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Shutdown? What shutdown?

By Robert Brodsky rbrodsky@govexec.com February 25, 2011

If Congress fails to pass a short-term budget and the government shuts down next week, hundreds of thousands of federal workers could find themselves temporarily idle. But for a select few government agencies that are funded by user fees or by means other than annual congressional appropriations, the threat of a shutdown is less intimidating.

A host of small, independent, finance-oriented agencies rely on fees that the private sector pays to continue operating and hence likely would be immune to the effects of a shutdown, according to several experienced federal management observers.

For example, Edward DeMarco, acting director of the Federal Housing Finance Agency, which regulates Fannie Mae, Freddie Mac and 12 federal home loan banks, sent a memo to staffers this week informing them that because the independent agency does not receive congressional appropriations, they would be unaffected by a shutdown. The agency, which was created through the 2008 Housing and Economic Recovery Act, is funded exclusively through user fees.

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Likewise, the National Credit Union Administration, an independent agency that charters and supervises federal credit unions, receives no operating appropriations and is funded by credit union fees.

In some unique cases, self-funded agencies actually bring a net contribution to the budget. The Overseas Private Investment Corporation, which helps U.S. businesses create revenue and jobs abroad, operates on a self-sustaining basis and contributed \$352 million to the treasury in fiscal 2010, the agency said.

The largest self-financed government agency is the [U.S. Postal Service](#), which, with the exception of a small federal subsidiary to continue providing free mail to the blind and overseas voters, is funded entirely by revenue from postage and products. When the federal government shuts down, as it did for 27 days in 1995 and 1996, the [Postal Service](#) can continue operating uninterrupted and requires no special exemption from the White House.

In some cases, even if the parent agency depends on appropriations, certain support offices will be unaffected by a shutdown. Take the Office of the Comptroller of the Currency, an independent bureau of the Treasury Department that charters, regulates and supervises all national banks. The office does not receive appropriations from Congress and is funded primarily by assessments on national banks. A spokesman said the office would operate as normal during a shutdown.

But even some self-funded agencies will feel the effects of a shutdown. The Export-Import Bank, an independent agency that assists in the financing of U.S. goods and services to international markets, likely would have to furlough its employees if the government closes. Even though the bank is self-sustaining and brings a dividend to taxpayers, Congress provides the agency with its spending authority, essentially preventing it from spending its own money if a shutdown occurred, said spokesman Phil Cogan.

According to the [Office of Management and Budget](#), employees can continue to work during a shutdown if they are involved in national security and the protection of life and property. This includes law enforcement officers, disaster assistance personnel, air traffic controllers and transportation safety workers, coastal and border patrol, and those in public health and medical functions. Employees involved in certain other functions, such as issuing Social Security checks and veterans benefits, typically have been allowed to continue.

In the first shutdown during the Clinton administration, which lasted five days in November 1995, an estimated 800,000 employees were furloughed, according to a [Congressional Research Service report](#) issued in late February. During a second 21-day shutdown, from Dec. 15, 1995, through Jan. 6, 1996, an estimated 284,000 federal workers were furloughed and another 475,000 designated federal employees continue to work on a nonpaid status, the report said.

"There is no real rule of thumb," said Jonathan Breul, executive director of the IBM Center for the Business of Government and a former senior adviser at OMB. "They will be decided case by case; action by action and employee by employee." Decisions about who can continue working during a shutdown and who cannot will require much discretion, said John Palguta, vice president of policy at the nonprofit Partnership for Public Service.

"It will be inconsistent because there is an interpretation and judgment to be applied," he said. "It's a crazy way to run an organization, and I can't imagine a private sector organization running this way."

In some instances, the curiosities of the appropriations process belie any simple answers.

The Patent and Trademark Office, a part of the Commerce Department, derives its funding from fees paid by users of the patent and trademark system. But the agency actually asks for appropriations from Congress matching what they expect to collect in patent fees in a given fiscal year, according to PTO's website. For the fiscal 2012 budget, the office requested \$2.71 billion, the same amount it anticipated in patent and trademark fees next year. It is unclear whether PTO, which did not respond to a request for comment, would be allowed to operate in a shutdown.

Even more perplexing is the [General Services Administration](#), one if not the only, federal agency that sustains itself through user fees generated by other federal agencies. Almost none of GSA's funding comes from direct appropriations from Congress, with most flowing from customer reimbursements to revolving funds for purchases of goods and services, or as rent paid for space in federally owned or leased property.

But even though the agency is essentially self-sustained, the funding it relies on comes from other agencies, such as the Defense, Energy and Transportation departments, whose employees would be working without any appropriated funds during a shutdown. It is unclear at this point if GSA would remain open during a shutdown.

"The administration is working with members of Congress on both sides of aisle to avoid a shutdown and keep the government running," said GSA spokeswoman Emily Barocas. "We can't speculate at this point about what impact a potential shutdown would have on GSA."

Palguta suspects that if GSA relies on other agencies for its funding, it would be difficult for GSA to operate, at least in full, during a shutdown.

"So much staff time is being burnt at agencies trying to answer these types of questions internally," Palguta said. "A lot of time, attention and resources are being devoted to these issues."