

## Federal Agencies to Implement Contingency Plans Following Government Shutdown

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### OVERVIEW

Due to a Congressional impasse, much of the Federal Government officially shut down today. The United States Congress was unable to pass legislation to fund the government before the beginning of the new fiscal year which occurred at 12:00 AM on October 1, 2013. Agencies immediately began curtailing operations and furloughing staff deemed non-essential. In anticipation of the possible shutdown, the Administration had previously required agencies to create shutdown contingency plans to govern agency activities during a lapse in appropriations. This directive also set forth general [guidelines](#) for which agency activities would and would not continue in the event of a federal government shutdown.

Five important general exemptions allow continued operations, even during a lapse in Congressional appropriations. Each specific agency applies these exemptions differently. The exemptions are:

- ***Non-appropriated Funds.*** Some agencies receive funding through means other than appropriations. This may include use fees, permit fees, interest, and so forth. Agencies are free to spend these funds on continuing operations, consistent with law.
- ***Holdover Funds.*** Some agencies have unspent funds in their accounts from prior year appropriations. These unspent funds can and will be used to continue operations until they run out.
- ***Essential Personnel.*** While salaries will not be paid unless specifically authorized, employees designated essential will continue to perform their duties. Essential activities are those that are necessary to protect national security and ensure the safety of people and property.
- ***Presidentially Appointed Personnel.*** Per OMB [guidance](#), employees who are presidentially appointed are not subject to furloughs. Therefore, agency secretaries and administrators, commissioners, and other similar employees will not be furloughed.
- ***Orderly Shutdown.*** Employees will be required to conduct an orderly shutdown of each agency's operations, even in the event of a lapse of appropriations.



## OVERVIEW OF CONTINGENCY PLANS

In addition to the general regulations, the specific operations of each agency will depend on each agency's contingency plans:

**Commodity Futures Trading Commission (CFTC)**. The CFTC will largely shut down. Of 680 employees, 28 will not be furloughed, including the 4 Commissioners. A small number of employees in the Whistleblower and Consumer Protection Offices are paid through funding other than appropriations. Otherwise, only a small number of staff will remain on duty during the shut-down to perform a bare minimum of oversight and surveillance of the futures markets, clearinghouses and intermediaries. Contact [Lisa Epifani](#) for further details.

**Department of Energy**. According to the agency, "most of DOE's appropriations are multi-year or no-year." Therefore, the agency can continue to operate for some time before requiring employee furloughs. The agency has not specified the length of time it can sustain operations without new appropriations. In the event of a sufficiently long lapse in operations, DOE will suspend most activities, except some small number of staff in the Offices of the Secretary, CFO, Intelligence and Counterintelligence, Health Safety and Security, and the Office of Environmental Management, including at regional facilities. Offices such as EERE, ARPA-E, EIA, Fossil Energy, Loan Programs, Indian Energy Policy and Programs, Public Affairs, Energy Policy and Systems Analysis, and International Affairs, will have no or negligible staff. The National Nuclear Security Administration will continue to operate with 345 essential employees. The Bonneville Power Administration will continue to operate with 3,103 employees funded outside of the appropriations process. Other Power administrations (SEPA, SWPA, WAPA) would operate with a skeletal staff to control and direct power to utilities, transmission or power, and repair of the power transmission system. Contact [Doug Smith](#) for further details.

**Department of the Interior**. Interior will close some offices. However, those focused on law enforcement and safety (comprising 20% of DOI's workforce) will remain open. BLM will terminate all non-emergency activities on public land. The Office of Surface Mining will be open only to respond to emergencies. The Bureau of Indian Affairs will largely suspend activities. On the other hand, the Bureau of Ocean Energy Management and Bureau of Safety and Environmental Enforcement would continue drilling and offshore permitting operations. Renewable energy activities would be suspended. The Bureau of Reclamation would continue providing water and power services, largely through customer funded operations, including at Hoover Dam. Contact [Joseph Nelson](#) for further details.

**Environmental Protection Agency (EPA)**. EPA gives no indication of the extent of prior year appropriations which may be used in the event of a lapse. Of EPA's 16,000 employees, approximately 1,000 will not be furloughed. EPA will largely shut down, including litigation and legal support. Limited exceptions include overseeing superfund sites, ensuring the viability of EPA laboratory operations, and providing emergency environmental response. The office of Enforcement and Compliance will retain 20% of its staff. Contact [Kyle Danish](#) for further details.



**Federal Courts**. The federal courts will remain open for as long as they have prior-year funding, estimated to be approximately ten business days. All proceedings and deadlines remain in effect, unless specific postponements are granted. However, the Department of Justice has [instructed](#) its attorneys to request postponements for non-criminal filing deadlines for cases to which the United States is a party. It will be up to the discretion of the courts to grant or deny these postponement requests. Contact [Mike McBride](#) for further details.

**Federal Energy Regulatory Commission (FERC)**. FERC has [indicated](#) that it has some unspent prior-year appropriations and so will continue normal operations for the time being. Once those funds are exhausted, FERC will operate with significantly reduced staffing of 67, including the commissioners, IT and legal support. FERC will continue hydroelectric and LNG inspections, market and reliability monitoring, and enforcement activities. Contact [Doug Smith](#), [Susan Olenchuk](#) or [David Yaffe](#) for further details.

**National Oceanic and Atmospheric Administration (NOAA)**. NOAA is an office within the Department of Commerce. More than 5,300 employees will not be furloughed in order to maintain necessary operations of the agency, including weather forecasting and fisheries enforcement. Contact [Jonathan Simon](#) for further details.

**Nuclear Regulatory Commission (NRC)**. NRC has said that it has not issued any furlough notifications and that it will continue “largely normal operations” for at least one week beyond any lapse of appropriations, using carry-over funding previously appropriated. If a government shutdown lasts longer than the carryover funds can support normal operations, approximately 300 employees of the NRC, as well as the Chairman and Commissioners, will maintain the Commission’s emergency operations. Contact [Mike McBride](#) for further details.

**Pipeline & Hazardous Materials Safety Administration (PHMSA)**. As an office within the Department of Transportation, PHMSA is subject to DOT’s contingency plan for a lapse in appropriations. The plan calls for 167 employees to continue work during a government shutdown and the continuation of operations related to investigations and enforcement. Contact [James Curry](#) for further details.

**Surface Transportation Board (STB)**. Throughout the duration of a federal government shutdown, the Board will suspend all operations, and the Board’s website and email addresses will be unattended. During the shut-down, only the three Commissioners and the Chief of Staff of the Board will be on duty. Contact [Mike McBride](#) for further details.

A compilation of all submitted agency contingency plans is available at:  
<http://www.whitehouse.gov/omb/contingency-plans>.

### FOR MORE INFORMATION

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Chambers USA and U.S. News/Best Law Firms. For questions regarding the current government shutdown and its potential impacts, please contact any member of the firm's [Government Relations & Public Policy Practice](#) at 202.298.1800.

Avi Zevin, Gabe Tabak, and Mike O'Neill, Van Ness Feldman's newest associates, contributed to this alert.

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