INTRODUCTION: IMPACTS OF A GOVERNMENT SHUTDOWN

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US Policy and Regulatory Alert

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OVERVIEW

The United States Congress is responsible for appropriating funds for the government. This process begins through the creation of 12 appropriations bills-each determining spending levels for federal agencies and programs for that fiscal year. Those 12 bills need to pass the House of Representatives and Senate, either individually or in groups of bills, before going to the president's desk for his signature. Government shutdowns generally occur when there is a disagreement over budget allocations and amounts. A full government shutdown occurs when none of the 12 appropriations bills is able to be signed before the fiscal year expires. A partial government shutdown occurs when some but not all of the necessary bills are signed. A shutdown may be temporarily avoided through the enactment of a continuing resolution (CR), which extends funding for the government at existing levels for a specific amount of time–buying time for Congress to resolve any disagreements.

Current federal funding expires 30 September 2023. Congress may pass a CR to avoid a government shutdown. However, passing a CR and eventually passing a year-end FY 2024 omnibus appropriations package will not be easy. Our Government Shutdown Task Force will be continuously monitoring the situation and assisting clients impacted by the shutdown. This alert will be the first in a series focused on the potential impacts of government shutdowns.

HISTORY OF GOVERNMENT SHUTDOWNS

Government shutdowns occur when there is failure to enact appropriations legislation before the existing appropriations bills expire. In 1980, as the federal government faced a potential lapse in appropriations, President Jimmy Carter asked Attorney General Benjamin Civiletti to look into the Antideficiency Act to see if the law permitted federal employees to work without appropriations. Civiletti published an opinion, *Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations, 5 Op. O.L.C. 1 (1981)*, stating that exceptions are made for “the safety of human life or the protection of property, and generally describing how the exceptions should be applied. Since 1980, each federal agency has developed a contingency plan following guidance released during previous shutdowns—building on the core guidance from Civiletti—and in coordination with the Office of Management and Budget. There have been four significant government shutdowns in US history. The first two occurred during the Clinton administration for a total of 26 days, over the president's opposition to major spending cuts supported by the Republican-controlled Congress. The third was a 16-day

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shutdown during the Obama administration over implementation of the Affordable Care Act. This shutdown was considered a “partial shutdown” because the president had already signed into law five congressionally approved appropriations bills. Lastly, a 35-day shutdown–the longest in US history-during the Trump Administration was caused by disagreement on funding for wall construction on the US- Mexico border.

EXCEPTED AND NON-EXCEPTED EMPLOYMENT STATUS

During government shutdowns, federal employees who provide “essential services”—also known as “excepted employees”—continue to work. Many excepted service jobs impact public safety such as border protection, air traffic control, and law enforcement. For Congressional staff, individual offices decide for themselves who is “excepted” versus “non-excepted”—informally referred to as essential vs. nonessential. In all cases, excepted employees continue to work during a shutdown; however, non-excepted employees are put on unpaid furlough and are not permitted to use government devices (e.g., laptops, cell phones). Only supervisors may change the status of an employee.

IMPACT ON GOVERNMENT FUNCTIONALITIES

During a shutdown, programs and agencies that receive mandatory funding or are self-sufficient, such as the US Postal Service, continue to operate during a shutdown. However, most federal agencies close or reduce operations, impacting industries and the public in several ways. Throughout this series of alerts, we will examine how programs might be disrupted and the potential impacts on our clients and industries.

There is a lot of uncertainty during government shutdowns, but our Government Shutdown Task Force has a breadth of knowledge from those who have worked in Congress, administrations, and have assisted clients during previous government shutdowns. Be on the lookout for more alerts in this series focused on the impacts of government shutdowns, including the impacts on federal grants, government contracts, the issuance of guidance and regulations, and other important matters.

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