

Ensuring NAHMA Members Receive the Latest News and Analysis of Breaking Issues in Affordable Housing

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E-NAHMAanalysis: Impact of a Federal Government Shutdown on HUD Programs

Effective Date

The Federal Government will shut down on Saturday, April 9 unless another appropriations bill is enacted on April 8 to continue operations.

Background

The federal fiscal year 2011 began on October 1, 2010. Because Congress failed to pass the necessary full-year appropriations bills to fund federal agencies through September 30, 2011, the federal government has been operating under a series of six temporary “continuing resolutions (CR).” The current CR expires on April 8. Unless legislation to provide further appropriations is enacted before the current CR expires, the federal government will shut down.

On April 5, 2011, the U.S. Office of Personnel Management issued guidance on, “The Potential Impact of a Lapse in Appropriations on Federal Employees.” The full notice is available at <http://www.opm.gov/furlough2011/>. The notice states,

“If the current continuing resolution expires at 12:01 a.m. on April 9, 2011 without passage of an FY 2011 appropriations bill or a further continuing resolution, Federal departments and agencies will be required to execute contingency plans for a lapse in appropriations (more commonly referred to as a “shutdown”). These contingency plans detail which agency activities are allowed by law to continue to operate, and which activities must stop. Employees whose salaries are funded through annual appropriations will not be able to work and will be furloughed, unless their duties qualify under the law as “excepted” to continue to work during periods of lapsed appropriations. During a shutdown, non-excepted employees are not permitted to work as unpaid volunteers for the government. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period must be cancelled. An

excepted employee who is absent from duty during the shutdown must be furloughed during such an absence....

In the context of shutdown furloughs, the term "excepted employees" is used to refer to 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. "Excepted employees" include employees who are (1) performing emergency work involving the safety of human life or the protection of property, (2) performing minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities, or (3) performing certain other types of excepted work. Agency legal counsels, working with senior agency managers, are determining which employees are designated to be handling "excepted" and "non-excepted" functions ...

Other employees are "exempt" from furlough because they are not affected by a lapse in appropriations. This includes employees who are not funded by annually appropriated funds. It also includes those Presidential appointees who are not subject to a Federal employee leave system-i.e., who are entitled to an annual salary without consideration of the hours of duty required and thus cannot be placed in nonduty/nonpay status. (NOTE: Non-career SES and Schedule C employees do not fall into this category.)

All other employees funded through annual appropriations are not able to work during a "shutdown" and will be furloughed."

Generally speaking, agency employees who are exempt from the furlough will be focused on critical tasks. They will not be performing the day-to-day operations of their furloughed colleagues.

Summary:

The predictions in this section are based on the best information available from various sources. When official guidance is released by federal agencies, we will inform members as soon as possible. Likewise, these educated guesses will become moot if negotiations among Congressional and White House officials produce a compromise that averts a shut-down.

Key variables which determine whether the shut-down will affect an operation are: the length of time the government is shut down, whether non-exempt agency employees are required for the operation. processing time and funding availability.

Section 8 HAP payments: The May HAP Payment for project-based Section 8 contracts should not be affected if the contract is live and had 12 months of obligated funds. Most HAPs are paid on the 1st of the month (or first business day). Most O/As will have submitted their vouchers on or before Friday, since they are due for Sec. 8, PAC and PRACs by the 10th day of month preceding the payment months. TRACS will remain live during the shutdown (if it occurs). The performance-based contract administrators who check the voucher are contractors, not federal

employees. With PBCAs at work and TRACs up and running, HUD does not anticipate interruption on payment of the May vouchers for contracts that have obligated funds..

Contract Renewals: Depending on how long the government is closed, we could see delays in the HAP contract renewal process. Renewing HAP contracts is a manual process which requires involvement by HUD field staff. Unfortunately, many of HUD staff are likely to be furloughed as non-exempt employees. The longer the government remains closed, the higher the likelihood of delays in this process.

Loan Closings: FHA-Insured loan closings will likely stop according to reports from the *Washington Post*. See “ Government shutdown details begin trickling out to workers” by **Ed O’Keefe**, published Tuesday, April 5, 9:18 PM at http://www.washingtonpost.com/politics/government-shutdown-details-begin-trickling-out-to-workers/2011/04/05/AFL6Gw1C_story.html.

REAC: REAC will issue guidance in the near future in the event that a shutdown is necessary. It is not clear at this time whether REAC’s contract inspections will proceed as scheduled. It is reasonable to assume no Quality Assurance REAC staff would be available. We also believe that turnaround on appeals for technical reviews and database adjustments would be suspended until the government reopens.

2530 Approvals: Although previous participation certifications can be submitted electronically through APPS, HUD staff must still approve the submissions. Based on available information, the HUD staff necessary to approve the certifications and resolve flag issues will probably be furloughed. For these reasons, NAHMA is concerned that 2530 approvals could be delayed.

Unknown Impacts:

NAHMA is seeking information from the Rural Housing Service about the potential impact on rental assistance payments and RD loan closings. It is reasonable to assume that RD would suspend closings if FHA does.

We do not yet have information about how Section 202 and Section 811 PRAC payments will be affected.

NAHMA Concerns:

Once again, I must stress that this information is subject to change. Agency officials have been meeting today to determine which operations will continue, and by extension, which employees will be furloughed, and which are exempt from the furlough. In other words, they’re still trying to figure out this process..

The severity of delays in any program operation really depends how long the federal government stays closed. A long weekend should not have much effect. However, the longer the government remains closed, the greater the potential for disruption in the programs.

NAHMA Position

NAHMA hopes that a spending compromise will be reached before a shut-down becomes necessary. Hopefully, the negotiators will reach an agreement to avert a shut-down. We strongly urge members to call their Senators and Representatives and ask them to pass the final FY 11 appropriations bill. Ask your elected officials to ensure the bill funds the government through September 30, and provides full funding to meet the federal government's contractual obligations with affordable housing providers under the project-based Section 8, Housing Choice Voucher, Section 202, Section 811 and Rural Rental Assistance programs.