FY 2014 Appropriations Update: Budget Showdown or Shutdown

Lewis-Burke Associates LLC – September 23, 2013

The next chapter in the federal budget wars will play out this week as the Congress faces the need to keep the federal government operating past September 30. The upcoming showdown over the Continuing Resolution (CR) is the prelude to an even higher stakes battle on the federal budget next month when Congress must raise the debt limit to allow the U.S. Government to continue borrowing to make federal benefit payments, such as Social Security, and meet other obligations.

Status of Funding for FY 2014
On September 20, the U.S. House of Representatives approved a Continuing Resolution that sets up a showdown with President Obama and the Democratically-led Senate over delayed funding for the Affordable Care Act. The House-passed CR (H.J. Res. 59) would:

- Provide funding authority for federal agencies through December 15;
- Continue funding at the current post-sequester funding level of $986.3 billion;
- Eliminate funding to implement the Affordable Care Act (health care reform law); and
- Give priority to funding Social Security and disability payments should the debt limit be reached.

Given the uncertainty regarding final resolution of budget negotiations by the end of the month, below is an assessment of the current state of play and possible impacts and activities associated with any temporary government shutdown after October 1.

Possibility of Shutdown
Under current laws, federal agencies cannot operate without the legal authority to expend appropriations provided by Congress. When there is a lapse in appropriations, or funding gap, in the absence of annual appropriations acts or a CR, all but essential personnel are furloughed and prohibited from working. The federal government is to go through an orderly shutdown process and suspend operations, except in certain limited circumstances, until funding authority is reinstated.

Only the following activities are generally “excepted” from the shutdown:

- Emergency circumstances where the safety of life or the protection of property is threatened or a delayed action would endanger life or property is “excepted” under funding lapse.
- Activities associated with the discharge of the President’s constitutional duties (Commander-in-Chief or conducting foreign relations) are also “excepted” under a government shutdown.
- An agency with statutory or other legal authority to obligate funding in advance of appropriations, such as the Department of Defense authority under the “Feed and Forage Act,” which provides authority to contract for necessary supplies for military operations during a time of war, would allow continued operations during a shutdown.
- Personnel to administer benefit payments under federal entitlement programs, such as Social, Security, Medicare and Medicaid, Supplemental Nutrition Assistance Program (SNAP) benefits, etc., would continue to work in order to pay benefits to persons meeting certain eligibility requirements under the law.
For federal agencies entering into grants or contracts, a government shutdown has several implications:

- If funding for a contract or grant has been obligated and payment made, and the contract or grant is not affected by a lapse in funding, the work can proceed.
- If a contract or grant is a new obligation, only in very limited circumstances outlined above (emergency circumstance, President’s constitutional duties, etc.) could such a commitment be made during a funding gap. For the most part, federal personnel would be sent home and all work would cease to process new grants or contracts not affected by limited or special circumstances.
- In the case of a contract or grant that has been awarded and the funds obligated, but payment has not been made, federal employees are not exempt from furlough in order to make contract payments during a lapse in funding.\(^1\)

With the end of the fiscal year rapidly approaching, most federal agencies are rushing to approve contracts and grants by September 30. This push to “clear the decks” of work to be funded in fiscal year (FY) 2013, is heightened by the threatened government shutdown. For example, the National Institutes of Health (NIH), the National Science Foundation (NSF), and other agencies are rushing to obligate grant monies by September 30 even as they must now begin to plan for a shutdown if there is no budget deal at the eleventh hour to prevent a funding gap and government shutdown.

**Action Steps**

Organizations should identify relevant awards which would be compromised by any near-term shutdown scenarios. In particular, large ongoing arrangements with minimal cash reserves and which depend on federal reimbursements as well as forthcoming awards which depend on federal funding to begin should be noted so that appropriate steps can be taken. This list may be one which could be updated from the most recent threat of a government shutdown in April 2011.

During the most recent run-up to a government shutdown in April 2011, agencies issued guidance to their employees about how to handle the funding gap.

- NIH would deem as essential the personnel who care for animals and patients on-campus, and those whose responsibility it is to keep those facilities operating as essential during a shutdown. Most other employees would be instructed to stay home and to suspend all work, including use of electronic devices, such as Blackberries.

- The NSF would be expected to notify grant awardees that they could continue work on all awards that are funded but don’t require federal staff intervention. NSF would notify awardees that it will have to suspend payments for previously funded awards temporarily. All but a handful of the agency’s approximately 2,000 employees would be furloughed during the shutdown.\(^2\)

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The Department of Energy would keep operating for a few days utilizing carry over funding and no-year appropriations.

The National Aeronautics and Space Administration (NASA) would likely give latitude to Center Directors to determine the number of essential personnel to stay on the job while others were furloughed. The determination was to be made based on the hazardous nature of NASA operations; maintaining a minimum level of security and safety; preserving government assets such as operating spacecraft; and the safety of human life. No new contracts, grants, cooperative agreements, or other orders would be issued during the lapse in appropriations other than to meet the aforementioned requirements.

The US Department of Agriculture (USDA) would continue food inspection services for safety and services funded by user fees. Forest Service law enforcement and firefighting forces would stay on the job. Research facilities would be closed except for the care of animals and plants. New loans and grants would be suspended.

Given the diversity of activities within the Department of Commerce, there are several categories of personnel and operations affected by a funding gap. Weather forecasting and alerts would continue, but most research activities under the National Oceanic and Atmospheric Administration (NOAA) and the National Institute of Standards and Technology (NIST) would be suspended.

Background and History
There have been numerous funding gaps over the last 30 years with the most recent in 1995-1996 lasting a total of 26 days. An estimated 800,000 federal employees were furloughed during this period. Examples of the impact of the shutdown in late 1995 and early 1996 are instructive of the potential and very broad impact of a government shutdown:

- NIH was not able to accept new patients into its clinical center and hotline calls were not answered.

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• The Centers for Disease Control (CDC) suspended disease surveillance activities.
• While law enforcement personnel were generally on the job under the life and safety exception, the addition of new law enforcement personnel, work on bankruptcy cases, and processing of various applications and cases were suspended.
• All National Parks were closed impacting visitors and local communities, and national museums and monuments, such as the Smithsonian Institution and Washington Monument, were closed.
• Visa and passport processing were suspended affecting U.S. citizens and foreign visitors alike.
• Agencies operating through contracts, especially the Department of Defense, suffered work delays and contract employees were furloughed without pay.
• Federal courts might operate for a short period on available funds, but would have to suspend some operations, other than those constitutionally mandated, were the shutdown to be in effect more than a few days.

The impact of a shutdown of the federal government has a significant ripple effect. The economic impact can run into multiple millions of dollars to localities and delay vital government functions and service to American citizens due to the furlough of federal employees. It is disruptive to federal employees, some of whom were furloughed under the sequester in March 2013, and have faced hiring freezes, no pay raises, and a dwindling workforce due to retirements. Finally, recovery following a government shutdown requires agency personnel to process a backlog of work that was deferred resulting in a decline in overall productivity and service.6

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