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Anticipating a Possible Federal Shutdown

As you know, the U.S. government may shut down later today if Congress is unable to reach an agreement on continuing funding. If that happens, most U.S. government services that are not deemed "essential" will stop. Essential is a flexible term, but generally has meant functions directly related to national defense, emergency response or safety, although there are exceptions. This situation could affect a wide range of activities, including the scheduling of pending litigation before federal courts, administrative proceedings, or the processing by federal agencies or departments of applications, licenses, trademarks or similar matters. It is likely that an assessment of the impact will need to be made on a case-by-case basis.

The last federal government shutdown was in FY 2014. "When federal agencies and programs lack funding after the expiration of full-year or interim appropriations, the agencies and programs experience a funding gap. If funding does not resume in time to continue government operations, then, under the Antideficiency Act, an agency must cease operations, except in certain situations when law authorizes continued activity. The criteria that flow from the Antideficiency Act for determining which activities are affected are complex."[1]

After the 2014 shutdown, the Office of Management and Budget issued a report outlining its impact and costs. These costs included macroeconomic effects on the economy as a whole, as well as "economic disruption" due to cessation of "government activities the private sector relies on." Examples include a "halt to several kinds of permitting, reviews, and licensing (e.g., 200 applications for a permit to drill for energy resources); suspension of Internal Revenue Service (IRS) income verification used by financial institutions to help determine creditworthiness of prospective borrowers; a halt to hundreds of federal loans to small businesses; and disrupted tourism and travel by closing national parks." Other effects included stoppage of work on federal contracts. During the 2014 shutdown, the federal judiciary continued working, using other funds, and even if they had been exhausted may have been able to continue functions. However, "some civil cases were postponed, in part due to continuance requests from the Department of Justice" and many "courts also operated on condensed criminal calendars and reduced building maintenance."[2]

If you are concerned about legal issues that could be affected, please do not hesitate to contact us.

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[1] See, "Shutdown of the Federal Government: Causes, Processes, and Effects, Congressional Research Service," RL34680, November 30, 2017

[2] Id.

Authors



Stanley A. Twardy, Jr.

Of Counsel

Stamford, CT | (203) 977-7368

satwardy@daypitney.com