Education and the Workforce has jurisdiction over the work requirements portion and Ways and Means has jurisdiction over the funding. According to staff at the House Ways and Means Committee, TANF is authorized through FY 2011, and states have received their quarterly allocations through June 30. As a result, there would be no effect on states receiving their federal funds to run TANF. TANF was extended by the Claims Resolution Act of 2010 (H.R. 4783) for all of FY 2011.

How would housing – Section 8, Section 202 (elderly), Section 811 (disabilities), homelessness programs – be affected?

According to the House Financial Services Committee, HUD programs would be affected in some way though it is not clear how. Most of the HUD programs are run on schedules other than day-to-day Federal involvement – that is, they are administered by local authorities, they are grants made to non-Federal entities (public or private), or they are contract payments made in advance (payment is made now for services to be rendered, rather than services being performed and sending a bill after). In some way, and depending on the length of a shutdown, those programs would be affected where there will be no actual disbursements under 202 or 811 during the shutdown. However, they will not close overnight.

Would the Pension Benefit Guaranty Corporation be affected?

According to the House Committee on Education and the Workforce, participants in terminated plans at PBGC would not be affected by a government shutdown.

How would Food stamps be affected?

According to the House Committee on Agriculture, without knowing USDA's contingency plans, it's hard to definitively say what would happen to food stamps. In short, food stamps would not immediately be affected at all. Food Stamps since they are administered at the state level should continue. USDA would have to determine how exactly that happens, but in the 1996 shutdown food stamp delivery was not compromised. During an absence of appropriation every agency would have to limit obligations to those needed to maintain the minimum level of essential activities necessary to protect life and property. It's believed food stamps would be maintained, but without definitive word from USDA it is speculation. Food stamp recipients should see no lapse in their benefits.

What would happen to school lunches?

According to the House Committee on Education and the Workforce there should be no impact felt by students. They would continue to get a school lunch. Unless the shutdown dragged on to May there would be no impact by the schools. The program is reimbursed on a quarterly basis and the next reimbursement would be in May.

How would student Loans/work study be affected? Would funding be released? Would repayment checks be cashed?

According to the House Committee on Education and the Workforce, CRS has limited information on the student aid programs as OMB has directed the agencies not to speak to anyone about shut down plans. Most of the impact is still unclear. However, Pell Grants would likely continue to be made since those are forward funded. Loan funds would likely continue to flow but there is some question about the administrative aspects of the aid disbursement. Much of student aid is run by contractors, who would have likely been paid for the year (although, that is not certain either). It is unclear about whether students would be able to file their FAFSAs since there would not be any administration support for the website, etc.

Would FHA Mortgage loans be affected?

According to the House Financial Services Committee, under a temporary government shutdown, FHA will no longer have the commitment authority to endorse/insure new loans. Lenders offering FHA loans may chose to go forward with the loan at closing, but they would have to assume the risk that FHA would normally take on. Some lenders' internal governance do not allow that, others do; it depends on the individual lender. Therefore, while the FHA endorsement process does not come until a couple of weeks after closing, it is committee staff's understanding that a temporary shutdown could disrupt closings.

How would the National Flood Insurance Program be affected in terms of mortgage closings and payment of claims?

According to the House Financial Services Committee, NFIP would continue to pay claims and sell policies in the event of a shutdown. Responses to day-to-day questions would be curtailed due to only essential personnel being on the job.

Federal Services:**Would the mail be delivered? Would post offices be open?**

According to the House Committee on Oversight and Government Reform, the U.S. Postal Service would continue mail delivery, retail service, and other operations in the event of a government shutdown. The Postal Service is essentially funded through the sale of postage.

Would National Parks and Museums (Smithsonian) be shut down?

According to the House Committee on Natural Resources, parks would be closed to public use. "Critical" personnel would be kept in place for resource protection (and to tell people that arrive that they are closed). The National Park Service has informed the Natural Resources Committee that they do not expect to close access to open entrance park land, such as the National Mall and the GW Parkway. According to CRS Report RL34680, while not indicative of future behavior, 368 National Park Service sites (loss of 7 million visitors) reportedly occurred in a previous shutdown.

Administration

What is being done to ensure consistency from agency to agency in the designation of essential personnel? (i.e. what if one agency only deems emergency/first responder type personnel essential where another might take a broader liberal view and consider someone who is conducting research?)

According to Congressional Research Service Report RL34680, OMB's Circular No. A-11 requires executive agencies to submit to OMB "plans for an orderly shutdown in the event of the absence of appropriations" when the plans are either first prepared or later revised. OMB has required the development and maintenance of these shutdown plans since 1980. It is not clear, however, the extent to which agency shutdown plans have been made publicly available or systematically shared with Congress and agency stakeholders for feedback.

Scrutiny over agency shutdown plans may provide incentives for agencies to improve the quality of the plans, should it become necessary at some point for agencies to execute the plans, and may inform budget policy debates about the potential impacts of shutdowns. On the other hand, such inquiries may distract agency personnel from other duties and raise sensitive issues regarding what activities and employees should be considered exempt from Antideficiency Act restrictions.

The Office of Management and Budget (OMB) provides agencies with annual instructions on how to prepare for and operate during a funding gap in Circular No. A-11. The circular cites the two Civiletti opinions and the 1995 OLC opinion as "background" and "guidance." The circular establishes two "policies" regarding the absence of appropriations: (1) a prohibition on incurring obligations unless the obligations are otherwise authorized by law and (2) permission to incur obligations "as necessary for orderly termination of an agency's functions," but prohibition of any disbursement (i.e., payment).

According to the CRS report, the circular also directs agency heads to develop and maintain shutdown plans, which are to be submitted to OMB when initially prepared and also when revised. Agency heads are to use the DOJ opinions and the circular to "decide what activities are essential to operate their agencies

during an appropriations hiatus." Among other things, a shutdown plan is required to include

- *an estimate of the time to complete the shutdown, to the nearest half-day;*
- *the number of employees expected to be on-board (i.e., filled positions) before implementation of the plan;*
- *the total number of employees to be "retained" under the plan (i.e., not subject to furlough), broken out into two categories: (1) employees "engaged in military, law enforcement, or direct provision of health care activities" and (2) employees whose "compensation is financed by a resource other than annual appropriations"; and*
- *the total number of additional employees who will be retained, in order to protect life and property, who are not "exempt" from furlough because of the two previous criteria, above.*

Does the President get paid?

According to the Committee on Oversight and Government Reform, under current law, the President continues to receive a paycheck during a federal government shutdown.¹ His salary is paid through mandatory spending rather than through the appropriations process.

What essential agencies would be in operation during the shutdown?

The House Committee on Oversight and Government Reform anticipates essential government functions spread across agencies and departments will continue. Employees responsible for imminent threats to human life or property will continue to work, as determined by their agency.

Relevant guidance includes the OMB Memorandum of November 17, 1981, that counseled:

"Beginning [on the first day of the appropriations hiatus], agencies may continue activities otherwise authorized by law, those that protect life and property and those necessary to begin phase down of other activities. Primary examples of activities agency many continue are those which may be found under applicable status to:

- *Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.*
- *Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.*
- *Conduct essential activities to the extent that they protect life and property, including:*
 - *Medical care of inpatients and emergency outpatient care;*
 - *Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;*

- *The continuance of air traffic control and other transportation safety functions and the protection of transport property;*
- *Border and coastal protection and surveillance;*
- *Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;*
- *Care of prisoners and other persons in the custody of the United States;*
- *Law enforcement and criminal investigations;*
- *Emergency and disaster assistance;*
- *Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;*
- *Activities that ensure production of power and maintenance of the power distribution system; an*
- *Activities necessary to maintain protection of research property.*

Would the FDA be affected – for example food inspection, drug approvals?

CRS notes that essential services, such as, “activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials,” would likely be preserved. This is up to the Agencies, but if in the interest of public health, it is likely that those activities would continue, even if streamlined. According to CRS, they cannot comment specifically on the status of food safety inspections by FDA during a funding gap. The situation may be slightly different from that for meat and poultry (regulated by USDA Food Safety and Inspection Service), for which inspection is required in order for a product to be introduced into commerce. In both cases, however, it is up to the agencies and OMB to determine "excepted" positions.

Does the interest on the debt still get paid?

According to the House Budget Committee, interest on the debt would still get paid in the event of a government shutdown. Revenues would still be coming into Treasury to cover interest payments and it could still issue debt to make payments. A shutdown would be different than breaching the debt limit. If the debt limit was breached and the government was prevented from legally borrowing money, then interest payments could go unpaid and the government could "default."

Law Enforcement and Federal Assistance:

Would FBI agents come off the streets?

Using past shutdown experience as a guide, the House Committee on Oversight and Government Reform anticipates that FBI agent personnel would be exempt from furlough and thus continue to perform their assigned duties. In accordance with OMB Circular No. A-11, the FBI prepares an annual plan which guides agency activities in the absence of appropriations. This includes a breakdown of employees that would be retained in absence of appropriations because they are

“engaged in military, law enforcement, or director provision of health care activities.”

Would CIA officers get paid?

Using past shutdown experience as a guide, the Committee on House Oversight and Government Reform anticipates that CIA officers would be considered excepted employees and required to work during a shutdown. Consistent with OPM guidance,⁴ CIA officers who qualify as excepted employees would continue to earn pay, but would not receive pay until the enactment of appropriated funds.

Do computer operated government systems shut down? Would local law enforcement still have access to Federal databases? Would the National Instant Criminal Background Check System (NICS) still be available so that firearm purchases would not be interrupted?

It is the understanding of the House Committee on Homeland Security that state and local law enforcement would continue to have access to federal law enforcement databases for homeland security oriented issues and access to the government systems that support them. DHS has not yet provided the Committee specific information on these issues.

Would FEMA and disaster assistance be affected?

The House Committee on Homeland Security has been informed that disaster assistance would likely not be affected because the Disaster Relief Fund is categorized as “no year money.” DHS has not yet provided the Committee specific information on these issues. Though not indicative of future shutdown activities, emergency and disaster assistance was an excepted activity in FY 1996.

Travel:

Would the passport offices still be open to receive applications/process passports since they are a fee for service operation?

According to the House Foreign Affairs committee, the State Department has not yet issued any final guidance, and these issues are still under internal discussion. State did say that during the mid-1990s shutdown processing was cut back to just emergency passport and visa issuance. Normal passport and visa processing was put on hold. According to the committee, Consular Affairs says that while those activities are largely fee-for-service funded – not all of the links in the issuing chain are fee-funded. Though not necessarily indicative of future shutdown effects, in the past approximately 20,000-30,000 applications by foreigners for visas reportedly went unprocessed each day; 200,000 U.S. applications for passports reportedly went unprocessed; and U.S. tourist industries and airlines reportedly sustained millions of dollars in losses.

How would this affect our customs and border patrol? Airport screeners? Air Traffic Controllers? What would happen to U.S. Border Patrol agents at the U.S.-Mexican border?

It is the understanding of the House Committee on Homeland Security that CBP agents and TSA screeners would likely be deemed essential personnel and that they would continue to be operational. DHS has not yet provided the Committee specific information on these issues. Though not indicative of future shutdown activities, border and coastal protection and surveillance and the continuance of air traffic control and other transportation safety functions and the protection of transport property was an excepted activity in FY 1996. In FY 1996 cancellation of the hiring of 400 Border Patrol agents occurred during the shutdown according to the report.

How would TSA be affected?

It is the understanding of the House Committee on Homeland Security that Customs and Border Protection agents and TSA screeners would likely be deemed essential personnel and that they would continue to be operational. DHS has not yet provided the Committee on Homeland Security specific information on these issues.

Would there be disruptions in the aviation system? Would air traffic controllers be affected?

According to the House Committee on Transportation and Infrastructure, Air Traffic Controllers would continue operating as normal. Almost all ATCs are considered essential/exempt

Federal Projects and Operations:

Would federal courts shut down? How would pending cases be treated? Would timelines keep running?

According to the House Committee on the Judiciary, the Administrative Office of the U.S. Courts (AO) has said that the Federal Judiciary would not have to shut down immediately because of the availability of other sources of funds. During previous shutdowns, the Judiciary used fee revenues and “carryover” funds from prior years to support what it considered its essential function of hearing and deciding cases, including payment of salaries and benefits of all judges and court employees, as well as support and administrative. These funds should sustain Judiciary activities for approximately ten working days after an appropriations lapse. Once these balances are exhausted, if a lapse in appropriations still exists, each court will need to limit its operations to mission-critical activities, but the AO expects most judicial functions should continue during any appropriations lapse.

- *U.S. courts should continue to hear and decide cases without interruption. Thus, all cases including civil and criminal, old and new should be processed and argued, and judgments should be issued and enforced, according to normal schedules and priorities. Judicial activity should be*

limited to those functions necessary and essential to continue the resolution of cases.

- *Most activities of probation and pretrial services office staff will continue. Supervision of potentially dangerous probationers and parolees will be maintained and needed treatment services should be provided. In non-emergency situations, probation and pretrial services should continue to handle new cases or maintain existing cases.*
- *The jury system will operate as necessary to assist the courts in the performance of Article III duties, though juror payments may be delayed.*
- *Attorneys and essential support staff in federal defender offices and court-appointed counsel will continue to provide defense services, as needed.*
- *Interpreters, librarians, circuit executives, and other like personnel will continue to be employed only if necessary.*

Recently, an AO spokesperson said serious disruptions could occur if a shutdown were prolonged. This could mean that the district and circuit courts couldn't afford to pay jurors, court reporters, clerks, probation officers, or security personnel. At that point, each court would have to determine which employees are "essential" for furlough purposes. Obviously, litigation conducted by Federal agencies could be delayed, even if the Federal courts remain open, because agency lawyers may not be considered exempt employees. That could delay certain types of litigation against the government, including claims for Social Security disability benefits, veterans' benefits, claims for medical injuries, and the like. Bankruptcy courts should continue those operations that may be considered part of the exercise of the judicial power of the United States or which preserve life or property. During the FY 1996 shutdowns, work on many bankruptcy cases was suspended.

Would prisons be secure?

According to the House committee on the Judiciary, care of prisoners and other persons in the custody of the United States is considered an excepted activity, as are personnel, in the event of a shutdown. Everyone who works at the Bureau of Prisons is considered a federal law enforcement officer and expected to help with safety, even if their daily focus is on food preparation, health services, or something of the sort. Thus, during the last shutdown all prison employees were treated as essential. However, there will likely be some furloughs at the administrative offices, but employees working on intelligence and monitoring will likely also be considered essential. The same is likely to be true for pre-trial detainees held in the custody of the U.S. Marshals Service.

What would happen with federal contracts?

Federal employees and contractors cannot be paid, for example, if appropriations have not been enacted. It would still be possible under the Constitution, nevertheless, for the government to make contracts or other obligations if it lacked funds to pay for these commitments. The so-called Antideficiency Act prevents this, however. The act prohibits federal officials from obligating funds

before an appropriations measure has been enacted, except as authorized by law. The act also prohibits acceptance of voluntary services and employment of personal services exceeding what has been authorized by law. Exceptions are made under the act to the latter prohibition for "emergencies involving the safety of human life or the protection of property." Therefore, the Antideficiency Act generally prohibits agencies from continued operation in the absence of appropriations. Failure to comply with the act may result in criminal sanctions, fines, and removal.

Would non-federal entities be able to continue administering federal grants? ie: research through NIH

While not indicative of future shutdowns, in the past new patients were not accepted into clinical research at the National Institutes of Health (NIH) clinical center; the Centers for Disease Control and Prevention ceased disease surveillance; and hotline calls to NIH concerning diseases were not answered.

Taxes:

Would tax returns get processed and refund checks get issued?

According to the House Committee on Ways and Means, with regard to tax filings and refunds, this would be the first time the IRS would be faced with a government shutdown during tax season. IRS Commissioner Shulman testified at a Ways and Means Oversight Subcommittee hearing last week and said he was working with OMB to prepare for such an event. He would not elaborate beyond that. According to IRS Legislative Affairs, there would be some minimal level of staff present, and they would expect there would be some staff handling filings and refunds. If the IRS does not provide a refund within 45 days, the government would be required to pay interest. OMB has instructed the IRS not to disclose any further information about the plans for a government shutdown.

International Affairs

Would foreign embassies and Consulates be shut down?

According to the House Foreign Affairs Committee, State Department internal guidance has been finalized, but not yet promulgated (which would require a decision at the most senior level). While they cannot talk specific details, it would almost certainly parallel their practice during the FY1996 shutdown, which paired down Embassy/Consulate staffs to essential personnel. While they still would provide some level of American Citizen Services overseas, they would curtail visa processing.