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Shutdown of the Federal Government: Causes, Processes, and Effects

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Summary

When federal agencies and programs lack appropriated funding, they experience a funding gap. Under the Antideficiency Act, they must cease operations, except in emergency situations. Failure of the President and Congress to reach agreement on interim or full-year funding measures occasionally has caused government shutdowns, the longest of which lasted 21 days, from December 16, 1995, to January 6, 1996. Government shutdowns have necessitated furloughs of several hundred thousand federal employees, required cessation or reduction of many government activities, and affected numerous sectors of the economy. This report discusses the causes, processes, and effects of federal government shutdowns, including potential issues for Congress.

For questions concerning the impact of a shutdown on a specific agency or program, congressional operations, or judicial operations, see the contact information contained in the "Key Policy Staff" table at the end of this report.

For background on funding gaps, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup.

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Budget Negotiations and Choices[1]

It has been said that "conflict is endemic to budgeting."[2] If conflict between Congress and the President or within Congress impedes the timely enactment of annual appropriations acts or continuing resolutions, the possibility of a government shutdown arises.

During high-stakes negotiations over appropriations measures, a number of options present themselves to Congress and the President, including

- coming to agreement on regular appropriations acts before the beginning of a new fiscal year;
- using one or more interim continuing resolutions (CRs) to extend temporary funding until final decisions are made; or
- not agreeing on full-year or interim appropriations acts, resulting in a funding gap and a corresponding shutdown of federal activities.

If Congress and the President pursue the second or third options, they may agree on full-year appropriations after the beginning of the fiscal year by using a full-year CR or, more commonly, regular appropriations acts (e.g., singly or in omnibus legislation). Congress and the President frequently agree on full-year or interim funding without coming to an impasse.[3] On other occasions, however, Congress and the President may not come to an accommodation in time to prevent a funding gap.

This report discusses the causes of funding gaps and shutdowns of the federal government,[4] processes that are associated with shutdowns, and how agency operations may be affected by shutdowns. The report concludes with a discussion of potential issues for Congress.

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[1] Justin Murray, Information Research Specialist in the Knowledge Services Group, provided research support for this report.

[2] Irene S. Rubin, "Understanding the Role of Conflict in Budgeting," in Roy T. Meyers, ed., *Handbook of Government Budgeting* (San Francisco: Jossey-Bass, 1999), p. 30.

[3] For discussion, see CRS Report RL32614, *Duration of Continuing Resolutions in Recent Years*, by Jessica Tollestrup. For analysis of the potential functions and impacts of CRs, see CRS Report RL30343, *Continuing Resolutions: Latest Action and Brief Overview of Recent Practices*, by Sandy Streeter; and CRS Report RL34700, *Interim Continuing Resolutions (CRs): Potential Impacts on Agency Operations*, by Clinton T. Brass. For more detailed discussion of the potential impacts of CRs, see CRS Congressional Distribution Memorandum, *Potential Impacts of Interim Continuing Resolutions (CRs) on Agency Operations and the Functioning of the Federal Government*, coordinated by Clinton T. Brass, July 8, 2008.

[4] The report focuses on funding gaps and shutdowns that are associated with annual appropriations acts. It does not focus on funding gaps and shutdowns that may occur when a specific program or agency is funded by legislation other than annual appropriations acts, but the statutory authorization for the program or agency expires. Nevertheless, these "expired authorization" shutdowns are similar in many ways to broader "annual appropriations" shutdowns. An example of an expired authorization shutdown occurred in early 2010, when authorization for certain surface transportation programs and trust funds expired after 11:59 p.m. on February 28, 2010. The expiration caused a lapse in authority to expend funds that, among other things, affected certain construction projects on federal lands and required nearly 2,000 U.S. Department of Transportation employees to be furloughed. On March 2, 2010, P.L. 111-144 reauthorized these activities (124 Stat. 45). On April 15, P.L. 111-157 provided compensation to furloughed federal employees and ratified retroactively all "essential actions" taken during the lapse by federal employees, contractors, and grantees to "protect life and property and to bring about orderly termination of Government functions" (124 Stat. 1118).

Causes of Federal Shutdowns

The federal fiscal year begins October 1. For agencies and programs that are funded through annual appropriations acts, Congress and the President must enact interim or full-year appropriations by this date if many governmental activities are to continue operating. If interim or full-year appropriations are not enacted into law, the time interval when agency appropriations are not enacted is referred to as a "funding gap."[5] A funding gap also may occur any time a CR expires and another CR (or regular appropriations bill) is not enacted immediately thereafter. When a funding gap occurs, the federal government begins a "shutdown" of the affected activities, including the furlough of non-emergency personnel and curtailment of agency activities and services. Programs that are funded by laws other than annual appropriations acts (e.g., entitlements like Social Security) also may be affected by a funding gap, if program execution relies on activities that receive annually appropriated funding.

Funding gaps and government shutdowns have occurred in the past when Congress and the President did not enact regular appropriations bills by the beginning of the fiscal year. They also have occurred when Congress and the President did not come to an agreement on stop-gap funding through a CR. As noted in another CRS report, six fairly lengthy funding gaps occurred from FY1977 to FY1980, ranging from 8 to 17 full days.[6] Subsequently, the durations of funding gaps shortened considerably. From FY1981 to FY1995, nine funding gaps occurred with durations of up to three full days. A significant exception to the trend occurred in FY1996, when President William Clinton and the 104th Congress engaged in extended negotiations over budget policy. Two funding gaps and corresponding shutdowns, amounting to 5 days and 21 days, ensued. There have been no similar funding gaps since FY1996.

The Constitution, statutory provisions, court opinions, and Department of Justice (DOJ) opinions provide the legal framework for how funding gaps and shutdowns have occurred in recent decades.[7] Article I, Section 9 of the Constitution states that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." Federal employees and contractors cannot be paid, for example, if appropriations have not been enacted. It would still be possible under the Constitution, nevertheless, for the government to make contracts or other obligations if it lacked funds to pay for these commitments.[8] The so-called Antideficiency Act prevents this, however. The act prohibits federal officials from obligating funds before an appropriations measure has been enacted, except as authorized by law.[9] The act also prohibits

[5] CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*, by Jessica Tollestrup. Some observers use alternative terms "lapse in appropriations" and "appropriations hiatus" instead of "funding gap."

[6] Ibid. These funding gaps occurred before the Department of Justice issued opinions in 1980 and 1981 about allowable agency activities during a funding gap. The opinions, which are discussed later, were restrictive in their implications about allowable agency activities compared to what agencies had done in the past during a funding gap.

[7] For legal analysis of funding gaps, see U.S. Government Accountability Office (formerly the General Accounting Office; hereafter "GAO"), *Principles of Federal Appropriations Law*, 3rd ed., vol. II, GAO-06-382SP, February 2006, ch. 6, pp. 6-146 - 6-159.

[8] For discussion, see prepared statement of Walter Dellinger, Assistant Attorney General, in U.S. Congress, Senate Committee on the Budget and House Committee on the Budget, *Effects of Potential Government Shutdown*, hearing, 104th Cong., 1st sess., September 19, 1995, S.Hrg. 104-175 (Washington: GPO, 1995), p. 18 (hereafter *Effects of Potential Government Shutdown*).

[9] 31 U.S.C. § 1341. The Antideficiency Act (31 U.S.C. §§ 1341-1342, §§ 1511-1519) is discussed in CRS Report RL30795, *General Management Laws: A Compendium*, by Clinton T. Brass et al., pp. 93-97. GAO provides information on the act, at http://www.gao.gov/ada/antideficiency.htm.

acceptance of voluntary services and employment of personal services exceeding what has been authorized by law.[10] Exceptions are made under the act to the latter prohibition for "emergencies involving the safety of human life or the protection of property." Therefore, the Antideficiency Act generally prohibits agencies from continued operation in the absence of appropriations. Failure to comply with the act may result in criminal sanctions, fines, and removal.

For years, many federal agencies continued to operate during a funding gap, while "minimizing all nonessential operations and obligations, believing that Congress did not intend that agencies close down" while waiting for the enactment of annual appropriations acts or continuing resolutions.[11] In 1980 and 1981, however, Attorney General Benjamin R. Civiletti issued two opinions that more strictly interpreted the Antideficiency Act in the context of a funding gap, along with its exceptions.[12] The opinions stated that, with some exceptions, the head of an agency could avoid violating the Antideficiency Act only by suspending the agency's operations until the enactment of an appropriation. In the absence of appropriations, exceptions would be allowed only when there is "some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property."

In 1990, in response to the 1981 Civiletti opinion, Congress amended 31 U.S.C. § 1342 to clarify that "the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."[13] DOJ's Office of Legal Counsel (OLC) issued a memorandum in 1995 that interpreted the effect of the amendment (hereafter, "1995 OLC opinion").[14] The 1995 OLC opinion said one aspect of the 1981 Civiletti opinion's description of emergency governmental functions should be modified in light of the amendment, but that the 1981 opinion otherwise "continues to be a sound analysis of the legal authorities respecting government operations" during a funding gap.[15]

OMB and Agency Shutdown Processes

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*.[16] 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

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[10] 31 U.S.C. § 1342; see also § 1515.

[11] U.S. GAO, *Funding Gaps Jeopardize Federal Government Operations*, PAD-81-31, March 3, 1981, pp. i, 2, at http://archive.gao.gov/f0102/114835.pdf.

[12] 43 Op. Att'y Gen. 224 (Apr. 25, 1980), 43 Op. Att'y Gen. 293 (January 16, 1981). The Civiletti opinions are included in a GAO report as Appendices IV and VIII. See U.S. GAO, *Funding Gaps Jeopardize Federal Government Operations*. For discussion of exceptions, see U.S. GAO, *Principles of Federal Appropriations Law*, pp. 6-146 - 6-159.

[13] Ibid., p. 6-151, citing P.L. 101-508, 104 Stat. 1388, at 1388-621.

[14] U.S. Department of Justice, Office of Legal Counsel, *Government Operations in the Event of a Lapse in Appropriations*, memorandum from Walter Dellinger, Assistant Attorney General, for Alice Rivlin, Director, Office of Management and Budget, August 16, 1995, reprinted in *Effects of Potential Government Shutdown*, pp. 77-85.

[15] Ibid., p. 78.

[16] U.S. Executive Office of the President, Office of Management and Budget (hereafter, "OMB"), *Circular No. A-11: Preparation, Submission, and Execution of the Budget*, July 2010, Section 124, at http://www.whitehouse.gov/omb/circulars_a11_current_year_a11_toc. See also CRS Report RS21665, *Office of Management and Budget (OMB): A Brief Overview*, by Clinton T. Brass.

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).

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.

In general, the circular refers to employees who are to be furloughed as "released," and employees who will not be furloughed as "retained" or "exempt."[17] OMB's circular also instructs agencies to take personnel actions to release employees according to applicable law and Office of Personnel Management (OPM) regulations.[18]

OMB documents and guidance from previous funding gaps and shutdowns may provide insights into current and future practices. OPM has recommended on a website that agencies use OMB guidelines to determine "excepted" positions (i.e., those not subject to furlough) and provided retyped copies of previous OMB bulletins and memoranda for reference.[19] These and other OMB documents also have been reproduced in several legislative branch documents.[20]

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[17] In congressional hearings that focused on the first FY1996 shutdown, some witnesses expressed regret that the terms "nonessential" and "essential" had been used to describe employees subject to furlough, and not subject to furlough, respectively. Use of the term "nonessential" was demeaning, they suggested. See U.S. Congress, House Committee on Government Reform and Oversight, Subcommittee on Civil Service, *Government Shutdown I: What's Essential?*, hearings, 104th Cong., 1st sess., December 6 and 14, 1995 (Washington: GPO, 1997) (hereafter, *Government Shutdown: What's Essential?*), pp. 48, 228-229, http://www.archive.org/details/governmentshutdo00unit.

[18] OPM maintains a website with guidance, historical OMB documents, and frequently asked questions about furloughs, at http://www.opm.gov/furlough/furlough.asp.

[19] See ibid. The reproduced OMB documents include, in chronological order:

(1) OMB Bulletin No. 80-14, *Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations*, August 28, 1980 (citing the 1980 Civiletti opinion and requiring agencies to develop shutdown plans);

(2) OMB Memorandum, *Agency Operations in the Absence of Appropriations*, November 17, 1981 (referencing OMB Bulletin No. 80-14; saying the 1981 Civiletti opinion remains in effect; and providing examples of "excepted activities" that may be continued under a funding gap);

(3) OMB Bulletin No. 80-14, Supplement No. 1, *Agency Operations in the Absence of Appropriations*, August 20, 1982 ("updating" OMB Bulletin No. 80-14 and newly requiring agencies to submit contingency plans for review by OMB);

(continued...)

Effects of a Federal Government Shutdown

Effects on Federal Officials and Employees

Effects of a shutdown may occur in anticipation of a funding gap (e.g., planning), during a gap (furlough and curtailed operations), and afterwards (e.g., reducing backlogs of work). An immediate shutdown effect is the "shutdown furlough" of certain federal employees (i.e., placement in a temporary, nonduty, nonpay status).[21] Several types of officials and employees are not subject to furlough. These include Members of Congress,[22] the President, presidential appointees, certain legislative branch employees, and federal employees deemed "excepted."[23] "Excepted" employees, who are required to work during a shutdown, are described as "employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough."[24] Shutdown furloughs are not considered a break in service and are generally creditable for retaining benefits and seniority.

During a funding gap, congressional employees whose pay is disbursed by the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives would not be paid if there is no appropriation to fund legislative branch activities. Any decision regarding requirements that a congressional employee continue to work during a government shutdown would appear to fall to his or her employing authority.[25]

(...continued)

(4) OMB Memorandum M-91-02, *Agency Operations in the Absence of Appropriations*, October 5, 1990 (referencing OMB Bulletin No. 80-14; stating that OMB Bulletin No. 80-14 was "amended" by the OMB Memorandum of November 17, 1981; saying the 1981 Civiletti opinion remains in effect; and directing agencies on a Friday how to handle a funding gap that begins during the weekend); and

(5) OMB Memorandum M-95-18, *Agency Plans for Operations During Funding Hiatus*, August 22, 1995 (referencing OMB Bulletin No. 80-14, as amended; citing the 1981 Civiletti opinion; transmitting to agencies the 1995 OLC opinion as an "update" to the 1981 Civiletti opinion; and directing agencies to send updated contingency plans to OMB).

[20] See *Effects of Potential Government Shutdown*, pp. 77-85; U.S. GAO, *Funding Gaps Jeopardize Federal Government Operations*, Appendices V, VI, and VII; and *Government Shutdown: What's Essential?*, pp. 99-112, 121-131, and 428-430.

[21] See http://www.opm.gov/furlough/furlough.asp.

[22] Additional information regarding compensation for Members of Congress is available in CRS Report 97-615, *Salaries of Members of Congress: Congressional Votes, 1990-2010*, by Ida A. Brudnick.

[23] For additional discussion, including the status of legislative branch agencies and personnel, see ibid., U.S. GAO, *Principles of Federal Appropriations Law*, pp. 6-149 - 6-150, and U.S. GAO, Letter from James F. Hinchman, GAO General Counsel, to John J. Kominski, Library of Congress General Counsel, B-241911, October 23, 1990, at http://archive.gao.gov/lglp2pdf23/087761.pdf.

[24] See http://www.opm.gov/furlough/furlough.asp.

[25] Congressional employing authorities include the following: individual Members of Congress for staff working in personal offices; chairs of individual House, Senate, and joint committees for committee staff; Members who hold leadership positions for staff in their respective leadership offices; House or Senate officers or officials for staff working in those offices. In addition, those with authority to obligate funds may choose to constrain the incurring of obligations for congressional activities such as travel, state or district facilities, or other non-personnel costs. For questions regarding congressional and legislative branch operations, see the "Key Policy Staff" table at the end of this report.

Federal employees who have been affected by shutdowns historically have received their salaries retroactively.[26]

As noted earlier, the two most recent shutdowns occurred in FY1996.[27] The first, which lasted five full days between November 13-19, 1995, resulted in the furlough of an estimated 800,000 federal employees. It was caused by the expiration of a continuing resolution agreed to on September 30, 1995 (P.L. 104-31), and by President Clinton's veto of a second continuing resolution and a debt limit extension bill. The second FY1996 partial shutdown of the federal government, and the longest in history, lasted 21 full days between December 15, 1995, and January 6, 1996. The shutdown was triggered by the expiration of a continuing funding resolution enacted on November 20, 1995 (P.L. 104-56), which funded the government through December 15, 1995. On January 2, 1996, the estimate of furloughed federal employees was 284,000.[28] Another 475,000 excepted federal employees continued to work in nonpay status. There were several short-term continuing resolutions between January 6, 1996, and April 26, 1996, when the Omnibus Consolidated Rescissions and Appropriations Act of 1996 (P.L. 104-134) was enacted to fund any agencies or programs not yet funded through FY1996.

During both of the government shutdowns just discussed, the federal courts generally operated with little disruption.[29] In the absence of appropriated funds, the judiciary used fee revenues and "carryover" funds from prior years to support what it considered its essential function of hearing and deciding cases.[30] Internal judiciary guidelines, according to the official publication of the U.S. courts, recognized the "unique function of the Judiciary" and anticipated that all activities "essential to maintain and support the exercise of the judicial power of the United States during a funding lapse" would continue.[31] The funding lapse, however, did affect some court functions, with some judges entertaining motions for continuances in civil cases and at least one district court announcing it would not start any new civil jury trials. An appellate court, it also was reported, had to reschedule several arguments because government lawyers were unable to attend. Further, during the November 1995 government shutdown, lack of funding resulted in furloughs

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[26] For example, for the FY1996 shutdowns, affected employees were guaranteed to be paid retroactively by provisions in continuing resolutions (P.L. 104-56, Section 124, which itself was continued in P.L. 104-94), but did not receive compensation until funding for their agencies was enacted.

[27] This paragraph draws on CRS Report 95-906, *Shutdown of the Federal Government: Effects on the Federal Workforce And Other Sectors*, by James P. McGrath (September 25, 1997, out of print; available upon request).

[28] Fewer employees, agencies, and programs were affected because some funding bills were enacted during the period between the two shutdowns.

[29] See "An Inside Look at the Shutdown," *The Third Branch: Newsletter of the Federal Courts*, Washington, D.C., December 1995, at http://www.uscourts.gov/News/TheThirdBranch/95-12-01/An_Inside_Look_At_the_Shutdown.aspx; also, "Active, Long, and Contentious First Session of Congress Closes," *The Third Branch: Newsletter of the Federal Courts*, Washington, D.C., February 1996, at http://www.uscourts.gov/News/TheThirdBranch/96-02-01/Active_Long_and_Contentious_First_Session_of_Congress_Closes.aspx. For questions regarding judiciary operations, see the "Key Policy Staff" table at the end of this report.

[30] The majority of these non-appropriated funds are from fee collections, primarily from court filing fees. These monies are used, in the judiciary's budget, to offset expenses within the Salaries and Expenses account. In some instances, the judiciary also has funds which may carry forward from one year to the next. These funds are considered "unencumbered" because they result from savings from the judiciary's financial plan in areas where budgeted costs did not materialize. The judiciary also has "encumbered" funds—no-year authority funds for specific purposes, which are used when planned expenses are delayed, from one year to the next (e.g., costs associated with space delivery or with certain technology needs and projects).

[31] "An Inside Look at the Shutdown," *The Third Branch: Newsletter of the Federal Courts*, Washington, D.C., December 1995, at http://www.uscourts.gov/News/TheThirdBranch/95-12-01/An_Inside_Look_At_the_Shutdown.aspx.

of most of the staff of the federal judiciary's two support agencies, the Federal Judicial Center and the Administrative Office of the U.S. Courts.[32]

Examples of Excepted Activities and Personnel

Previous determinations of excepted activities and personnel would not necessarily hold for any future shutdown. However, past experience may inform future OMB and agency decisions. An OMB memorandum of November 17, 1981, from Director David A. Stockman to the heads of executive agencies, identified "examples of excepted activities."[33] The memorandum, which still was in effect for the FY1996 shutdowns, explained

> 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 phasedown of other activities. Primary examples of activities agencies may continue are those which may be found under applicable statutes to:
>
> 1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.
>
> 2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.
>
> 3. Conduct essential activities to the extent that they protect life and property, including:
>
> a. Medical care of inpatients and emergency outpatient care;
>
> b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;
>
> c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;
>
> d. Border and coastal protection and surveillance;
>
> e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;
>
> f. Care of prisoners and other persons in the custody of the United States;
>
> g. Law enforcement and criminal investigations;
>
> h. Emergency and disaster assistance;
>
> i. 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;

[32] Ibid.

[33] OMB Memorandum, *Agency Operations in the Absence of Appropriations*, November 17, 1981.

j. Activities that ensure production of power and maintenance of the power distribution system; and

k. Activities necessary to maintain protection of research property.

You should maintain the staff and support services necessary to continue these essential functions.

Effects on the Public

The effects of the two FY1996 shutdowns on government activities and the public received extensive attention. Although the effects on the public of any future shutdown would not necessarily reflect past experience, past events may be illustrative of effects that are possible.[34] Several examples follow that were reported in congressional hearings, news media, and agency accounts.[35]

- **Health.** New patients were not accepted into clinical research at the National Institutes of Health (NIH) clinical center; the Centers for Disease Control and Prevention ceased disease surveillance; and hotline calls to NIH concerning diseases were not answered.[36]
- **Law Enforcement and Public Safety.** Delays occurred in the processing of alcohol, tobacco, firearms, and explosives applications by the Bureau of Alcohol, Tobacco, and Firearms; work on more than 3,500 bankruptcy cases reportedly was suspended; cancellation of the recruitment and testing of federal law-enforcement officials reportedly occurred, including the hiring of 400 border patrol agents; and delinquent child-support cases were delayed.[37]
- **Parks, Museums, and Monuments.** Closure of 368 National Park Service sites (loss of 7 million visitors) reportedly occurred, with loss of tourism revenues to local communities; and closure of national museums and monuments (reportedly with an estimated loss of 2 million visitors) occurred.[38]

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[34] In 1981, GAO developed a "hypothetical case" of the possible effects of a 30-day government-wide funding gap and shutdown, which the agency characterized as "unthinkable." After the release of the first Civiletti opinion concerning compliance with the Antideficiency Act, GAO characterized the opinion as "fundamentally alter[ing] the environment in which Federal agencies must prepare for a period of expired appropriations." Previously, interpretation of the Antideficiency Act had been much less strict. The results of GAO's illustrative survey are available in U.S. GAO, *Funding Gaps Jeopardize Federal Government Operations*, pp. 48-56.

[35] The examples are drawn from more extensive discussion in CRS Report 95-906, *Shutdown of the Federal Government: Effects on the Federal Workforce And Other Sectors*, by James P. McGrath (out of print; available upon request). Many of the examples come from agency accounts in congressional hearings after the first FY1996 shutdown (see *Government Shutdown: What's Essential?*, at http://www.archive.org/details/governmentshutdo00unit) and media accounts during and after the second shutdown.

[36] *Government Shutdown: What's Essential?*, p. 23; and Stephen Barr and Frank Swoboda, "Jobless Aid, Toxic Waste Cleanup Halt," *Washington Post*, January 3, 1996, p. A1.

[37] *Government Shutdown: What's Essential?*, pp. 62 and 228, http://www.archive.org/details/governmentshutdo00unit; and Stephen Barr and David Montgomery, "At Uncle Sam's No One Answers," *Washington Post*, November 16, 1995, p. A1.

[38] Dan Morgan and Stephen Barr, "When Shutdown Hits Home Ports," *Washington Post*, January 8, 1996, p. A1.

- **Visas and Passports.** Approximately 20,000-30,000 applications by foreigners for visas reportedly went unprocessed each day; 200,000 U.S. applications for passports reportedly went unprocessed; and U.S. tourist industries and airlines reportedly sustained millions of dollars in losses.[39]
- **American Veterans.** Multiple services were curtailed, ranging from health and welfare to finance and travel.[40]
- **Federal Contractors.** Of $18 billion in Washington, DC, area contracts, $3.7 billion (over 20%) reportedly were affected adversely by the funding lapse; the National Institute of Standards and Technology (NIST) was unable to issue a new standard for lights and lamps that was scheduled to be effective January 1, 1996, possibly resulting in delayed product delivery and lost sales; and employees of federal contractors reportedly were furloughed without pay.[41]

For the federal courts, a prolonged lapse in appropriated funding in the future, it has been suggested, might have a noticeable effect on court operations and on members of the public in contact with the courts. A spokeswoman for the judiciary reportedly has said it would again consider using non-appropriated funds to continue operating, as it did during the 1995-1996 government shutdowns. However, serious disruption, she added, could occur if a shutdown were prolonged and funds were depleted—with district and appellate courts unable to keep jurors, court reporters, clerks, probation officers, or security personnel on the job. Each court, she said, would make an independent decision on which employees were "emergency" and which were not.[42]

Effects on Mandatory Spending Programs

Programs that are funded by laws other than annual appropriations acts—for example, some entitlement programs—may, or may not, be affected by a funding gap. Specific circumstances appear to be significant. For example, although the funds needed to make payments to beneficiaries may be available automatically, pursuant to permanent appropriations, the payments may be processed by employees who are paid with funds provided in annual appropriations acts. In such situations, the question arises whether a mandatory program can continue to function during a funding gap, if appropriations were not enacted to pay salaries of administering employees. According to the 1981 Civiletti opinion, at least some of these employees would not be subject to furlough, because authority to continue administration of a program could be inferred from Congress's direction that benefit payments continue to be made according to an entitlement formula.[43] That is, obligating funds for the salaries of these personnel would be excepted from the Antideficiency Act's restrictions during a funding gap. However, such a

[39] Thomas W. Lippman, "Inconvenience Edges Toward Emergency," *Washington Post*, January 3, 1996, p. A11.

[40] *Government Shutdown: What's Essential?*, pp. 115-117.

[41] Peter Behr, "Contractors Face Mounting Costs from Government Shutdowns," *Washington Post*, January 23, 1996, p. C1; *Government Shutdown: What's Essential?*, p. 270, http://www.archive.org/details/governmentshutdo00unit; and Peter Behr, "Latest Federal Shutdown Hits Contractors Hard," *Washington Post*, December 22, 1995, p. D1.

[42] Paul M. Krawzak, "Ghosts of Shutdowns Past," *CQ Weekly*, vol. 69, February 28, 2011, p. 460, reporting statements of a spokeswoman for the Administrative Office of the U.S. Courts.

[43] 1981 Civiletti opinion, reprinted in U.S. GAO, *Funding Gaps Jeopardize Federal Government Operations*, p. 82 (footnote 7). For discussion, see U.S. GAO, *Principles of Federal Appropriations Law*, pp. 6-149 - 6-150.

determination would depend upon the absence of contrary legislative history in specific circumstances.

Nevertheless, the experience of the Social Security Administration (SSA) during the FY1996 shutdowns illustrates what might happen over a period of time in these situations. The lack of funds for some employees' salaries, for example, may impinge eventually on the processing and payment of new entitlement claims. SSA's administrative history describes how 4,780 employees were allowed to be retained during the initial stages of the first shutdown.[44] The majority of these employees were "in direct service positions to ensure the continuance of benefits to currently enrolled Social Security, SSI and Black Lung beneficiaries." Avoidance of furloughs was possible, because "appropriations were available to fund the program costs of paying benefits, [which] implied authority to incur obligations for the costs necessary to administer those benefits." SSA furloughed its remaining 61,415 employees. Before long, however, SSA and OMB reconsidered. SSA had not retained staff to, among other things, respond to "telephone calls from customers needing a Social Security card to work or who needed to change the address where their check should be mailed for the following month." SSA then advised OMB that the agency would need to retain 49,715 additional employees for direct service work, including the processing of new claims for Social Security benefits. Further adjustments were made during the considerably longer second shutdown, in response to increasing difficulties in administering the agency's entitlement programs.

Potential Issues for Congress

Quality and Specificity of Agency Planning

In December 1995, Representative John L. Mica, chairman of the Subcommittee on Civil Service of the House Committee on Government Reform and Oversight, convened a hearing that focused on the first FY1996 shutdown and potential implications for the future.[45] Among other things, then-Chairman Mica raised concerns about the shutdown's planning and execution by agencies and OMB, saying "the execution of the shutdown was, in many instances, disorganized and illogical, at best, and oftentimes chaotic experience."[46] As an example, he cited the "recall of more than 50,000 Social Security personnel [three days into the furlough], raising questions about whether they should have been furloughed in the first place."[47] In addition, then-Ranking Member James P. Moran expressed interest in clarifying the distinction between exempt and nonexempt activities and employees. If similar issues were currently of concern, Congress might consider lawmaking and oversight options related to the quality and specificity of agency shutdown planning.

[44] See SSA's "History of SSA 1993 - 2000," Ch. 5, http://www.ssa.gov/history/ssa/ssa2000chapter5.html.

[45] See *Government Shutdown: What's Essential?*, pp. 1-3.

[46] Ibid., p. 2.

[47] Ibid.

Availability of Agency Shutdown Plans

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.[48] 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.

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[48] OMB, *Circular No. A-11: Preparation, Submission, and Execution of the Budget*, July 2010, Section 124, p. 1.