

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 CRS 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."