

How the Federal Government Shutdown Could Affect Your Business

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We have now passed the one-month point for the federal government shutdown, making it the longest in the country's history.

The shutdown has closed offices, put off crucial assignments and wreaked havoc on the business world for companies that deal with the federal government in some way. Some agencies are unaffected by the shutdown because a [September 2018 "minibus" bill](#) funded those agencies through October 1, 2019. Others remain unfunded and are experiencing the effects of the shutdown.

Our Barley Snyder attorneys have compiled a partial list of federal offices and industries that have been affected, how those effects can reach your business and what you can do in the meantime until the shutdown ends. Read on to learn about what's happening with on topics such as food inspections, federal loan financing, intellectual property offices, school lunches, immigration laws, Medicare and federal courts:

EEOC

One of the most severely impacted agencies is the Equal Employment Opportunity Commission. A skeleton crew of 103 staffers (down from 2000 employees) in field offices around the country is in place to receive charges of discrimination, temporary restraining orders, ongoing litigation for which an extension has not been granted and maintenance of office security and information systems. However, staff will not be available to answer questions or respond to correspondence from the public. Although the skeleton crew will accept charges that must be filed in order to preserve the limitations period, the resources to investigate new or existing complaints are not available. The EEOC will not litigate in the federal courts, and mediations and federal sector hearings are canceled.

In 2013, the EEOC received over 3,000 charges of discrimination during the 16-day shutdown, but no new investigations started and existing investigations languished. The shutdown led to a backlog that took over a month to work through. At this point with a 30-day-plus shutdown, cases will be backlogged at least two months and for every month of shutdown, backlogs will continue to mount jamming up the EEOC process, significantly impacting employers both now and well into the future. -Sarah Yerger

Food Inspections

The bigger concern with food inspections could be what happens after the shutdown, not during.

Both the Food and Drug Administration and U.S. Department of Agriculture are in shutdown mode, but are continuing essential food safety functions. The Food Safety Inspection Service of the USDA is maintaining its

continual inspection of meat and poultry operations plants. Since federal law requires that such facilities be continually inspected in order for the product to be sold, continuation of these inspections is essential for our food supply.

Our experience in the last few weeks indicates that the FDA is continuing to address those specific product and recall problems viewed as presenting public danger. In some instances, the FDA is utilizing assistance from the U.S. Public Health Service. In addition, FDA Commissioner Scott Gottlieb has announced the organization will seek the return of various investigators to resume inspections of "high-risk" food facilities having compliance histories, food-borne illness outbreaks or other violations. It will also go back to inspecting facilities handling certain higher-risk food commodity categories.

If the shutdown continues for a lengthy period of time, we are concerned about the impact on the USDA's Food Safety Inspection Service and its ability to continue the vital, daily inspection of poultry and meat processing facilities while they are not being paid.

In the event that employees find themselves unable to continue those duties, poultry and meat facilities will face some very challenging issues. All facilities will face major backlog delays when the shutdown ends. -
Timothy Dietrich

Property Loan Financing

For residential loans, the offices of Fannie Mae, Freddie Mac, and U.S. Department of Veterans Affairs (for VA loans) are unaffected by the shutdown.

The Federal Housing Administration (for FHA loans) is operating with a smaller staff but still approving loans guaranteed through its programs.

USDA mortgages cannot close and it is impacting homebuyers with USDA guaranteed mortgages. Buyers with USDA loans pending are being encouraged to apply for FHA or VA loans, if eligible.

On the commercial side, loans are unable to close through the Small Business Administration programs during the shutdown unless a preferred SBA lender already has an authorization number. -*Joseph Schalk & Derek Dissinger*

Is the Government Your Tenant?

If you're a landlord and the federal government is your tenant, you may have noticed something distressing: You're not getting the rent money.

The shutdown has rendered the federal government's unfunded departments and agencies without authority to pay rent on its leased and rented properties across the country, including central Pennsylvania. The common thought is that once the shutdown is over, landlords will receive their back-dated rent money.

But in the short term, it creates cash-flow problems that may cause landlords to contemplate declaring the government in default for not paying rent. Before you sour a tenant relationship with the government, please call any of our attorneys to discuss your alternate options. -*Timothy Dietrich*

Intellectual Property

The U.S. Patent and Trademark Office announced it is open for business as usual and has funding to

maintain operations for a few weeks.

It is not clear when funding will run out but we may be getting close. If the shutdown extends beyond the funding, they will maintain IT and necessary staff to continue accepting applications.

For now, we are still receiving office actions but if we pass the date when funding is exhausted, I think examination will come to a screeching halt but we will continue to have the ability to file applications and responses.

The U.S. Copyright Office is open for normal business and is not directly affected by the shutdown. Online registration remains available every day. -*Salvatore Anastasi*

Immigration

The E-Verify program is currently shut down, and employers will not be able to use it for the duration of the shutdown. E-Verify is the federal, electronic employment eligibility verification service under the Department of Homeland Security.

During the shutdown, employers will not be able to:

- Enroll in the program
- Access their E-Verify accounts
- Create a case
- View or take action on any case
- Add, delete or edit accounts
- Reset passwords, edit company information, terminate accounts or run reports

In addition, myE-Verify will be unavailable and employees will not be able to access their myE-Verify accounts. To minimize the burden on both employers and employees, the department announced that USCIS suspended the "three-day rule" for creating E-Verify.

Employers should be cognizant that they may not take adverse action against an employee because the E-Verify case is in an interim case status, including while the employee's case is in an extended interim case status due to the unavailability of E-Verify.

Despite 300 E-Verify employees [called back to work](#) this week, they will be assigned to other fee-based tasks in the USCIS and E-Verify will remain unavailable.

Employers might not be as severely affected when it comes to other immigration-related matters. The Department of Homeland Security remains open during a shutdown. This includes USCIS, which adjudicates most immigration processes. Visa processing and other immigration-related activities, however, could be delayed.

Most Immigration and Customs Enforcement (ICE) employees are still working. U.S. Department of State consular posts will remain open through February 14, although it is unclear what will happen after that. Most immigration courts are only handling cases involving detained immigrants, with non-detained cases being rescheduled. -*Sarah Yerger*

School Lunches

The USDA [recently announced](#) that funds for child nutrition programs have been allocated to cover normal operations into March - though no specific date is mentioned. The recent letter modifies an earlier announcement of funding through January.

According to the Pennsylvania Department of Education's School Nutrition Programs, Pennsylvania schools served more than 167 million lunches during the 2017-2018 school year and schools rely on USDA reimbursement to provide meals to students. Children from eligible families receive meals for free or at a reduced cost. Funding from the federal government makes price reduction possible. For a low-income child, breakfast, lunch and afterschool snacks received at school may constitute a majority of the day's caloric intake. Based on data provided by Pennsylvania schools, the Annie E. Casey Foundation found that more than 870,000 Pennsylvania students qualified for free or reduced lunches in the 2017-2018 school year.

The Pennsylvania Department of Education has not yet commented on the potential lapse in funding, so the potential impact of a continued partial federal government shutdown on Pennsylvania's system for reimbursement is unclear. What is clear is that federal funding is essential in order for Pennsylvania schools to continue providing nutritional meals for qualifying students. -*Kalani Linnell*

Public Health Organizations

The federal government's funding of its major healthcare programs, Medicare and Medicaid, is not impacted by the partial shutdown - yet. The Centers for Medicare and Medicaid Services announced that funding for these programs is assured until at least September 30.

Also, federal workers in departments without funding still are assured continued health insurance coverage through the Federal Employee Health Benefits plan.

Hundreds of healthcare advocacy groups - including the American College of Physicians, the American Academy of Pediatrics and the National Association of School Nurses - have petitioned U.S. Congress to reopen the federal government to prevent further disruption of funding for essential healthcare programs that benefit children and families. -*Christopher Churchill*

U.S. Department of Labor

The U.S. Department of Labor and the National Labor Relations Board, among others, are fully staffed and operational during the duration of any impending shutdown.

That allows matters like these to continue:

- Wage-and-hour compliance
- Workplace safety matters
- Federal contract compliance
- Labor relations matters, including union elections, unfair labor practice charges and litigation

Additionally, because U.S. Department of Justice lawyers are furloughed during this shutdown, any litigation involving the federal government is impacted. On the first day of business after the shutdown began, the department's lawyers requested that their civil cases be stayed and all deadlines postponed for the duration

of the shutdown. -*Sarah Yerger*

Federal Court

Federal trial and appellate courts have predicted multiple furlough dates, but have later extended those dates. The current deadline is Jan. 31, after which only essential activities will be performed, subject to direction and decisions of the federal judges serving in that court.

Parties involved in litigation or contemplating litigation should check with the court where their matter is pending for dates of proceedings or deadlines and understand that the case may be delayed, which could be particularly important where injunctive relief is sought. -*Lauralee Baker*

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