



Date: January 7, 2019
To: Mayor and Members of the City Council
From: Patrick H. West, City Manager *T.H.W.*
Subject: **2018 Federal Government Shutdown**

For information, the City of Long Beach's (City) federal legislative lobbyists, Dentons, provided the City with an overview of the partial federal government shutdown. Already into the third week of the partial federal government shutdown, the Senate and House of Representatives have not yet reached a consensus on border security funding influencing President Trump to consider declaring a national emergency in order to secure funds. This primer addresses key concerns regarding federal employee statuses, grants, and operations.

City staff will continue to monitor federal government developments throughout the partial government shutdown.

If you have any questions, please contact Diana Tang, Manager of Government Affairs, at 562-570-6506 or Diana.Tang@longbeach.gov.

CC: CHARLES PARKIN, CITY ATTORNEY
LAURA L. DOUD, CITY AUDITOR
TOM MODICA, ASSISTANT CITY MANAGER
KEVIN JACKSON, DEPUTY CITY MANAGER
ALL DEPARTMENT DIRECTORS
REBECCA GARNER, ASSISTANT TO THE CITY MANAGER
MONIQUE DE LA GARZA, CITY CLERK
DIANA TANG, MANAGER OF GOVERNMENT AFFAIRS
DENTONS

MEMORANDUM

To: Interested Parties
From: Dentons Public Policy Team
Date: January 4, 2019
Subject: A Partial Government Shutdown Primer - Some Key Questions and Answers

With the partial government shutdown now closing in on two weeks and no end in sight, many federal services have ceased or been impaired. The Smithsonian museums and the National Zoo are now closed and garbage is overflowing in the country's national parks. If a shutdown solution is not reached beforehand, on January 11, over 400,000 federal employees will miss a pay check for the first time in connection with this crisis. Thus, we thought that providing answers to some key questions about the shutdown and its impact on the public, federal employees and contractors, and government operations would be useful.

Which federal departments are already funded?

Congress already passed bills funding the Departments of Defense, Energy, Labor, Health and Human Services, and Veterans Affairs — as well as the legislative branch — through Sept. 30, 2019, the end of fiscal year 2019. President Trump signed those appropriations into law, so these departments are not affected by the current stalemate over border wall funding. In addition, the U.S. Postal Service will function as normal, as it gets almost all of its funding from sales of postage and other services.

Which federal departments have not been funded yet? In limbo because of the dispute between the president and Congress is funding for the Departments of Agriculture, Commerce, Justice, Homeland Security, Interior, State, Transportation, and Housing and Urban Development, as well as several smaller agencies.

Though the Coast Guard and the Transportation Security Administration are part of the Department of Homeland Security, because those agencies are considered vital to national security, they continue operating. As was the case in a 2013 shutdown, for instance, TSA personnel are still screening travelers, and the Coast Guard continues to monitor the waterways.

Nationally, an estimated 420,000 employees, including those in federal law enforcement, are required to work without pay for the duration of a shutdown, while

380,000 others deemed nonessential (though the government does not officially use that word, it's the colloquial term) will be furloughed. Those furloughed workers include;

- Approximately 86 percent of the Department of Commerce staff
- Approximately 96 percent of NASA employees
- Roughly 52,000 Internal Revenue Service (IRS) employees
- Approximately 95 percent of HUD employees

Many government services have closed, and others will continue to close, as the shutdown goes on. The Agriculture Department has closed its state and local farm service centers across the country. The Federal Housing Administration (FHA) has slowed down loan processing, and many approvals and new loan applications will not be processed until after the shutdown is resolved.

How is the shutdown implemented?

The Office of Management and Budget (OMB) is responsible for ensuring that agency contingency plans are in place in the event of a government shutdown. OMB Circular A-11 describes the details of those plans, and what types of actions an agency may conduct during a lapse in appropriations. Agency contingency plans must be updated at least every two years and are available at:

<https://www.whitehouse.gov/omb/information-for-agencies/Agency-Contingency-Plans>. Most of the plans posted date back to September 2015.

What types of employees and services are unaffected by the shutdown?

Employee group	Examples	Business impact
Necessary for national security	<ul style="list-style-type: none"> •US Military •Embassies abroad 	<ul style="list-style-type: none"> •Some defense contractors will still bill for work, but payments may be delayed
Necessary for security of people and property	<ul style="list-style-type: none"> •Air traffic control •Emergency medical care •Border control •Federal prisons •Oversight of the banking system •Meat and egg inspection 	<ul style="list-style-type: none"> •Air traffic controllers continue to work during a government shutdown, which means airlines will continue to run •FDA continues select vital activities including maintaining critical consumer protection to handle emergencies, high-risk recalls and import entry review

Permanent programs or programs with multi-year funding

- Social Security
- Veterans' benefits
- Unemployment and food stamps
- Medicare and Medicaid

- Social Security checks will go out as usual
- Medicare and Medicaid recipients will continue to receive healthcare benefits

Agencies with independent sources of funding

- US Postal Service
- Federal Reserve

- USPS will continue to provide mailing services and Postal Service workers get paid normally
- Active service military members get paid regardless of length of shutdown

User fee-funded staff

- Patent and Trademark Office
- Visa and passport processing
- Parts of HHS (including segments of the FDA and NIH)
- Grain inspections

- Employees will continue to process patent applications, possibly for up to four weeks, but the PTO cannot accept new ones
- The State Department is keeping most of its passport agencies and consular operations open as long as it has the funds to do so

How does a shutdown affect federal grant programs?

Discretionary programs. These programs would be interrupted by a shutdown because funding is determined and provided through the annual appropriations process. Most grants to state and local governments are discretionary.

Mandatory programs that bypass the appropriations process. In general, these programs aren't affected by a shutdown because their funding becomes automatically available (for example, revolving funds or programs that receive a direct appropriation in their authorizing legislation). Examples include: Temporary Assistance for Needy Families, the mandatory/matching portion of the Child Care Development Fund, Boating Safety, and Mineral Leasing.

Mandatory programs funded in appropriations acts. Funding for these programs is determined by authorizing legislation, but their funding is included in annual

appropriations bills. These programs would be affected by a shutdown because no new funding would be available. Examples include: Vocational Rehabilitation – Basic State Grants, the Social Services Block Grant, Child Nutrition, and the Supplemental Nutrition Assistance Program (SNAP).

Federal-aid surface transportation programs. Federal-aid highway programs funded through the Highway Trust Fund (HTF) would continue during a shutdown because of contract authority already in place. However, the Federal Transit Administration (FTA) would not outlay funds, despite having contract authority in place for most programs, because appropriations would not be available to pay FTA staff.

Regulatory Action

Many agency staff working on regulatory matters are not deemed “essential”, and therefore, work on the rulemaking at federal agencies like the Environmental Protection Agency is stalled until the shutdown is resolved. Notably, the Department of Commerce’s consideration of exclusion requests from Section 232 aluminum and steel tariffs has stopped since the shutdown began.

Are there exceptions to the above?

Yes. In general:

Discretionary programs that have already received an appropriation for a portion of FY 2019. Some discretionary programs would not be immediately affected by a shutdown because they received FY 2019 funding in the FY 2018 omnibus appropriations bill. Examples include: Title I Grants to Local Educational Agencies, Special Education Grants to States, Career and Technical Education state grants, and Workforce Investment Opportunity Act (WIOA,) formula grants.

Mandatory programs funded in appropriations acts that have already received an appropriation for a portion of FY 2019. These programs received an appropriation for the first quarter of FY 2019 in the FY 2018 omnibus appropriations bill. Examples include: Medicaid, Child Support Enforcement, Foster Care, and Adoption Assistance.

Mandatory programs funded outside of the appropriations process with funding that expires September 30, 2019.

Activities that involve the safety of human life or protection of property. These activities can continue during a shutdown. Examples include: air traffic control and other transportation safety functions, medical care of inpatients and emergency outpatient care, border and coastal protection, emergency and disaster assistance, and law enforcement and criminal investigations.

Can states use prior-year funding in the absence of a current appropriation?

States may be able to use funds that were appropriated in prior years if the budget authority does not expire and such funds are available. For instance, many education and health and human services programs can use FY 2018 funding through September 30, 2019. Funding for Department of Justice grants remains available until expended and may continue if sufficient carryover funds remain. Some programs, such as the Special Supplemental Food Program for Women, Infants, and Children (WIC), allow states to carry over only a small percentage of funds, so funding would be exhausted during an extended shutdown.

If a program continues receiving funding through a shutdown, what else could cause an interruption?

The ability to draw down federal funds during a shutdown varies by agency, office, and program. In general, automated payment systems are operational during a shutdown to ensure delivery of grant payments for programs or funding not affected by it. However, there could be delays if a drawdown request is flagged because of internal controls, or requires federal staff to take a specific action for the drawdown to occur.

Will Federal employees who worked without pay during the shutdown receive back pay? What about those employees who were available for work but furloughed through no fault of their own? What about federal contractors?

Those federal employees who worked without pay will be reimbursed as soon as funding becomes available. While there is no legal requirement for the federal government to do so, Congress customarily will pass legislation also to pay federal employees who were furloughed. So furloughed federal employees will also be paid if the president will sign such legislation.

Private sector contractor who do work for the federal government on discretionary programs do not always have the same sorts of assurances. Congress could elect to direct that such contractors be paid through appropriated funds once such funds again become available. However, if contractors performed work for the federal government during a period where there were no discretionary funds to pay them for such work, these contractors could find themselves at some risk unless Congress passes and the president signs legislation requiring that such contractors be paid.

If states continue to operate affected programs during a shutdown, will they get reimbursed once the shutdown ends?

States are not guaranteed to receive reimbursement for discretionary programs. However, during the FY 2014 shutdown, the CR that ended it retroactively covered the

lapse in appropriations and included specific language to ensure states were reimbursed for costs they incurred to carry out federal programs during the shutdown. For mandatory programs included in appropriations bills, states are entitled to reimbursement once an appropriations bill is enacted.