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# **FY2024 Appropriations: Potential Effects of a Government Shutdown on Illustrative Agencies, Programs, and Activities**

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# FY2024 Appropriations: Potential Effects of a Government Shutdown on Illustrative Agencies, Programs, and Activities

When federal agencies and programs lack funding after the expiration of full-year or interim appropriations, the agencies and programs experience a lapse in appropriations, also known as 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. Programs that are funded by laws other than annual appropriations acts may or may not be affected by a funding gap. Other programs and activities may be funded in whole or part by user fees or similar sources of financing. However, if Congress controls access to user fee collections and an agency’s ability to obligate such funds through an annual appropriations act, then a lapse in appropriations could result in a shutdown of user-fee-funded activities.

A lapse in appropriations could potentially affect many federal agencies, programs, and activities as well as associated parts of society and the economy. This report briefly describes how a potential lapse in FY2024 appropriations and resulting government shutdown might affect a limited, illustrative set of agencies, programs, and activities. The report focuses on examples with relatively high levels of public interaction or visibility. Therefore, these topics may be of particular interest to Congress. The illustrative agencies, programs, and activities covered in this report include:

- Affordable Care Act (ACA) health insurance exchanges,
- Department of Education (ED) services and benefits,
- Food and Drug Administration (FDA),
- Head Start services,
- Department of Housing and Urban Development (HUD),
- Law enforcement personnel,
- Medicaid beneficiaries,
- Medicare beneficiaries,
- Social Security Administration (SSA) services and benefits,
- Supplemental Nutrition Assistance Program (SNAP) and Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) beneficiaries,
- U.S. Citizenship and Immigration Services (USCIS),
- Department of Veterans Affairs (VA) services and benefits,
- Workplace safety ,
- Armed forces personnel,
- U.S. passport services,
- Banking regulation and enforcement,
- Federal Emergency Management Agency (FEMA) services,
- Federal employee furloughs,
- Federal employee retroactive pay,
- Internal Revenue Service (IRS),
- Small Business Administration (SBA) services and benefits,

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- U.S. Postal Service (USPS),
- Department of Agriculture (USDA), excluding nutrition programs,
- Air travel and airports,
- Environmental Protection Agency (EPA),
- National Park Service (NPS), and
- National Aeronautics and Space Administration (NASA) and other research agencies.

Given the potentially pervasive effects of a government shutdown across a diverse array of appropriations bills, agencies, programs, activities, stakeholders, and contexts, CRS is unable to comprehensively document or track all the potential or actual effects of a given shutdown. Along these lines, this report is not intended to be comprehensive or representative or to track the evolution of a particular shutdown's effects over time.

Congressional requesters may wish to refer to CRS Report R41723, *Funding Gaps and Government Shutdowns: CRS Experts*, which lists CRS staff who can help to identify available and relevant information. During an actual lapse in appropriations that covers the legislative branch, however, CRS itself may furlough staff who cover many subject areas other than congressional operations or deliberations on the resumption of funding. In such situations, to reach CRS staff who have been excepted from furlough and are available to respond to requests, congressional requesters may use the "Place a Request" function on the CRS.gov website or call (202) 707-5700.

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## Introduction

When federal agencies and programs lack funding after the expiration of full-year or interim appropriations, the agencies and programs experience a lapse in appropriations, also known as a “funding gap.”<sup>1</sup> If funding does not resume in time to continue government operations, then, under the Antideficiency Act,<sup>2</sup> an agency must cease operations, except in certain situations when law authorizes continued activity. Some of these authorized continuations of activity are described as “exceptions” to the general requirement to shut down related operations and furlough employees.<sup>3</sup> For example, relevant decisionmakers might determine activities involving the safety of human life or the protection of property to be excepted.<sup>4</sup> Even when continued activity is authorized, however, related payments may not be made for activities normally funded by the relevant appropriations bills—such as to agency personnel and contractors—due to a lack of enacted funding.

Programs that are funded by laws other than annual appropriations acts—such as some entitlement programs—may or may not be affected by a funding gap. For example, although the funds needed to make payments to beneficiaries may be available automatically pursuant to a permanent appropriation, the payments may be processed by employees who are paid with funds provided in annual appropriations acts. In such situations, at least some of these employees might be excepted from furlough (but not paid), because authority to continue administration of a program might be inferred from Congress’s direction that benefit payments continue to be made.<sup>5</sup>

For a program funded *in its entirety* by appropriations provided outside the annual appropriations process—such as through a permanent appropriation or funds that are available until expended, also known as “no-year” funds—a lapse might have no effect. Contemplating this scenario, the Office of Personnel Management (OPM) has referred to some employees as being “exempt” from furlough if they are not affected by a lapse in appropriations. OPM describes these employees as not being subject to a shutdown furlough, because the employees’ compensation is not funded by annually appropriated funds.<sup>6</sup>

Other programs and activities may be funded in whole or part by user fees or similar sources of financing.<sup>7</sup> A related trust fund or other fund might receive collections from user fees. However, if Congress controls access to user fee collections and an agency’s ability to obligate such funds through an annual appropriations act (e.g., limiting the amount of user fee collections that can be

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<sup>1</sup> For more information, see CRS Report RS20348, *Federal Funding Gaps: A Brief Overview*.

<sup>2</sup> The so-called Antideficiency Act refers to several statutory provisions in Title 31 of the *U.S. Code*. For discussion of how the act applies in the context of a lapse in appropriations and resulting government shutdown, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*.

<sup>3</sup> In this context, a furlough refers to placement of an employee in temporary non-duty, non-pay status because of temporary lack of funds. See CRS In Focus IF11703, *Federal Employee Furloughs: Types and Implications*.

<sup>4</sup> See CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*. See also Office of Management and Budget (OMB), “Frequently Asked Questions During a Lapse in Appropriations,” <https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans/>.

<sup>5</sup> In this view, the continued availability of funds for benefit payments would be held to “necessarily imply” that continued administration of the program is authorized by law at some level and therefore excepted from the Antideficiency Act. For discussion, see CRS Report RL34680, *Shutdown of the Federal Government: Causes, Processes, and Effects*.

<sup>6</sup> OPM, “Guidance for Shutdown Furloughs,” December 2021, p. 2, <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

<sup>7</sup> See CRS Report R45463, *Economics of Federal User Fees*.

obligated during a given fiscal year), then a lapse in appropriations could result in a shutdown of user-fee-funded activities.

## Contents

This report provides brief information about how a potential lapse in appropriations for FY2024 and resulting government shutdown might affect an illustrative, albeit limited set of agency programs and their services, recipients of benefits and services, industries and related customers or stakeholders where agencies play key roles (e.g., air travel, workplace safety), and federal government civilian and military personnel. While a lapse in appropriations could potentially affect many federal agencies, programs, and activities, this report focuses on illustrative examples of those with higher levels of public interaction or visibility. Therefore, these topics may be of particular interest to Congress. The report includes contributions from many staff across CRS who cover topics in their respective areas of expertise. Accordingly, for each topic, the report lists the CRS contributor(s) in footnotes to section headings in case congressional clients have questions.

### What If an Agency, Program, or Activity Is Not Included in This Report?

Congressional requesters may refer to CRS Report R41723, *Funding Gaps and Government Shutdowns: CRS Experts*, which lists CRS staff who can help identify available and relevant information.

Requesters may also use the “Place a Request” function on the CRS.gov website or call (202) 707-5700.

## Uncertainties Related to the Effects of a Government Shutdown

Several factors impede CRS’s ability to authoritatively predict the effects of a potential, forthcoming shutdown for a given topic. The Antideficiency Act has been interpreted differently over time and may be interpreted differently in the future. Even apart from statutory interpretation, relevant contextual factors may vary for a given program or agency in different years and even over the course of a single lapse in appropriations. In addition, the actual effects of past shutdowns are often not authoritatively or comprehensively documented. In view of these limitations, this report may draw on publicly available sources such as descriptions that agencies have included in their most recent shutdown plans (which may provide only limited detail),<sup>8</sup> reports of what happened in past shutdowns,<sup>9</sup> and information about any enacted funding that is available to an agency apart from lapsed annual appropriations acts. As such, publicly available information may provide an incomplete and contingent basis for projecting or documenting the

<sup>8</sup> OMB refers to these plans as “contingency plans.” Agency shutdown plans are posted on OMB’s public website. See OMB, “Agency Contingency Plans,” <https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans/>.

<sup>9</sup> CRS is aware of some systematic efforts to document the effects of past shutdowns. CRS has not validated the findings of these reports. For examples, see Sylvia Mathews Burwell, “Impacts and Costs of the Government Shutdown,” November 7, 2013, <https://obamawhitehouse.archives.gov/blog/2013/11/07/impacts-and-costs-government-shutdown> (summary web page); Executive Office of the President, *Impacts and Costs of the October 2013 Federal Government Shutdown*, <https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf>; Office of Sen. Rob Portman, “Portman, Carper: Bipartisan Report Shows Recent Government Shutdowns Cost Taxpayers Nearly \$4 Billion, 56,938 Years of Lost Productivity,” press release, September 17, 2019, <https://web.archive.org/web/20221107215023/https://www.portman.senate.gov/newsroom/press-releases/portman-carper-bipartisan-report-shows-recent-government-shutdowns-cost>; and U.S. Congress, Senate Committee on Homeland Security and Governmental Affairs, Permanent Subcommittee on Investigations, *The True Cost of Government Shutdowns*, staff report (“majority and minority”), September 17, 2019, <https://www.hsgac.senate.gov/wp-content/uploads/imo/media/doc/2019-09-17%20PSI%20Staff%20Report%20Government%20Shutdowns%20Final.pdf>.

potential impacts of any prospective or past shutdown. Additionally, this report is not intended to be comprehensive or to track the evolution of a particular shutdown's effects over time.

Congressional requesters may wish to refer to CRS Report R41723, *Funding Gaps and Government Shutdowns: CRS Experts*, which lists CRS staff who can help to identify available and relevant information about specific agencies, programs, and other related topics. During an actual lapse in appropriations that covers the legislative branch, however, CRS itself may furlough staff who cover many subject areas other than congressional operations or deliberations on the resumption of funding. In such situations, to reach CRS staff who have been excepted from furlough and are available to respond to requests, congressional requesters may use the “Place a Request” function on the CRS.gov website or call (202) 707-5700.

## Illustrative List of Potential Effects

### Domestic Social Policy-Related Agencies, Programs, and Activities

#### Affordable Care Act (ACA) Health Insurance Exchanges<sup>10</sup>

Exchanges are virtual marketplaces, established under the ACA, in which consumers (and small business owners and employees) can shop for and purchase private health insurance coverage and, where applicable, consumers can be connected to public health insurance programs (e.g., Medicaid). Per the Centers for Medicare & Medicaid Services (CMS) contingency plan for a potential FY2024 lapse in appropriations, “CMS will continue Federal Exchange activities, such as eligibility verification, using Federal Exchange user fee carryover.”<sup>11</sup>

An exchange may be established either by a state itself as a *state-based exchange (SBE)* or by the Secretary of the Department of Health and Human Services (HHS) as a *federally facilitated exchange (FFE)*. Some states have *SBE-FPs*: They have SBEs but use the federal information technology platform (FP), including the federal exchange website HealthCare.gov. For the current plan year (2023), there are 30 FFEs, 18 SBEs, and 3 SBE-FPs.<sup>12</sup>

In general, federal spending on the exchanges is specific to the FFEs and to applicable functions in the SBE-FPs. This includes, for example, the operation of HealthCare.gov. CMS performs and funds some functions for all exchanges, including SBEs, such as “verifying eligibility data for financial assistance through the Marketplace or other health insurance programs” and “ensuring proper payment of financial assistance” for eligible consumers, as discussed below.<sup>13</sup>

Much of the federal spending on the exchanges is funded by user fees paid by the insurers who participate (i.e., offer plans to consumers) in FFE and SBE-FP exchanges. Such user fees are typically made available until expended. P.L. 116-127 P.L. 118-15 P.L. 117-108 P.L. 118-15<sup>14</sup> CMS could use the unobligated balance of such fees, if any, to continue such exchange activities during a lapse until they are exhausted. Besides those exchange insurer user fees, federal funding for the

<sup>10</sup> This section was written by Vanessa C. Forsberg, Analyst in Health Care Financing.

<sup>11</sup> Department of Health and Human Services (HHS), *Centers for Medicare & Medicaid Services' FY2024 Lapse Plan*, <https://www.hhs.gov/about/budget/fy-2024-cms-contingency-staffing-plan/index.html>.

<sup>12</sup> For exchange types by state, see Appendix A of CRS Report R44065, *Overview of Health Insurance Exchanges*. For plan year 2024, there will be 29 FFEs, 19 SBEs, and 3 SBE-FPs, given exchange transitions in Virginia and Georgia.

<sup>13</sup> CMS, *FY2024 Justification of Estimates for Appropriations Committees*, March 2023, p. 200, <https://www.cms.gov/files/document/cms-fy-2024-congressional-justification-estimates-appropriations-committees.pdf-0>.

<sup>14</sup> See, for example, the Consolidated Appropriations Act, 2023 (P.L. 117-328), Div. H, Title II, 136 Stat. 4868-4869.

exchanges largely comes from discretionary appropriations for CMS program management and program integrity. The implications of a lapse in this funding are unclear. States with SBEs finance their own exchange administration; states with SBE-FPs also finance certain costs.<sup>15</sup>

The costs of the plans purchased through the exchanges are covered by enrollees' premiums and, in some cases, are subsidized by the federal government (i.e., via premium tax credits, or PTCs). The PTCs are financed through a permanent appropriation at Title 31, Section 1324(b)(2), of the *U.S. Code*, which means that the PTC subsidies themselves are not subject to a lapse in appropriations.

### **Department of Education (ED) Services and Benefits<sup>16</sup>**

ED released its contingency plan for a lapse in FY2024 appropriations on September 29, 2023.<sup>17</sup> It includes the most up-to-date and authoritative information about how ED would handle a government shutdown. With respect to discretionary funding provided for elementary and secondary education programs administered by ED, most funding is provided through formula grant programs. Most of these formula grant programs have available to them forward funding as of July 1, 2023, or advance appropriations as of October 1, 2023. This funding has already been obligated by ED to grantees and will be used primarily during the 2023-2024 school year. According to ED, "obligations and payments from these programs may continue, depending on the length of the lapse and availability of funds."<sup>18</sup> For the administration of these programs, some employees would be excepted from furlough to support limited administrative functions, such as "to provide payments and fulfill obligations to grantees and other recipients."<sup>19</sup> Program funds for Pell Grants and Direct Student Loans are provided through mandatory and multiyear discretionary appropriations that carry over into FY2024, and key administrative operations such as processing applications, disbursing aid, and servicing loans could continue for a limited time. Discretionary programs that do not have unobligated balances available to them from FY2023 could not incur new obligations during a government shutdown unless permitted under an exception. During a government shutdown, ED would not run any new grant competitions or develop and implement guidance, technical assistance, or regulatory actions unless required for otherwise funded activities. In addition, the Office of Civil Rights would pause its review and investigations of civil rights complaints.

### **Food and Drug Administration (FDA)<sup>20</sup>**

FDA regulates the safety of foods (including dietary supplements), cosmetics, and radiation-emitting products; the safety and effectiveness of drugs, biologics (e.g., vaccines), and medical devices; and public health aspects of tobacco products. FDA's total program level—the amount that FDA can spend—is comprised of discretionary appropriations from two different sources: annual appropriations from the Treasury general fund (i.e., discretionary budget authority) and

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<sup>15</sup> For more information about federal spending on exchange operations, exchange user fees and other funding sources for federal exchange spending, and state financing of the exchanges, see "Exchange Spending and Funding" in CRS Report R44065, *Overview of Health Insurance Exchanges*.

<sup>16</sup> This section was written by Kyle D. Shohfi, Analyst in Education Policy; and Rebecca R. Skinner, Specialist in Education Policy.

<sup>17</sup> ED, *U.S. Department of Education Contingency Plan for Lapse in Fiscal Year (FY) 2024 Appropriations*, September 29, 2023, <https://www2.ed.gov/about/shutdown/contingency-plan-2023.pdf>.

<sup>18</sup> ED, *U.S. Department of Education Contingency Plan for Lapse in Fiscal Year (FY) 2024 Appropriations*, p. 3.

<sup>19</sup> ED, *U.S. Department of Education Contingency Plan for Lapse in Fiscal Year (FY) 2024 Appropriations*, p. 3.

<sup>20</sup> This section was written by Amanda Sarata, Specialist in Health Policy.



user fees paid by the regulated industry (e.g., drug manufacturers). In FDA’s annual appropriation, Congress sets both the total amount of appropriated funds and the amount of user fees that the agency is authorized to collect and obligate for that fiscal year.<sup>21</sup> Thus, without enacted annual appropriations, FDA has neither appropriated funds available for obligation nor the authority to collect user fees for the fiscal year. The agency would be able to use carryover user fee funds to continue specific activities (i.e., activities related to the review of products) supported by user fees.<sup>22</sup> However, as noted, the agency does not have the authority to accept user fees during a lapse in appropriation. Therefore, it would not be able to accept regulatory submissions with fees during the lapse period. In addition, activities supported by COVID-19 supplemental funding may continue, including, for example, work on Emergency Use Authorization submissions and activities to mitigate medical product shortages or supply chain disruptions. Finally, activities “related to the safety of human life” and those to “protect property” may continue. These might include, for example, managing recalls and foodborne illness or infectious disease outbreaks, as well as surveillance of adverse event reports for issues that might threaten human health. FDA’s “FY2024 Lapse Plan” notes that “15,602 (81%) of FDA staff will be retained including 12,300 (64%) who are exempt (their activities or position are already funded or otherwise exempted) and 3,302 (17%) who are excepted” and that of these staff, about 1,000 would be working directly on COVID-19 response-related activities.<sup>23</sup>

### Head Start Services<sup>24</sup>

HHS issues Head Start (including Early Head Start) grants on a rolling basis throughout the fiscal year. The timing varies based on the grant cycles for individual grant recipients (e.g., some grantees may receive funds early in the fiscal year, some later in the fiscal year). As a result, the effects of a potential federal funding gap may be uneven, grant-specific, and varied based on when the funding gap occurs and how long it lasts. For example, a White House press release about a possible October 2023 shutdown estimated that “10,000 children across the country would immediately lose access to Head Start ... with the impacts only growing worse over time.”<sup>25</sup> This estimate represents roughly 1% of the program’s overall FY2023 funded enrollment level. A shutdown occurring at a different time during FY2024 could potentially implicate a different set of grant recipients, though effects would depend on the timing and duration. As another example, the Office of Management and Budget (OMB) reported that six Head Start grant recipients serving nearly 6,300 children were temporarily closed during the October 2013 shutdown.<sup>26</sup> The OMB report noted that the programs were able to reopen with support from private philanthropists, their states, or the National Head Start Association.

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<sup>21</sup> For more information about FDA’s budget, see CRS Report R44576, *The Food and Drug Administration (FDA) Budget: Fact Sheet*.

<sup>22</sup> Generally, the activities that user fees are authorized to support are specified in statute. See, for example, Federal Food, Drug, and Cosmetic Act, Section 737(9) (21 U.S.C. §379i).

<sup>23</sup> HHS, *FDA FY2024 Lapse Plan*, <https://www.hhs.gov/about/budget/fy-2024-fda-contingency-staffing-plan/index.html>.

<sup>24</sup> This section was written by Karen Lynch, Specialist in Social Policy.

<sup>25</sup> The White House, “Extreme House Republicans’ Chaos Is Marching Us Toward a Government Shutdown,” press release, September 20, 2023, <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/25/extreme-house-republicans-chaos-is-marching-america-toward-a-shutdown-that-would-jeopardize-vital-nutrition-assistance-for-nearly-7-million-vulnerable-moms-and-young-children/>.

<sup>26</sup> OMB, *Impacts and Costs of the October 2013 Federal Government Shutdown*, November 2013.

## Department of Housing and Urban Development (HUD)<sup>27</sup>

HUD’s 2023 contingency plan provides detailed information about activities during a potential lapse in appropriations.<sup>28</sup> HUD’s primary rental assistance programs (public housing, Housing Choice Vouchers, and Project-Based Rental Assistance) are all funded on a calendar year basis, so funding is generally available to program administrators to continue assistance through the end of the calendar year. Depending on the program and the recipient, additional prior year, no-year, or reserve funding may also be available to support ongoing program operations. The Federal Housing Administration (FHA) would continue to insure single-family loans (with certain exceptions, such as FHA-insured reverse mortgages, known as Home Equity Conversion Mortgages) so long as commitment authority remains available, although the processing or closing of some loans may be delayed. HUD formula grantees (including cities, counties, states, insular areas, and tribes) may continue to spend previously obligated funding where further action or review by HUD employees is not required. However, the contingency plan provides that HUD may undertake further action or review under certain circumstances.

## Law Enforcement Personnel<sup>29</sup>

There are nearly 131,000 federal law enforcement officers (LEOs) across 42 federal agencies, which can make it difficult to determine how a government shutdown would affect federal law enforcement in its entirety.<sup>30</sup> For example, the shutdown contingency plans for the Departments of Veterans Affairs and the Treasury, which have approximately 6,500 LEOs, do not discuss, outside of the Internal Revenue Service, how a shutdown would affect their law enforcement personnel. However, LEOs at the Departments of Justice (DOJ), Homeland Security (DHS), and the Interior (DOI) account for 84% of all federal LEOs, and the shutdown contingency plans for these departments indicates that their law enforcement operations would continue in order to protect life and property:

- DOJ states in its shutdown contingency plan, “The law enforcement capacity of the U.S. Government should not be impaired or perceived to be impaired. To do so could constitute an imminent threat to the safety of human life and the protection of property.”<sup>31</sup> DOJ further states that “a significant portion of the Department’s mission relates to the safety of human life and the protection of property, and primarily for this reason, the Department has a high percentage of activities and employees that are excepted from the Antideficiency Act restrictions and can continue during a lapse in appropriations.”<sup>32</sup>
- DHS states in its shutdown contingency plan that LEOs “whose duties include protecting human life or protecting property are excepted. However, LEOs who perform administrative functions that do not directly and demonstrably contribute to such activities are not excepted unless their work is necessary to support

<sup>27</sup> This section was written by Katie Jones, Analyst in Housing Policy; Maggie McCarty, Specialist in Housing Policy; and Libby Perl, Specialist in Housing Policy.

<sup>28</sup> HUD, *HUD Contingency Plan for Possible Lapse in Appropriations 2023*, September 29, 2023, <https://www.hud.gov/sites/documents/HUDCONTINGENCYPLANFINAL.PDF>.

<sup>29</sup> This section was written by Nathan James, Analyst in Crime Policy.

<sup>30</sup> Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Statistics, *Federal Law Enforcement Officers, 2020—Statistical Tables*, NCJ 304752, September 2022, pp. 4-5.

<sup>31</sup> DOJ, *FY2024 Contingency Plan*, September 25, 2023, p. 2.

<sup>32</sup> DOJ, *FY2024 Contingency Plan*, September 25, 2023, p. 1.

activities that protect life or property.”<sup>33</sup> Examples of DHS law enforcement functions that would be scheduled to continue during a shutdown include:

- maintaining law enforcement operations, including drug interdiction and irregular migration management;
  - continuing passenger processing and cargo inspection functions at ports of entry;
  - providing the protective functions of the U.S. Secret Service; and
  - maintaining counter-terrorism watches or intelligence gathering or dissemination in support of terrorist threat warnings.<sup>34</sup>
- Agencies in DOI with LEOs<sup>35</sup> indicate in their shutdown contingency plans that their law enforcement operations would continue in the event of a government shutdown.<sup>36</sup>

### Medicaid Beneficiaries<sup>37</sup>

Medicaid is an appropriated entitlement. The level of spending for appropriated entitlements, similar to other entitlements, is based on the benefit and eligibility criteria established in law. The amount of budget authority provided in appropriations acts for Medicaid is based on budget projections for meeting the funding needs of the program. The annual appropriations act usually provides Medicaid with (1) funding for the fiscal year considered in the appropriations act and (2) an advance appropriation for the first quarter of the following fiscal year.

The Consolidated Appropriations Act, 2023 (P.L. 117-328), provided the grants to states for Medicaid with \$367.4 billion for FY2023 and an advance appropriation of \$197.6 billion for the first quarter of FY2024. As a result, the federal Medicaid funding to states is available at the beginning of FY2024, and in the event of a shutdown, states would continue to receive federal Medicaid funding, and Medicaid enrollees would not be expected to see a disruption in service for most of the first fiscal quarter.

CMS’s FY2024 lapse plan says that, in the event of a federal shutdown, almost half of CMS staff would be exempt or excepted.<sup>38</sup> The lapse plan does not specify what work exempt or excepted staff would be doing, so there could be delays in the federal administration of Medicaid, such as

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<sup>33</sup> DHS, *Procedures Related to a Lapse in Appropriations*, September 22, 2023, p. 7.

<sup>34</sup> DHS, *Procedures Related to a Lapse in Appropriations*, p. 7.

<sup>35</sup> These agencies are the National Park Service (both the National Park Service Rangers and the U.S. Park Police), the Fish and Wildlife Service, the Bureau of Indian Affairs, the Bureau of Land Management, and the Bureau of Reclamation.

<sup>36</sup> DOI, Bureau of Indian Affairs, *Contingency Plan*, November 2023, p. 3; DOI, Bureau of Land Management, *Contingency Plan*, November 2023, p. 4; DOI, Bureau of Reclamation, *Contingency Plan*, November 2023, p. 4; DOI, U.S. Fish and Wildlife Service, *Contingency Plan*, November 2023, p. 4; and DOI, National Park Service, *Contingency Plan*, November 2023, p. 2.

<sup>37</sup> This section was written by Alison Mitchell, Specialist in Health Care Financing.

<sup>38</sup> HHS, *Centers for Medicare & Medicaid Services’ FY2024 Lapse Plan*, <https://www.hhs.gov/about/budget/fy-2024-cms-contingency-staffing-plan/index.html>.

getting approval of Medicaid state plan amendments or waivers.<sup>39</sup> However, CMS has specified that, during a shutdown, it would continue overseeing states' unwinding efforts.<sup>40</sup>

### Medicare Beneficiaries<sup>41</sup>

The varied interests of the Medicare program include beneficiaries, Medicare providers and suppliers (e.g., hospitals, nursing homes, other institutions, physicians and practitioners, durable medical equipment suppliers, and others) that furnish health care services to program beneficiaries, and activities undertaken by CMS—the HHS agency that administers the Medicare program. A network of Medicare Administrative Contractors (MACs) is responsible for paying providers and suppliers for care furnished to beneficiaries. CMS procures all MAC contracts according to the Federal Acquisition Regulation. Based on precedent from prior shutdowns, Medicare-covered services for program beneficiaries and payments to providers and suppliers have been unaffected in the short term (up to 35 days based on prior shutdown experience), whereas some administrative and program-related activities may cease.<sup>42</sup>

During prior lapses in funding, Medicare Part A, Part B, and Part D beneficiaries have continued to receive covered services, and providers and suppliers furnishing those services have been paid. Similarly, private Medicare Part C plans that receive capitated payments (managed care plans, also called Medicare Advantage [MA]) have continued to furnish beneficiary services and pay providers and suppliers during prior shutdowns. However, as prior shutdowns have not lasted more than 35 days, there is no precedent for whether MACs and MA organizations might continue these activities should a lapse in federal funding exceed this duration.

Some CMS activities have been directly affected during prior shutdowns, including activities funded through discretionary funds. Suspended initiatives have included CMS program integrity efforts such as health care fraud and abuse programs and both initial and recertification surveys for Medicare providers and suppliers. The cessation of these and related activities may affect access to and quality of care.

### Social Security Administration (SSA) Services and Benefits<sup>43</sup>

SSA administers two cash benefit programs: (1) Old-Age, Survivors, and Disability Insurance, commonly known as Social Security;<sup>44</sup> and (2) Supplemental Security Income (SSI).<sup>45</sup> SSA also supports the administration of Medicare through several activities, such as initially determining

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<sup>39</sup> For more information about Medicaid state plan amendments and waivers, see CRS Report R43357, *Medicaid: An Overview*.

<sup>40</sup> During the COVID-19 public health emergency period, the continuous coverage requirement for the Family First Coronavirus Response Act () federal medical assistance percentage increase has prevented states from redetermining Medicaid eligibility for Medicaid enrollees. However, states have begun the process of conducting Medicaid eligibility redeterminations since April 1, 2023, and this process is referred to as the Medicaid “unwinding” (Dorothy Mills-Gregg, “CMS: Unwinding Oversight Will Continue If Government Shuts Down,” *Inside Health Policy*, September 28, 2023).

<sup>41</sup> This section was written by Jim Hahn, Specialist in Health Care Financing.

<sup>42</sup> HHS, “Centers for Medicare and Medicaid Services,” <https://www.hhs.gov/about/budget/fy-2024-cms-contingency-staffing-plan/index.html>.

<sup>43</sup> This section was written by William R. Morton, Analyst in Income Security; and Paul S. Davies, Specialist in Income Security.

<sup>44</sup> For more information, see CRS In Focus IF10426, *Social Security Overview*.

<sup>45</sup> For more information, see CRS In Focus IF10482, *Supplemental Security Income (SSI)*.

eligibility for Medicare, processing enrollment for certain parts of the program, and determining and withholding certain Medicare premiums from Social Security benefits.

Funding for Social Security and SSI benefits is considered mandatory spending, while funding for SSA's administration of Social Security, SSI, and Medicare is generally considered discretionary spending.<sup>46</sup> Funding for Social Security benefits is provided directly from the Social Security trust funds, which have a permanent and indefinite appropriation. Funding for SSI payments is provided by mandatory appropriations from the general fund in annual appropriations acts. The Consolidated Appropriations Act, 2023 (P.L. 117-328) provided an advance appropriation to fund SSI payments through the first quarter of FY2024 (i.e., through December 31, 2023). Discretionary spending for SSA's administrative activities is also provided as part of the annual appropriations process.

According to SSA's August 2023 contingency plan,<sup>47</sup> in the event of a lapse in appropriations, Social Security benefits would continue to be paid, and SSI payments would continue to be paid through the first quarter of FY2024. In addition, many of SSA's administrative activities would continue during a lapse in appropriations, such as taking and processing benefit applications, adjudicating appeals, and issuing new or replacement Social Security cards. Some of SSA's administrative activities would be discontinued during a lapse in appropriations, such as issuing replacement Medicare cards, processing overpayments, and responding to requests from third parties.

### **Supplemental Nutrition Assistance Program (SNAP) and Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Beneficiaries<sup>48</sup>**

During a government shutdown, whether SNAP and WIC benefits will continue to be issued, and for how long, can vary based on a variety of factors, including available carryover or contingency funds, whether the lapse in appropriations follows a continuing resolution (CR), whether the CR included any SNAP- or WIC-specific provisions, how the Department of Agriculture (USDA) implements the CR, federal accounting principles, and the availability of program funding outside of the appropriations process. SNAP and WIC each have different authorizing laws, funding mechanisms, and appropriations accounts, so the continuation of benefits and services may vary between the two programs.

With regard to the possibility of a government shutdown following November 17, 2023, USDA's Food and Nutrition Service (FNS) has indicated in memoranda that it will provide program benefits, under the authority of both general and program-specific terms of the P.L. 118-15 continuing resolution, through December 31, 2023 (and possibly longer for WIC).<sup>49</sup> For SNAP, FNS said it will use the CR to provide SNAP benefits for November and December 2023.<sup>50</sup> For WIC, FNS said it will use the CR to provide states WIC funding for the first quarter of FY2024 (October-December 2023) and that it expects the funding to "fully support WIC state agencies"

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<sup>46</sup> See CRS Report R47097, *Social Security Administration (SSA): Trends in the Annual Limitation on Administrative Expenses (LAE) Appropriation Through FY2021*.

<sup>47</sup> Chad Poist, Deputy Commissioner for Budget, Finance, and Management, letter to Shalanda Young, Director, OMB, August 14, 2023, <https://www.ssa.gov/agency/shutdown/materials/contingency-plan-08-14-23.pdf>.

<sup>48</sup> This section was written by Randy Alison Aussenberg, Specialist in Nutrition Assistance Policy.

<sup>49</sup> See, Division A, Sections 111 and 118 for provisions pertaining to SNAP and WIC, respectively.

<sup>50</sup> FNS, "Supplemental Nutrition Assistance Program (SNAP) Benefit Issuance," October 16, 2023, <https://www.fns.usda.gov/snap/benefit-issuance-cr>.

operations and ongoing efforts to serve all eligible people seeking WIC benefits through at least December 31<sup>st</sup>.<sup>51</sup> Should a lapse in funding occur at a different point in FY2024 or in a future year, these memoranda and dates are not likely to apply.

Other resources on SNAP and WIC operations during a shutdown include (1) FNS's lapse in funding contingency plan, which may also speak to staffing and administration of the programs,<sup>52</sup> and (2) state agencies' websites and hotlines for more local updates on these programs.<sup>53</sup>

For discussion of USDA operations generally, see this report's entry for "**USDA, Excluding Nutrition Programs.**"

## U.S. Citizenship and Immigration Services (USCIS)<sup>54</sup>

Services provided through USCIS are not expected to be substantially affected by a lapse in appropriations. DHS estimates that 19,578 (96%) of USCIS's 20,381 on-board employees would be exempted and retained during a federal lapse in appropriations.<sup>55</sup> In FY2023, USCIS received about 97% of its \$5.94 billion budget from user fees from applications and petitions for immigration benefits.<sup>56</sup> That fee revenue is expected to continue unabated during a lapse in appropriations. The relatively small portion of the USCIS budget that is appropriated by Congress (\$158 million, or about 3% in FY2023) funds the E-Verify employment status verification program as well as the Citizenship and Integration Grants program that provides resources for civics education and assistance with applications for naturalization. Both programs might be affected by a lapse in appropriations.

## Department of Veterans Affairs (VA) Services and Benefits<sup>57</sup>

VA administers numerous programs that provide benefits and services to eligible veterans and their families. These benefits include medical care, disability compensation and pensions, education, vocational rehabilitation and employment services, assistance to homeless veterans, home loan guarantees, administration of life insurance and traumatic injury protection insurance for servicemembers, and death benefits that cover burial expenses.<sup>58</sup> VA's budget authority includes both mandatory and discretionary accounts.<sup>59</sup> The accounts for VA's *mandatory*

<sup>51</sup> FNS, "Letter to WIC State Agencies on Fiscal Year 2024 Funding," October, 16, 2023, <https://www.fns.usda.gov/wic/state-agencies-fy-2024-funding>.

<sup>52</sup> Available at USDA, "U.S. Department of Agriculture Lapse in Funding Plans," <https://www.usda.gov/shutdownplans>. The FNS plan posted on the website as of November 7, 2023, specifies the federal staffing for SNAP and WIC but not the duration that benefits would be provided during a lapse in federal funding.

<sup>53</sup> States administer eligibility determination and benefit issuance for SNAP and WIC. In some cases, the availability of funding may vary among states. For SNAP and WIC state agencies, see FNS, "SNAP State Directory of Resources," <https://www.fns.usda.gov/snap/state-directory>; and FNS, "WIC Program Contacts," <https://www.fns.usda.gov/wic/program-contacts>.

<sup>54</sup> This section was written by William Kandel, Specialist in Immigration Policy.

<sup>55</sup> DHS, *Procedures Relating to a Lapse in Appropriations*, September 22, 2023, p. 46.

<sup>56</sup> DHS, *United States Citizenship and Immigration Services, Budget Overview, Fiscal Year 2024, Congressional Justification*, p. CIS-4.

<sup>57</sup> This section was written by Jared Sussman, Analyst in Health Policy.

<sup>58</sup> For information on medical care, see CRS In Focus IF10555, *Introduction to Veterans Health Care*; on non-health care benefits, see CRS Report R44837, *Benefits for Service-Disabled Veterans*; on homelessness, see CRS Report RL34024, *Veterans and Homelessness*; and on burial benefits, see CRS Report R46813, *Department of Veterans Affairs: Burial Benefits and the National Cemetery Administration*.

<sup>59</sup> For more information on VA appropriations, see CRS Report R47423, *Department of Veterans Affairs FY2023 Appropriations*.

programs (appropriated entitlements) fund disability compensation for veterans, the survivor’s Dependency and Indemnity Compensation program, pensions, vocational rehabilitation and employment, education, life insurance, housing, clothing allowances, and burial benefits (such as burial allowances, grave liners, outer burial receptacles, and headstones and markers), among other benefits and services. *Discretionary* accounts fund medical care, medical research, construction programs (which comprises major construction, minor construction, grants for state-extended care facilities, and grants for state cemeteries accounts), information technology, Electronic Health Care Record Modernization, the Office of Inspector General, the Board of Veterans Appeals, the National Cemetery Administration, and general operating expenses, among other accounts.

Certain mandatory and discretionary accounts are funded by advance appropriations. The following mandatory accounts—compensation and pensions, readjustment benefits, and veterans insurance and indemnities—and the following discretionary accounts—medical services, medical community care, medical support and compliance, and medical facilities—are provided advance appropriations budget authority. For instance, the Consolidated Appropriations Act, FY2023, provided FY2024 advance appropriations budget authority for these accounts for the entirety of FY2024.<sup>60</sup> Thus, in the event of a lapse in appropriations, benefits, programs and services funded by these accounts may not be affected. In addition, according to VA’s contingency plan, some programs that did not receive advance appropriations would continue operations—such as benefits processions, burial benefits, and certain information technology activities, among others.<sup>61</sup> Medical research is funded by a multiyear appropriation and would also continue operations.<sup>62</sup>

In late September 2023, VA released its contingency plan and other information regarding departmental operations in the event of a lapse in appropriations.<sup>63</sup> According to the 2023 *Veterans Field Guide to Government Shutdown*:

The following programs and services would not be impacted:<sup>64</sup>

- Veterans health care is not impacted. VA medical centers, outpatient clinics, and vet centers will be open.
- VA benefits will continue to be processed and delivered, including compensation, pension, education, and housing benefits.
- Burials will continue at VA national cemeteries. Applications for headstones, markers, and burial benefits processing will continue.
- The Board of Veterans’ Appeals will continue decisions on veterans’ cases.
- VA Contact Centers (1-800-MyVA411) and the Veterans Crisis Line (Dial 988, press 1) are open 24/7.

<sup>60</sup> In the case of the mandatory accounts—compensation and pensions, readjustment benefits, and veterans insurance and indemnities—funds made available on October 1, 2023, are to remain available until expended. In the case of the discretionary accounts—medical services, medical community care, medical support and compliance, and medical facilities—funds made available on October 1, 2023, are to remain available until September 30, 2024, except for a portion of each to remain available until September 30, 2025.

<sup>61</sup> VA, “Frequently Asked Questions,” September 2023, p. 5, <https://department.va.gov/contingency-planning/frequently-asked-questions/>.

<sup>62</sup> VA, “Human Capital Contingency Plan,” September 27, 2023, Table 4, <https://department.va.gov/contingency-planning/human-capital-contingency-plan/>.

<sup>63</sup> VA, “VA Contingency Planning,” <https://department.va.gov/contingency-planning/>.

<sup>64</sup> VA, *Veterans Field Guide to Government Shutdown*, October 2023, [https://www.va.gov/files/2023-09/Veteran%20Field%20Guide%20to%20Government%20Shutdown%20508%2009292023\\_0.pdf](https://www.va.gov/files/2023-09/Veteran%20Field%20Guide%20to%20Government%20Shutdown%20508%2009292023_0.pdf).

The following programs and services would be impacted:

- VA will not provide veteran career counseling or transition assistance program activities.
- The GI Bill Hotline will be closed.
- VA benefits regional offices will be closed.
- VA will cease public affairs and outreach to veterans.
- VA will not permanently place headstones or maintain the grounds at VA national cemeteries.
- VA will not process applications for pre-need burials.
- VA will not print new presidential memorial certificates.

VA notes that 96% of the VA workforce would continue operations in the event of a lapse in appropriations.<sup>65</sup>

### Workplace Safety<sup>66</sup>

In the event of a lapse in appropriations for the Department of Labor (DOL), the Occupational Safety and Health Administration (OSHA) would, under its authority to continue operations to address “emergencies involving the safety of human life or protection of property,” continue to perform the following agency functions:<sup>67</sup> inspections of situations presenting an “imminent danger” to employees; investigations of workplace fatalities and catastrophes (generally an incident resulting in the hospitalization of three or more workers); investigations of safety and health complaints or other information establishing that workers are potentially exposed to high risk of death or serious physical harm with the potential to cause death; review of whistleblower complaints to determine if there is an imminent threat to life or property and referring such complaints to the appropriate agencies for action; and follow-up inspections of workplaces with high-gravity serious violations that have not been abated. All other agency functions—including programmed inspections (inspections not related to specific workplace incidents or complaints), compliance assistance, training and outreach activities, and activities related to rulemaking—would be suspended.

In the event of a lapse in appropriations for the DOL, the Mine Safety and Health Administration (MSHA) would, under the requirement of Section 103(a) of the Mine Safety and Health Act that all coal and other mines are to be periodically inspected, continue to conduct periodic inspections of mines.<sup>68</sup> In addition, MSHA would continue the following activities: investigations of targeted mines, specific hazards, accidents, and miners’ safety complaints; select analyses of certain samples taken from mines, such as dust and air samples; and activities during mine emergencies. All other agency functions—including compliance assistance, education, and training activities; conferences between mine operators and MSHA to review citations; the collection of civil monetary penalties; and approvals and certification of underground mine equipment—would be suspended.

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<sup>65</sup> VA, “Frequently Asked Questions,” p. 5.

<sup>66</sup> This section was written by Scott D. Szymendera, Analyst in Disability Policy.

<sup>67</sup> DOL, *Plan for the Continuation of Activities During a Lapse in Appropriations*, September 27, 2023, pp. 29-31, <https://www.dol.gov/sites/dolgov/files/general/plans/dol-contingency-plan.pdf>.

<sup>68</sup> DOL, *Plan for the Continuation of Activities During a Lapse in Appropriations*, pp. 26-27. See also 30 U.S.C. §813(a). This section states in part that “the Secretary shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times a year.”



## Foreign Affairs, Defense, and Trade-Related Agencies, Programs, and Activities

### Armed Forces Personnel<sup>69</sup>

Compensation for members of the Armed Forces (i.e., Army, Navy, Marine Corps, Air Force, Space Force, and Coast Guard) is typically funded through annual appropriations to personnel-related line items in accounts of the Department of Defense (DOD) and DHS.<sup>70</sup> On September 12, 2023, DOD released contingency plan guidance for a lapse in appropriations.<sup>71</sup> The document states that, in the event of a lapse in appropriations, “Military personnel on active duty, including reserve component personnel on Federal active duty, will continue to report for duty and carry out assigned duties.”<sup>72</sup> Such duties would include, among others, “military operations and activities authorized by deployment or execute orders, or otherwise approved by the Secretary of Defense, and determined to be necessary for national security, including administrative, logistical, medical, and other activities in direct support of such operations and activities; training and exercises required to achieve and maintain operational readiness and to prepare for and carry out such operations.”<sup>73</sup> Activities not “excepted” from a lapse in appropriations would cease.<sup>74</sup>

During a lapse in appropriations, servicemembers would not receive compensation for their work until the enactment of an appropriation providing funding for military pay and allowances, according to DOD.<sup>75</sup> On September 28, Sabrina Singh, Deputy Pentagon Press Secretary, said, “If there is a shutdown in just a few days, our service members would be required to continue working but would be doing so without pay, and hundreds and thousands of their civilian colleagues would be furloughed.”<sup>76</sup> In addition to military pay and allowances, a lapse in appropriations could affect certain active-duty benefits, such as tuition assistance, military spouse scholarships, reimbursement for qualifying expenses for adoption, Reserve Officers Training Corps scholarships, Junior Reserve Officers Training Corps program funding, and childcare fee assistance.<sup>77</sup> On September 22, 2023, DHS released contingency plan guidance for a lapse in

<sup>69</sup> This section was written by Brendan W. McGarry, Specialist in U.S. Defense Budget; and Kristy N. Kamarck, Specialist in Military Manpower.

<sup>70</sup> See, for example, DOD, Office of the Under Secretary of Defense (Comptroller), *Military Personnel (M-1) Programs*, [https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2024/FY2024\\_m1.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2024/FY2024_m1.pdf); and DHS, U.S. Coast Guard, *Budget Overview Fiscal Year 2024 Congressional Justification*, March 2023, [https://www.dhs.gov/sites/default/files/2023-03/U.S.%20COAST%20GUARD\\_Remediated.pdf](https://www.dhs.gov/sites/default/files/2023-03/U.S.%20COAST%20GUARD_Remediated.pdf).

<sup>71</sup> DOD, *Contingency Plan Guidance for Continuation of Essential Operations in the Absence of Available Appropriations*, August 2023, <https://media.defense.gov/2023/Sep/12/2003299418/-1/-1/0/Guidance-For-Continuation-of-Operations-During-a-Lapse-in-Appropriations.PDF>.

<sup>72</sup> DOD, *Contingency Plan Guidance*, p. 4.

<sup>73</sup> DOD, *Contingency Plan Guidance*, p. 8.

<sup>74</sup> DOD, *Contingency Plan Guidance*, p. 2.

<sup>75</sup> See, for example, DOD, “Sabrina Singh, Deputy Pentagon Press Secretary, Holds an On-Camera Press Briefing,” transcript, September 28, 2023, <https://www.defense.gov/News/Transcripts/Transcript/Article/3541970/sabrina-singh-deputy-pentagon-press-secretary-holds-an-on-camera-press-briefing/>. Also see DOD, Deputy Secretary of Defense, “Potential for Lapse in Funding,” September 29, 2023, <https://media.defense.gov/2023/Sep/29/2003311351/-1/-1/0/DEPUTY-SECRETARY-OF-DEFENSE-MEMO-POTENTIAL-FOR-LAPSE-IN-FUNDING.PDF>. For further discussion, see CRS Insight IN12244, *Armed Forces Compensation During a Lapse in Appropriations*.

<sup>76</sup> DOD, “Sabrina Singh, Deputy Pentagon Press Secretary, Holds an On-Camera Press Briefing.”

<sup>77</sup> DOD, Office of the Under Secretary of Defense (Comptroller), *Operations and Maintenance (O-1) Programs*, [https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2024/FY2024\\_o1.pdf](https://comptroller.defense.gov/Portals/45/Documents/defbudget/FY2024/FY2024_o1.pdf).

appropriations.<sup>78</sup> The document describes that Coast Guard servicemembers, similar to those under DOD, “may perform normal duties during a lapse.”<sup>79</sup> Military retired pay and survivor benefits are distributed from the Military Retirement Fund.<sup>80</sup> As such, retirees and survivor benefit plan beneficiaries generally continue to receive disbursements during a lapse in appropriations.<sup>81</sup>

### **U.S. Passport Services<sup>82</sup>**

The Department of State’s (DOS’s) passport services are typically funded by consular fees that DOS is authorized by law to collect and expend rather than by annual appropriations. The DOS current guidance on operations during a lapse in appropriations, updated in August 2023, anticipates that passport services “will remain 100% operational as long as there are sufficient fees to support operations.”<sup>83</sup> DOS cautions that domestic passport agencies located in government buildings impacted by a lapse in appropriations “may become unsupported.” The Office of the Under Secretary of State for Management is responsible for determining the operating status of such passport agencies on a case-by-case basis.<sup>84</sup>

## **General Government-Related Agencies, Programs, and Activities**

### **Banking Regulation and Enforcement<sup>85</sup>**

The banking regulators—the Office of the Comptroller of the Currency,<sup>86</sup> Federal Reserve,<sup>87</sup> Federal Deposit Insurance Corporation,<sup>88</sup> and Consumer Financial Protection Bureau<sup>89</sup>—are generally funded outside of the regular appropriations process. Thus, a lapse in appropriations would have little, if any, impact on banking regulation and enforcement.

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<sup>78</sup> DHS, *Procedures Relating to a Lapse in Appropriations*, September 22, 2023, [https://www.dhs.gov/sites/default/files/2023-09/23\\_0926\\_dhs\\_procedures\\_related\\_to\\_lapse\\_in\\_appropriations\\_september\\_2023.pdf](https://www.dhs.gov/sites/default/files/2023-09/23_0926_dhs_procedures_related_to_lapse_in_appropriations_september_2023.pdf).

<sup>79</sup> DHS, *Procedures Relating to a Lapse in Appropriations*, September 22, 2023, p. 55.

<sup>80</sup> 10 U.S.C. §1463.

<sup>81</sup> Patricia Kime, “Government Shutdown Would Not Affect VA Medical Care and Most Benefits, Secretary Says,” *Military.com*, September 23, 2023, <https://www.military.com/daily-news/2023/09/22/government-shutdown-would-not-affect-va-medical-care-and-most-benefits-secretary-says.html>.

<sup>82</sup> This section was written by Cory Gill, Analyst in Foreign Affairs.

<sup>83</sup> DOS, *Guidance on Operating During a Lapse in Appropriations*, August 28, 2023, p. 7, <https://www.state.gov/wp-content/uploads/2023/08/Updated-DOS-Lapse-Guidance-August-2023-Final-Accessible.pdf>.

<sup>84</sup> DOS, *Guidance on Operating*, p. 25.

<sup>85</sup> This section was written by Baird Webel, Specialist in Financial Economics.

<sup>86</sup> The Office of the Comptroller of the Currency is located within the Department of the Treasury, but it is independently funded. It currently does not have a contingency plan on the Treasury website at <https://home.treasury.gov/lapse-in-appropriations-contingency-plans>.

<sup>87</sup> The Federal Reserve does not have a contingency plan on the OMB website.

<sup>88</sup> The Federal Deposit Insurance Corporation’s Office of Inspector General is appropriated funds through the Financial Services and General Government appropriations bill but does not have a current contingency plan on the OMB website. A previous plan can be found at <https://web.archive.org/web/20180125003039/https://www.fdicog.gov/sites/default/files/attachments/FDICOIG-OPERATING-PLAN-SEPTEMBER-2017.pdf>.

<sup>89</sup> The Consumer Financial Protection Bureau does not have a contingency plan on the OMB website.

## Federal Emergency Management Agency (FEMA) Services<sup>90</sup>

Under the most recent contingency plan released by DHS,<sup>91</sup> 15.8% of FEMA staff are projected to be furloughed during a lapse in annual appropriations. Almost all of FEMA's staff that would continue working would do so because they are funded through the Disaster Relief Fund (DRF) and the National Flood Insurance Fund, working on disaster response and recovery programs authorized under the Stafford Act and the National Flood Insurance Program (NFIP). FEMA's non-disaster grant and training programs would not be funded under a lapse. This would result in delays in awards, possible delays in grant drawdowns, and deferral or cancellation of training and exercises that support state and local preparedness.

The DHS plan specifically notes that DRF-funded activities would continue operations. During the FY2019 shutdown, FEMA's website noted that, despite the lapse in appropriations and resulting furloughs, applications for disaster assistance could still be made online, although some of FEMA's partners' operations were impacted by the lapse in appropriations.<sup>92</sup>

During a lapse in appropriations, the NFIP can continue to process and pay claims from the National Flood Insurance Fund and National Flood Insurance Reserve Fund, which are primarily funded through fees paid by NFIP policyholders. In FY2023, as in FY2019, the NFIP's expanded borrowing authority and authority to issue new flood insurance policies were to expire at the end of the fiscal year. Without the short-term extension recently carried in appropriations measures (including the FY2024 CR), expiration of those authorities could impact the issuance of new mortgages in special flood hazard areas.<sup>93</sup>

## Federal Employee Furloughs<sup>94</sup>

What happens to a given executive branch employee may depend on several factors. If employees are not covered by a funded appropriations bill, then they may be put on shutdown furloughs or *excepted* from furlough and told to come to work. A shutdown furlough is the placement of employees in a temporary, non-duty, non-pay status.<sup>95</sup> OPM has described "excepted" employees, who are required to work during a shutdown, as "employees who are funded through annual appropriations who are nonetheless excepted from the furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations."<sup>96</sup> An employee's status as excepted or furloughed may change over the course of a shutdown as needed. OMB provides guidance to executive branch agencies regarding determinations of which employees

<sup>90</sup> This section was written by William L. Painter, Specialist in Homeland Security Policy and Appropriations.

<sup>91</sup> DHS, *Procedures Related to a Lapse in Appropriations*, September 26, 2023, <https://www.dhs.gov/publication/lapse-funding-dhs>.

<sup>92</sup> FEMA, "Lapse in Federal Funding Impact on FEMA Website Operations Notice," January 22, 2018, <https://web.archive.org/web/20190110110621/https://www.fema.gov/lapse-federal-funding-impact-fema-website-operations-notice>.

<sup>93</sup> More details of that impact can be found in CRS Insight IN10835, *What Happens If the National Flood Insurance Program (NFIP) Lapses?*

<sup>94</sup> This section was written by Taylor Riccard, Analyst in Government Organization and Management.

<sup>95</sup> For more information about shutdown furloughs, see OPM, "Pay and Leave: Furlough Guidance," <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>. This OPM website provides detailed questions and answers about shutdown furloughs in a PDF document titled *Guidance for Shutdown Furloughs*.

<sup>96</sup> OPM, *Guidance for Shutdown Furloughs*, December 2021, p. 1.

should be excepted from furlough during a shutdown in the annually revised *Circular No. A-11* and in occasional supplementary guidance.<sup>97</sup>

### **Federal Employee Retroactive Pay<sup>98</sup>**

Furloughed federal employees receive retroactive pay pursuant to the Government Employee Fair Treatment Act of 2019 (P.L. 116-1).<sup>99</sup> P.L. 116-1 requires that all federal employees, furloughed and excepted, be paid at their standard rates of pay as soon as possible after the lapse in appropriations ends.

### **Internal Revenue Service (IRS)<sup>100</sup>**

The IRS anticipates that it would furlough two-thirds of its workforce in the event of a shutdown that occurred outside of filing season, or before December 31, 2023.<sup>101</sup> Non-excepted activities (activities that would not be performed during this phase of the shutdown) would include taxpayer services such as answering taxpayer calls, issuing non-automated refunds, performing non-automated collection activities, auditing returns, and providing taxpayers with transcripts. The IRS would still offer some of these taxpayer services, such as phone service and transcripts, to taxpayers affected by disasters. Internal workings including some headquarters operations, information technology functions, and research activities would also cease. The IRS would not provide legal counsel on any of these non-excepted activities during the shutdown.<sup>102</sup>

The IRS says it would except more employees should a shutdown occur during the filing season—between January 1 and April 30, 2024. The agency’s contingency plan does not identify which additional roles it would except. However, the IRS says it would continue processing returns and implementing the green energy credit provisions included in the Inflation Reduction Act (P.L. 117-169). Additionally, the agency would continue implementing its Direct File pilot program as well as activities described in its Strategic Operating Plan, such as modernization efforts. The IRS’s leadership would assess necessary adjustments if the shutdown lasted longer than five days.<sup>103</sup>

### **Small Business Administration (SBA) Services and Benefits<sup>104</sup>**

Certain SBA activities may cease during a funding lapse. Following guidance from OMB to executive branch agencies on how to prepare for and operate during a funding lapse, SBA has prepared a contingency plan known as its “Plan for Operating in the Event of a Lapse in Appropriations.”<sup>105</sup> According to the contingency plan, SBA would discontinue some services

<sup>97</sup> OMB, *Circular No. A-11: Preparation, Submission, and Execution of the Budget*, August 2023, §124, <https://www.whitehouse.gov/wp-content/uploads/2018/06/a11.pdf>; and OMB, “Frequently Asked Questions During a Lapse in Appropriations,” <https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans/>. For information about OMB, see CRS Report RS21665, *Office of Management and Budget (OMB): An Overview*.

<sup>98</sup> This section was written by Taylor Riccard, Analyst in Government Organization and Management.

<sup>99</sup> 31 U.S.C. §1341(c).

<sup>100</sup> This section was written by Brendan McDermott, Analyst in Public Finance.

<sup>101</sup> IRS, *Fiscal Year 2024 Lapsed Appropriations Contingency Plan*, September 27, 2023, p. 5, <https://home.treasury.gov/system/files/266/IRS-FY24LapsePlan.pdf>.

<sup>102</sup> IRS, *Fiscal Year 2024 Lapsed Appropriations Contingency Plan*, p. 15.

<sup>103</sup> IRS, *Fiscal Year 2024 Lapsed Appropriations Contingency Plan*, pp. 8-9.

<sup>104</sup> This section was written by R. Corinne Blackford, Analyst in Small Business and Economic Development Policy.

<sup>105</sup> SBA, *SBA Plan for Operating in the Event of a Lapse in Appropriations*, September 29, 2023, <https://www.sba.gov/document/report-sba-plan-operating-event-lapse-appropriations>.

among its lending, technical assistance, and federal contracting programs, including several “significant agency activities.”<sup>106</sup> The SBA also summarizes significant activities that would continue during a funding lapse in its contingency plan.<sup>107</sup>

### U.S. Postal Service (USPS)<sup>108</sup>

The Postal Reorganization Act of 1970 (P.L. 91-375) established USPS as an independent agency of the executive branch, self-funded by revenue from the sale of postal products and services.<sup>109</sup> During a lapse of appropriations, USPS continues its operations, as it is funded almost entirely by revenue from the sale of postal products and services.<sup>110</sup> Operations would also continue at the Postal Regulatory Commission (PRC), which is no longer subject to annual appropriations.<sup>111</sup> While USPS and the PRC may continue operations, select activities of the USPS Office of Inspector General (OIG) would cease during a lapse of appropriations, because its funding requires enactment of annual appropriations.<sup>112</sup> According to its latest shutdown plan, 522 of the OIG’s 967 employees would be retained in the event of a shutdown. Of those, 517 are deemed “necessary to protect life and property,” while five are compensated by a resource other than annual appropriations.<sup>113</sup> To protect life and property, the OIG would retain 456 special agents. The remaining employees include IT personnel, attorneys, data analysts, security, budget and accounting, and human resources. The plan notes that additional personnel may be called in for court appearances or other emergencies.

<sup>106</sup> These activities include the Certified Development Company 504 Loan Program (no new loan approvals or program support); 7(a) Loan Program (no new loan approvals or program support); Microloan Program (no new loans to Microloan Intermediaries that make loans to businesses); Entrepreneurial Development (no management and oversight of resource partners that receive SBA grant funds, such as Small Business Development Centers); Women-Owned Small Business Contracting Program (no application processing or program support); Service-Disabled Veteran-Owned Small Business Contracting Program (no application processing or program support); 8(a) Business Development [Contracting] Program (no application processing or program support); Surety Bond Program (no new surety bond approvals/modifications other than through the Preferred Surety Bond Program); and United States Export Assistance Centers (no small business export counseling). See SBA, *SBA Plan for Operating in the Event of a Lapse in Appropriations*.

<sup>107</sup> These activities include Disaster Preparedness and Response (making and servicing disaster direct loans and disaster planning activities); Limited Procurement Set-Aside Support (limited number of SBA procurement staff to provide small business set-aside programs support to federal agencies that remain open during a funding lapse); HUBZone Contracting Program (accepting and processing HUBZone applications and other program operations); Preferred Surety Bond Program (Preferred Sureties continue to issue SBA guaranteed surety bonds under delegated authority); Small Business Investment Company Debenture Program (limited receivership/liquidation activities); and Limited Credit Risk Management (limited activities for imminent loss). See SBA, *SBA Plan for Operating in the Event of a Lapse in Appropriations*.

<sup>108</sup> This section was written by Michelle Christensen, Analyst in Government Organization and Management.

<sup>109</sup> For additional information about USPS governance and operations, see CRS Report R44603, *Reforming the U.S. Postal Service: Background and Issues for Congress*.

<sup>110</sup> USPS, “Postal Service Not Affected by a Government Shutdown,” September 29, 2023, <https://about.usps.com/newsroom/statements/092923-postal-service-not-affected-by-a-government-shutdown.htm>; CRS In Focus IF12516, *FY2024 U.S. Postal Service Appropriations*.

<sup>111</sup> Section 205 of the Postal Service Reform Act () created permanent authority for the Postal Service Fund to be used for payment of expenses incurred by the PRC, thereby removing the PRC from the annual appropriations process. The Postal Service Fund (39 U.S.C. §2003) is a revolving fund that consists largely of revenues generated from the sale of postal products and services.

<sup>112</sup> Like the PRC, funding for the OIG is provided via transfer from the Postal Service Fund. However, the OIG requires enactment of annual appropriations.

<sup>113</sup> USPS, OIG, *U.S. Postal Service OIG Shutdown Plan*, September 28, 2023, [https://www.uspsoig.gov/sites/default/files/reports/2023-09/uspsoig\\_updatedshutdownplan\\_fy2024\\_002\\_0.pdf](https://www.uspsoig.gov/sites/default/files/reports/2023-09/uspsoig_updatedshutdownplan_fy2024_002_0.pdf).

## Resources, Science, and Technology-Related Agencies, Programs, and Activities

### USDA, Excluding Nutrition Programs<sup>114</sup>

USDA anticipates that it would furlough about 60% of its workforce in the event of a shutdown.<sup>115</sup> During a government shutdown, USDA has said that it would not be making new farm ownership or operating loans, guaranteeing new rural development homeowner loans, making farm commodity program payments, and issuing Market News reports. USDA would continue to perform meat, poultry, and egg inspection; preclearance of fruit and vegetable imports (fee-funded); and animal quarantine inspection. It would also continue to collect loan payments and protect collateral for farm loans and protect research property and data if significant damage could occur.

For discussion of USDA nutrition-related programs, see this report's entry for "**Supplemental Nutrition Assistance Program (SNAP) and Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) Beneficiaries.**"

### Air Travel and Airports<sup>116</sup>

The immediate impacts of a potential government shutdown to aviation operations and air travel are expected to be limited. Federal services related to air traffic operations and aviation security functions, such as air traffic control services and passenger and baggage screening, would continue during a shutdown. The most recent Department of Transportation (DOT) plan for handling a lapse in annual appropriations includes details of the various Federal Aviation Administration (FAA) programs that would continue as excepted activities as well as certain agency activities that would cease during a lapse in appropriations.<sup>117</sup> The Continuing Appropriations Act, 2024 and Other Extensions Act extended appropriations for the FAA and the excise taxes supporting the Airport and Airway Trust Fund through December 31, 2023.<sup>118</sup>

During the last shutdown that occurred in December 2018 and January 2019, however, the impact on air travel became an increasing concern once the shutdown went beyond several weeks, when Transportation Security Administration (TSA) screeners and, to a lesser extent, FAA air traffic controllers began to miss work shifts. The increase in unscheduled absences likely contributed to longer wait times at airport security checkpoints as well as temporary closure of part of terminals or concourses at certain airports due to lack of TSA staff.<sup>119</sup>

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<sup>114</sup> This section was written by Jim Monke, Specialist in Agricultural Policy.

<sup>115</sup> USDA, *Fiscal Year 2024 Summary of Activities to Be Continued in the Event of a Government Shutdown*, September 29, 2023, p. 4, <https://www.usda.gov/sites/default/files/documents/usda-2024-contingency-plan-summary.pdf>.

<sup>116</sup> This section was written by Rachel Tang, Analyst in Transportation and Industry.

<sup>117</sup> DOT, *Plans for Operations During a Lapse in Annual Appropriations and/or Federal Aviation Administration Authorization Plans by Operating Administration*, August 3, 2023, <https://www.transportation.gov/lapse>.

<sup>118</sup>, Division B, Title II.

<sup>119</sup> See Katherine Gypson, "New York's LaGuardia Halts Flights as Shutdown Drags on," *Voice of America News*, January 25, 2019; Matthew Chayes and Ellen Yan, "Sick-Outs Snarl Air Traffic," *Newsday*, January 26, 2019; Paul M. Rinaldi, Written Testimony of Paul M Rinaldi, President, National Air Traffic Controllers Association, AFL-CIO (NATCA), Before the Subcommittee on Aviation, Committee on Transportation and Infrastructure, U.S. House of Representatives, "Putting U.S. Aviation at Risk: The Impact of the Shutdown," February 13, 2019. See also TSA (continued...)

## Environmental Protection Agency (EPA)<sup>120</sup>

EPA released an updated contingency plan for a lapse of funding on September 29, 2023.<sup>121</sup> In a message to EPA employees before the end of FY2023, EPA indicated that it may have had sufficient funds to operate for several days in the event of a lapse in funding at that time.<sup>122</sup> EPA expects to retain 1,893, or 11.7%, out of a projected 16,205, employees in the event of a lapse in funding. Employees who are not exempted or excepted would be furloughed.<sup>123</sup>

In the contingency plan, EPA identifies major categories of activities that would continue during a shutdown, which are focused on core agency safety and security, emergency response, payment of prior obligated funds, and certain legal and enforcement activities. For example, the contingency plan states that agency activities that would *continue* during a lapse of funding include protection of EPA land, buildings, equipment, and research; law enforcement and criminal investigations; emergency and disaster assistance; certain Superfund response work; EPA's emergency response readiness operation; payments to contractors and grantees where available funds were obligated prior to the lapse or for exempted activities; and secure operation of information technology systems, among other activities.

All other activities would be temporarily suspended. Examples from EPA's contingency plan of activities that would *not continue* during a lapse of funding include issuance of new grants or agreements; most civil enforcement inspections; issuance of federal permits, guidance, regulations, and policies; certain Superfund site activities where there is no imminent threat to human health and property; and approvals of pending state requests such as permits and standards, among other activities.

## National Park Service (NPS)<sup>124</sup>

On September 29, 2023, NPS released a contingency plan indicating that approximately 13,000 NPS employees (roughly 70% of the workforce) would be furloughed in a shutdown and that the majority of the more than 420 NPS units would be closed completely to public access.<sup>125</sup> However, park areas that “by their nature are physically accessible to the public,” such as many open-air parks and memorials, would remain accessible, although with “significantly reduced visitor services.”<sup>126</sup>

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Statement on Checkpoint Operations, January 15-25, 2019, <https://www.tsa.gov/news/press/releases>. These statements provided selected airport security checkpoint operations statistics from January 14, 2019, through January 24, 2019. Email correspondence between CRS and Airport Council International-North America between April 23, 2019 and May 12, 2019.

<sup>120</sup> This section was written by Angela Jones, Analyst in Environmental Policy.

<sup>121</sup> EPA, *U.S. Environmental Protection Agency Contingency Plan for Shutdown*, [https://www.epa.gov/system/files/documents/2023-09/epa\\_contingency\\_plan\\_2023-sept-iiija-ira-updatejmc.pdf](https://www.epa.gov/system/files/documents/2023-09/epa_contingency_plan_2023-sept-iiija-ira-updatejmc.pdf).

<sup>122</sup> EPA, “Message from the Deputy Administrator,” [https://insideepa.com/sites/insideepa.com/files/documents/2023/sep/epa2023\\_1787b.pdf](https://insideepa.com/sites/insideepa.com/files/documents/2023/sep/epa2023_1787b.pdf).

<sup>123</sup> EPA, *U.S. Environmental Protection Agency Contingency Plan for Shutdown*.

<sup>124</sup> This section was written by Mark K. DeSantis, Analyst in Natural Resources Policy; and Laura B. Comay, Specialist in Natural Resources Policy.

<sup>125</sup> NPS, *Contingency Plan for a Potential Lapse in Appropriations*, September 2023, <https://www.doi.gov/sites/doi.gov/files/doi-nps-contingency-plan-2023.9.26-508.pdf>.

<sup>126</sup> NPS, *Contingency Plan*. This approach is similar to that adopted by NPS in the government shutdown of December 2018 through January 2019 but different than the approach used in the shutdown of October 2013, when all parks (even open-air areas) were closed to public visitation and use. For more information, see CRS In Focus IF11079, *National Park Service: Government Shutdown Issues*.

The NPS contingency plan states that certain *excepted* activities—such as law enforcement, border surveillance, fire suppression, emergency response, and power maintenance—would continue at park units. In addition, the plan states that NPS would use recreation fees collected under the Federal Lands Recreation Enhancement Act (FLREA; 16 U.S.C. §§6801-6814) to conduct certain *exempted* activities at open or accessible park units. The use of FLREA funds would be limited to the “minimal level ... necessary to provide critical health, public safety and protection services,” including restroom maintenance, trash collection, road maintenance, campground operations, law enforcement emergency operations, and protection of park resources.<sup>127</sup> During the 2018-2019 government shutdown, NPS’s use of FLREA fees to cover certain operational costs and the agency’s subsequent budgetary treatment of the FLREA account were addressed by the Government Accountability Office in a legal opinion, which DOI disputed.<sup>128</sup>

The contingency plan also authorizes park superintendents to accept donations from states and other entities to support services at individual parks.<sup>129</sup> In previous government shutdowns, such donations have allowed selected park units to remain open and staffed by NPS employees for certain periods of time. While NPS would refund to the donor any unobligated balances when a shutdown ends, funding actually used for park operations could be reimbursed only through an act of Congress.

### **Research: National Aeronautics and Space Administration (NASA) and Other Agencies<sup>130</sup>**

NASA issued a contingency plan in August 2023 that describes its expected operations in the event of a lapse in appropriations.<sup>131</sup> The plan estimates that out of about 18,300 NASA employees, approximately 17,000 would be furloughed. Most of the remaining 1,300 would continue to work in order to protect life and property. Major activities that would continue include the operation of NASA satellites and the International Space Station, space launch hardware processing activities that are necessary to prevent harm to life or property, and the completion or phase-down of research activities in cases where temporary suspension would result in serious damage to property. Activities that would be suspended include educational support for schools, public access to NASA centers and facilities, and the NASA television channel and website. In addition, new travel and procurement actions would generally not proceed. For example, most new contracts, grants, cooperative agreements, task orders, change orders, and other actions would not be issued. However, NASA contractors would be permitted to continue work under contracts funded prior to the lapse in appropriations provided that their work does not require the use of NASA facilities that shut down or other support funded separately by a lapsed appropriation. Contractors who are permitted to continue working would be directed to preserve

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<sup>127</sup> NPS, *Contingency Plan*, p. 3.

<sup>128</sup> Government Accountability Office (GAO), *Department of the Interior—Activities at National Parks During the Fiscal Year 2019 Lapse in Appropriations*, B-330776, September 5, 2019, <https://www.gao.gov/products/b-330776>; and letter from DOI, Office of the Solicitor, to GAO, September 6, 2019, <https://trumpwhitehouse.archives.gov/wp-content/uploads/2020/02/OMB-and-DOI.pdf>. For more information, see CRS In Focus IF11079, *National Park Service: Government Shutdown Issues*.

<sup>129</sup> NPS, *Contingency Plan*, p. 7. As of September 29, 2023, some states had already announced plans to invest state funds in keeping certain park units open. See Anita Snow, “Utah and Arizona Will Pay to Keep National Parks Open If Federal Government Shutdown Occurs,” AP News, September 28, 2023.

<sup>130</sup> This section was written by Daniel Morgan, Specialist in Science and Technology Policy.

<sup>131</sup> NASA, *NASA Continuity of Appropriations Plan*, August 1, 2023, <https://www.nasa.gov/wp-content/uploads/2023/08/nasa-continuity-of-appropriations-plan-august-2023.pdf>.



resources and limit contractual expenditures. For example, contractor travel would be limited to exceptional cases.

For research activities at other agencies, the situation would likely be similar, though specifics may vary among agencies. In general, intramural research at federal facilities conducted by federal employees would likely be limited, but federally funded extramural research and development (R&D) at universities, companies, and other nonfederal organizations would likely be able to continue, with some limitations, under awards that have already been issued. In most cases, agencies would not award new R&D grants or contracts. Additional specifics for each agency that funds R&D can be found in that agency's contingency plan, which is available online.<sup>132</sup>

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<sup>132</sup> OMB, "Agency Contingency Plans," <https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans/>.