

LEGAL UPDATES

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# Seeking Answers in Looming Government Shutdown

On September 20, 2013, the U.S. House of Representatives voted to fund the federal government through Dec. 15, 2013, provided the Senate and the president agreed to defund the Affordable Care Act (ACA). The Senate is expected to vote on this matter today (Sept. 27) and is expected to strike the defunding provisions and reduce the time for funding the government to November 15, 2013. It is unknown at this point how the House of Representatives may respond to this type of Senate passed bill. The House may try to attach a delay or repeal of some portion of the ACA to a government funding bill.

It is our understanding that House leaders are considering several alternatives, including the following: adding language to repeal a board created by the ACA that makes recommendations about Medicare; ending a medical device tax that funds the ACA; postponing the effective date of the individual mandate to purchase health insurance by one year; or ending federal contributions that help pay for federal lawmakers' health care coverage. If an extension of the spending of the federal government is not resolved by October 1, the federal government will shut down.

To further complicate things, Treasury Secretary Jacob Lew has informed Congress that the government will need renewed borrowing authority by October 17 to meet its debt obligations and to avoid surpassing the statutorily enacted debt ceiling.

Generally, the government cannot continue running without appropriations, and none of the 13 regular appropriations bills that are due by October 1 has been enacted. Some exceptions to the general shutdown have arisen through interpretation over the years, and certain portions of the government can function, such as:

National security

Programs with permanent funding, like Society Security and Medicare

Power production, highway repairs and disaster assistance

Public health and safety

Therefore, even in a shutdown situation, soldiers will man their posts, prisons will be guarded, medical facilities will remain open and air traffic controllers will watch the skies.

## **Previous Shutdowns**

Over the years, there have been numerous short “funding gaps” that have caused shutdowns for a few days; in fact, since 1977 there have been at least 16. The last shutdown in 1995 lasted for 26 days and its impact was considerable.

Husch Blackwell Partner Ike Skelton, who was serving in Congress during the 26-day shutdown in 1995, said, “Major portions of the federal government were suspended, and nearly all elements of the U.S. economy felt the impact.” For example,

As many as 800,000 federal employees were furloughed, costing \$400 million.

Even “excepted” employees (soldiers, guards) had to wait for their pay until after the shutdown.

Veteran’s services were curtailed.

Medical research and health monitoring were interrupted.

The State Department delayed 200,000 passports and did not process visitor Visas (30,000 per day).

The Office of Management and Budget (OMB) put the overall direct cost to the government of the shutdown at \$1.4 billion.

## **Businesses Problems in 1995 Shutdown**

Federal permitting needed for all manner of business activities was delayed.

Resolution for 3,500 bankruptcy cases was suspended.

Toxic waste cleanup and other remediation programs were interrupted.

Federal grants and loan applications to fund business activities were not processed.

Tourism and airline industries lost millions of dollars from the severe drop in travel.

Federal contracts that could be slowed or stopped were (procurement orders, new construction, etc.).

Federal contractor service employees not otherwise excepted were sent home.

Although comprehensive information on losses to federal contractors is hard to find, a survey of Washington, D.C., contractors in 1996 found that more than 20 percent of existing federal contracts were adversely impacted.

## **What this Means to You**

Our firm has been closely following the debate in Congress and federal planning as the government moves closer to a shutdown. We can offer advice on activities that may be impacted by a shutdown and on the prospects of the on-going debate. Please contact Russ Orban at 202.378.2328 or Kyle Gilster at 202.378.2303 with any questions you may have.