

ALSTON & BIRD

TO: Health Care Clients

FROM: Alston & Bird LLP

DATE: September 29, 2025

RE: A&B Memorandum – What to Expect During a Government Shutdown

The federal government is currently operating under a continuing resolution (CR) passed in March 2025 that funds the government through September 30, 2025.¹ Unless Congress passes an annual appropriations act or an interim continuing resolution by that date, the government will shut down on October 1.²

On September 16, Republican Leadership released a short-term “clean” CR entitled, *Continuing Appropriations and Extensions Act, 2026*, to fund the government through November 21, 2025 at current spending levels.³ The package timeline aligned with a temporary extension of health care policies (“extenders”), including reauthorizing funding for community health centers, the National Health Service Corps, teaching health centers, and the Special Diabetes Programs, as well as continuing key Medicare policies like the low-volume hospital adjustment, the Medicare-Dependent Hospital program, ambulance add-on payments, telehealth flexibilities, and the Acute Hospital Care at Home waiver. It also delays Medicaid disproportionate share hospital (DSH) cuts and maintains certain human services programs. The White House is in full support of the short-term CR as proposed by Congressional Republicans.

Separately, on September 17, Democratic Leadership released an alternative CR also entitled, *Continuing Appropriations and Extensions and Other Matters Act, 2026*, that would fund the government through October 31, 2025. The Democrats’ proposal also included the aforementioned health “extenders,” along with policies considered “non-negotiable” by their Republican colleagues, such as a permanent extension of the enhanced premium tax credits (EPTC) and a full repeal of the health care provisions within the *One Big Beautiful Bill Act*.⁴

Although the House narrowly passed the Republican-backed CR on September 19 (217-212),⁵ the Senate rejected both the Republican-backed CR (44-48) and Democrat-backed CR (47-45) that same day.⁶ While negotiations on the CR are expected to continue in the coming days, a government shutdown remains a strong possibility given the current stalemate between Democrats and Republicans.

¹ See Congress Passes Full-Year Continuing Resolution Bill, Maintaining Global Health Funding at Prior Year Levels (published March 18, 2025), available at <https://www.kff.org/global-health-policy/congress-passes-full-year-continuing-resolution-bill-maintaining-global-health-funding-at-prior-year-levels/>.

² See Government Shutdowns and Executive Branch Operations: Frequently Asked Questions (FAQ) (published September 2, 2025), available at <https://www.congress.gov/crs-product/R47693>.

³ See <https://appropriations.house.gov/sites/evo-subsites/republicans-appropriations.house.gov/files/evo-media-document/bill-text-continuing-appropriations-and-extensions-act-2026.pdf>.

⁴ See http://democrats.senate.gov/imo/media/doc/fy26_democratic_continuing_resolution_text.pdf.

⁵ See Roll Call, “Temporary spending bill passes House, likely to stall in Senate” (published September 19, 2025), available at <https://rollcall.com/2025/09/19/temporary-spending-bill-passes-house-likely-to-stall-in-senate/>.

⁶ See U.S. Senate, Roll Call Votes 119th Congress, 1st Session (2025), available at https://www.senate.gov/legislative/LIS/roll_call_lists/vote_menu_119_1.htm.

This memorandum provides an overview of what to expect during a government shutdown, particularly for federal health programs including Medicare, Medicaid, and the Children’s Health Insurance Program (CHIP); the Medicare Payment Advisory Committee (MedPAC) and Medicaid and CHIP Payment Advisory Committee (MACPAC); the Office of Inspector General (OIG); federal grants; Food and Drug Administration (FDA) user fees and inspections; Health Resources and Services Administration (HRSA) programs; Substance Abuse and Mental Health Services Administration (SAMHSA) programs; and National Institutes of Health (NIH) research and grants.

This memorandum includes information on what has traditionally occurred during a government shutdown. **This memorandum references FY 2026 Contingency Staffing Plans for the Department of Health and Human Services (HHS) as well as other agencies, which was released by the Trump Administration on September 27, 2025.**

Overview of Government Shutdowns

The failure to reach an agreement on full-year or interim funding measures can result in a government shutdown. The interval in which agency appropriations are not enacted (when full-year appropriations or interim CRs are not passed before the end of the fiscal year) is called a “funding gap”. When a funding gap begins and appears that it will continue a full calendar day or longer, the federal government generally will begin a “shutdown” of the affected activities.⁷

For agencies and programs that depend on discretionary funding through annual appropriations acts, Congress and the President must enact interim or full-year appropriations by October 1 if many governmental activities are to continue operating. Discretionary spending is provided and controlled through appropriations acts, while mandatory spending (also known as direct spending) refers to budget authority that is provided in and controlled by laws other than annual appropriations acts, including federal spending on entitlement programs (e.g., Medicare, Social Security, etc.). Although programs like Medicaid and CHIP are also considered mandatory spending, these programs are funded by annual appropriations.⁸ However, as described in more detail below, both programs are currently funded through at least the first quarter of FY 2026, which ensures that they will remain funded even if there is a government shutdown beginning on October 1, 2025.⁹

Further, a government shutdown caused by annual appropriations not being enacted can also result in furloughs. Although benefits will continue to be paid out, furloughs can impact the operations of such government programs, resulting in process and payment delays.¹⁰ Specifically, a “shutdown furlough” occurs when there is a lapse in annual appropriations. According to the Office of Personnel Management (OPM), “shutdown furloughs can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed. In a shutdown furlough, an affected agency would have to shut down any activities funded by annual appropriations that are not excepted by law.”¹¹

⁷ See CRS Report, Government Shutdowns and Executive Branch Operations: Frequently Asked Questions (FAQ) (Updated September 14, 2023), available at <https://crsreports.congress.gov/product/pdf/R/R47693>.

⁸ *Id.*

⁹ See H.R.1968, available at <https://www.congress.gov/bill/119th-congress/house-bill/1968>.

¹⁰ See CRS Report, Shutdown of the Federal Government: Causes, Processes, and Effects (Updated December 10, 2018), available at <https://crsreports.congress.gov/product/pdf/RL/RL34680>.

¹¹ OPM, Guidance for Shutdown Furloughs, available at <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf>.

However, employees that are “excepted” or “exempt” may continue to work. “Excepted” employees are employees whose work is funded through annual appropriations, but who are not furloughed because they are performing tasks that are allowed to continue during a lapse in appropriations (i.e., emergency work involving the safety of human life, the protection of property, or performed “by necessary implication” or the performance of certain other types of “excepted work activities” as defined in Department of Justice (DOJ) and OMB guidance). “Exempt” employees are not affected by a lapse in appropriation because they are not funded by annually appropriated funds.¹² However, it is important to note that neither “excepted” or “exempt” employees are paid during a government shutdown.

In the FY 2026 HHS Contingency Staffing Plan, specifically the FY 2026 Lapse Plan for CMS, the agency states that 53 percent of its staff will be retained (3 percent excepted employees and 50 percent exempted employees).¹³ CMS notes that excepted employees will primarily be working to ensure that funded activities (i.e., the Medicare program) continue operations.¹⁴ CMS also notes that exempt staff include staff funded from the Health Care Fraud and Abuse Control Program, Quality Improvement Organizations, *Inflation Reduction Act* (IRA), and user fees.¹⁵ Thus, although programs will continue to be funded, furloughs may impact the efficiency of the HHS agency operations and the administration of the agency’s programs and result in office closures.

The FY 2026 Lapse Plan for CMS includes the following summary for activities that will not continue:

- Health Care Facility Survey and Certification: CMS survey and certification activities would focus on complaint investigations alleging the most serious incidents of resident or patient harm. Other survey activities, such as recertification surveys, initial surveys, and less serious complaint investigations, and all surveys by federal staff would be suspended.
- Policy and Rule Making: CMS payment rule development and other policy decisions would depend on the funding source and duration of a lapse in appropriation. With limited staff to review and provide operational support, we would expect delays in rulemaking and other policy development.
- Contract Oversight: Under a lapse, CMS would be largely unable to provide oversight to many of its major contractors, including the Medicare Administrative Contractors, the Medicare Call Center, and other IT contractors.
- Outreach and Education: Many national and community outreach and education activities performed by CMS would cease or slow down during a lapse. This could include local and national engagement activities, Medicare card and other mailings, and other beneficiary facing activities.
- Beneficiary Casework: CMS beneficiary casework services would largely suspend during a lapse in appropriations.

Medicare

Funding for Medicare benefits is considered mandatory spending and is not subject to the annual congressional appropriations process.¹⁶ Medicare payments will continue even during a lapse in appropriations and are therefore protected during a government shutdown. In addition, Medicare claims processing will continue, although it may be slowed. Some federal offices will be closed, and some federal

¹² *Id.*

¹³ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan Center for Medicare and Medicaid Services (CMS), available at <https://www.hhs.gov/about/budget/fy-2026-cms-contingency-staffing-plan/index.html>.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ CRS Report, Medicare Overview (Updated May 21, 2020), available at <https://crsreports.congress.gov/product/pdf/IF/IF10885>.

workers furloughed, but initially CMS will direct the Medicare Administrative Contractors (MACs) to continue to process all Medicare Fee-for-Service (FFS) claims and payments.¹⁷

However, as mentioned above, new rulemaking and bulletins related to Medicare will be suspended for the length of the shutdown. **Additionally, Medicare telehealth flexibilities and the Acute Hospital Care at Home waiver are scheduled to expire on September 30, 2025.**

CMS has stated that, “For all hospitals with active [Acute Hospital Care at Home] waivers, all inpatients must be discharged or returned to the hospital on September 30, 2025, in the absence of Congressional action to extend the initiative. CMS will no longer accept waiver requests for participation in the AHCAH initiative after September 1, 2025.”¹⁸

The HHS Telehealth Resource Center confirms that current Medicare telehealth flexibilities, including those related to geography, provider types, FQHCs, audio-only services, and in-person requirements for mental health—are authorized only through September 30, 2025.¹⁹ There is no indication of discretionary leniency or automatic extension beyond September 30, 2025. Should the telehealth waivers expire on September 30, 2025, CMS has stated that starting October 1, 2025, “the statutory limitations that were in place for Medicare telehealth services before the COVID-19 PHE will retake effect for most telehealth services.”²⁰ CMS has not provided updated guidance on how the agency plans to address any lapse in authorization of existing telehealth flexibilities.²¹

Medicaid

Medicaid is a federal entitlement to the states, which is categorized as mandatory spending. However, although most mandatory spending programs bypass the annual appropriations process and automatically receive funding each year according to either permanent or multi-year appropriations in the substantive law, Medicaid is funded in the annual appropriations acts. Thus, Medicaid is referred to as an “appropriated entitlement.”²²

To prevent a sudden lapse in funding in the event of a government shutdown, Congress has provided advance appropriations for Medicaid that become available for obligation one or more fiscal years after the budget year covered by the appropriations act.²³ Previously, Congress provided advance appropriations for Medicaid in the *Further Consolidated Appropriations Act, 2024* (CAA) for the first quarter of FY 2025.²⁴ As a result, the Medicaid program had funds to operate for the remainder of the first quarter of FY 2025 (through December 31, 2024) even if the government had to shut down due to Congress not passing annual appropriations legislation or a CR before December 21, 2024.

¹⁷ See Kaiser Family Foundation Health News, *What Happens to Health Programs if the Federal Government Shuts Down?* (published September 27, 2023), available at <https://kffhealthnews.org/news/article/federal-government-shutdown-health-hhs/>.

¹⁸ CMS QualityNet Notice, *Acute Hospital Care at Home*, available at <https://qualitynet.cms.gov/acute-hospital-care-at-home>.

¹⁹ See *id.*

²⁰ See CMS, Medicare Learning Network Article, *Telehealth & Remote Patient Monitoring* (published April 2025), available at <https://www.cms.gov/files/document/mln901705-telehealth-remote-patient-monitoring.pdf>.

²¹ See HHS, *Telehealth Policy Updates*, available at <https://telehealth.hhs.gov/providers/telehealth-policy/telehealth-policy-updates>.

²² CRS Report, *Medicaid: An Overview* (Updated Feb. 8, 2023), available at <https://crsreports.congress.gov/product/pdf/R/R43357>.

²³ CRS Report: *Advance Appropriations, Forward Funding, and Advance Funding: Concepts, Practice, and Budget Process Considerations* (Updated June 10, 2019), available at <https://crsreports.congress.gov/product/pdf/R/R43482>.

²⁴ P.L. 118-42 (March 9, 2024).

In the *Full-Year Continuing Appropriations and Extensions Act, 2025*, passed on March 15, 2025, Congress extended the FY 2025 appropriations for Medicaid through the remainder of FY 2025 and provided advance appropriations for Medicaid for the first quarter of FY 2026.²⁵ Although the *FY 2026 Lapse Plan for CMS* does not indicate what would happen should the government shutdown extend beyond the first quarter of FY 2026, the previous *FY 2025 Lapse Plan for CMS* notes that the agency will have sufficient funding in subsequent FYs only for regular Medicaid grant awards made within 30 days of the initiation of a lapse in appropriations, based on Section 111(b) of the *Continuing Appropriations and Extensions Act, 2025*.²⁶ Typically, a CR usually includes at least 30 days of advance funding for appropriated entitlements like Medicaid, and a typical appropriations bill includes at least one quarter of advance funding. Thus, if there is a shutdown, there should be enough funding for states to pay providers and plans on October 1, 2025. A protracted shutdown, however, could be eventually problematic. When states make their withdrawals from the Treasury also could matter.

It should also be noted that with staff furloughs, certain Medicaid operations will slow down. In addition, rulemaking related to Medicaid and the deliberation of Medicaid waivers will be suspended for the length of the shutdown.

CHIP

Federal CHIP funding is mandatory spending. Specifically, this funding is an entitlement to states that adhere to the federal CHIP rules. The funding for this program is provided through a mandatory appropriation set in Section 2104(a) of the *Social Security Act*. The federal appropriation amount is the maximum amount of federal funding for CHIP.²⁷ The *Bipartisan Budget Act of 2018* provided appropriations for FY 2024 through FY 2027.²⁸ For FY 2024 through FY 2026, the funding amounts are not specified; rather, such sums as necessary to fund allotments to states are provided. However, the funding for FY 2027 is the combination of two semiannual appropriations of \$7.65 billion plus a one-time appropriation of such sums as necessary to fund the allotments to states after considering the semiannual appropriations.²⁹

Given that CHIP is funded through FY 2027, the program will continue to have funding even if there is a government shutdown. Furthermore, in the *FY 2026 Lapse Plan for CMS*, the agency specifically states that it will maintain the staff necessary to make payments to eligible states for CHIP in the absence of appropriations.³⁰ This provides further affirmation that during a government shutdown (at least through FY 2027), CMS will devote funds to ensure CHIP payments are made to eligible states.

MedPAC and MACPAC

MedPAC, an independent legislative branch agency that advises Congress on issues affecting the Medicare program, and MACPAC, an independent legislative branch agency that advises Congress on issues

²⁵ P.L. 119-4 (March 15, 2025), available at <https://www.congress.gov/bill/119th-congress/house-bill/1968>.

²⁶ FY 2025 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2025 Lapse Plan Center for Medicare and Medicaid Services (CMS), available at <https://www.hhs.gov/about/budget/fy-2025-cms-contingency-staffing-plan/index.html>; P.L. 118-83 (September 26, 2024).

²⁷ CRS Report, Federal Financing for the State Children’s Health Insurance Program (CHIP) (Updated May 23, 2018), available at <https://crsreports.congress.gov/product/pdf/R/R43949>.

²⁸ P.L. 115-123 (Feb. 9, 2018).

²⁹ CRS Report, Federal Financing for the State Children’s Health Insurance Program (CHIP) (Updated May 23, 2018), available at <https://crsreports.congress.gov/product/pdf/R/R43949>.

³⁰ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan Center for Medicare and Medicaid Services (CMS), available at <https://www.hhs.gov/about/budget/fy-2026-cms-contingency-staffing-plan/index.html>.

affecting the Medicaid and CHIP programs, receive discretionary funding through the annual congressional appropriations process.³¹ As such, if a government shutdown occurs, both MedPAC and MACPAC would not receive continued funding and would likely be required to suspend operations. Notably, in a previous government shutdown from October 1, 2013 to October 17, 2013, MedPAC³² and MACPAC³³ canceled their scheduled October public meetings.

OIG

HHS has provided limited details regarding HHS OIG's operations in **its currently published contingency plans**.³⁴ OIG will continue its Health Care Fraud and Abuse Control Program and enforcement activities under its mandatory funding sources. OIG may also continue operating its hotline and disclosure programs.

Federal Grants

There are grant programs that are controlled by mandatory budget authority. Specifically, mandatory spending is controlled by laws other than appropriations acts. HHS grant programs with mandatory spending include, in part, Social Services Block Grant; Affordable Insurance Exchange Grants; Grants to States for Medicaid; Payments to States for Child Support Enforcement and Family Support Programs; Payments for Foster Care and Permanency; Child Care Entitlement to States; and Temporary Assistance for Needy Families (TANF). While funding for these grant programs is controlled by mandatory spending, funding for the program administration staff may be provided through annual appropriations.³⁵ Therefore, as mentioned above, grant programs that are funded by mandatory spending may be affected by the lapse of appropriations funding.

Discretionary grants are controlled by discretionary budget authority and are awarded after annual appropriations acts authorize levels of funding for the grant program. A lapse in appropriations delays the administration of programs that rely on discretionary grants to varying degrees depending on “the grant award period, grant extensions that may be in place at the time of a lapse in appropriations, program elements such as the availability of contingency funds that can be reprogrammed, and the amount and type of state and local contributions provided to programs funded with federal discretionary grant funds.”³⁶ HHS grant programs that rely on renewed funding through discretionary spending, include, in part, Children and Families Services Program; Aging and Disability Services Programs; HRSA programs; SAMHSA programs; Low Income Home Energy Assistance; and Payments to States for the Child Care and Development Block Grant. Thus, a government shutdown will impact access to such grant funding because new payments and grants that rely on funding distributed through the appropriations process generally would not be awarded for the duration of a shutdown. However, in some circumstances, grantees “draw-

³¹ See, e.g., MedPAC's FY 2026 Budget Request, available at https://www.medpac.gov/wp-content/uploads/2025/06/MedPAC_FY2026_Budget_Request_SEC.pdf.

³² See <https://www.medpac.gov/past-meeting/page/9/>; Becker's Hospital Review, *Government Shutdown Forces MedPAC to Cancel October Meeting* (Oct. 7, 2013), <https://www.beckershospitalreview.com/finance/government-shutdown-forces-medpac-to-cancel-october-meeting/>.

³³ See <https://www.macpac.gov/past-meetings/page/5/>; Modern Healthcare, *Reform Update: Government funding deal negotiations continue, with device tax in the mix* (Oct. 11, 2013), <https://www.modernhealthcare.com/article/20131011/NEWS/310119964/reform-update-government-funding-deal-negotiations-continue-with-device-tax-in-the-mix/>.

³⁴ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan Office of the Secretary available at <https://www.hhs.gov/about/budget/fy-2026-os-contingency-staffing-plan/index.html>.

³⁵ CRS Report, *Federal Aid to State and Local Governments: Select Issues Raised by a Federal Government Shutdown* (April 7, 2014), available at <https://crsreports.congress.gov/product/pdf/R/R43467>.

³⁶ *Id.*

down” government funds that have already been awarded, providing funding during a government shutdown for a certain period of time.³⁷

During a government shutdown, how federal grant funds are distributed may determine whether, and to what extent, there is a funding gap for programs funded in whole or in part by federal funds. Some grants programs provide advance payments in the first quarter of the fiscal year, and payments made to grant recipients in advance of expenditures are referred to as “advance draw-downs”. Thus, there may be instances where states may already have federal funds to keep the program going during a government shutdown in the first quarter of a fiscal year. However, if a government shutdown occurs or continues after January 1 (after the first quarter of the fiscal year), there may not be as much advance draw-down funding available.³⁸

States may also be able to “draw-down” funds for state-administered programs funded in whole or in part by federal grants that have already been awarded before a government shutdown. States may do so for anticipated or actual expenditures made under the terms of the grant award or authorizing language of the federal grant program. These disbursements may be authorized before actual program expenses are incurred or as reimbursement for expenditures made by the state. If funds are accessible in advance of a government shutdown, the state may be able to continue program activities for a certain amount of time, depending upon the amount of funds that were available at the time of the shutdown. Note, however, when funds are reimbursed, the federal agencies will not process reimbursement requests during a government shutdown.³⁹

Health Resources and Services Administration

HRSA has a number of programs with either mandatory spending authority or existing carryover balances from prior years that will be used to maintain services.⁴⁰ These include:

- Ryan White Parts A & B;
- President's Emergency Plan for AIDS Relief;
- Ending HIV Epidemic;
- National Practitioner Databank;
- Health Center Federal Tort Claims Act Program, Rural Residency Program;
- Countermeasures Injury Compensation Program;
- Health Centers Program, Teaching Health Centers GME, National Health Service Corps, Nurse Corps, Medical Student Education, Pediatric Loan Repayment Program, and Provider Relief Fund activities and Family to Family Health Information Systems.

HRSA will continue to oversee these programs so long as funding remains available. In addition, HRSA will use user fees to fund continued oversight of the National Practitioner Databank.

Activities that will not continue during a shutdown are primarily related to the discretionary grant programs that HRSA oversees, particularly those that are awarded in Q1 of the fiscal year. The FY 2026 Lapse Plan for HRSA includes the following summary for activities that will not continue:

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan Health Resources and Services Administration (HRSA), available at <https://www.hhs.gov/about/budget/fy-2026-hrsa-contingency-staffing-plan/index.html>.

- Vaccine Injury Program, IT and administrative contracts would be delayed.
- Drafting and posting FY 2026 NOFOs and reviewing applications for discretionary funded programs would be impacted.
- Limited ability to staff activities related to certain litigation.
- Limited staff to support programs in maternal health, health workforce, and behavioral health.

HRSA has 1,028 staff members (54 percent of the total HRSA staff) who are either exempt or excepted in order to staff the continuing programs. In addition, 49 Public Health Service Commissioned Corps Officers are excepted and will continue working.⁴¹

Substance Abuse and Mental Health Services Administration

SAMHSA will continue substance use and mental health programs “vital to the safety and protection of Americans.”⁴² Specifically, this includes programs that provide critical behavioral health resources during a natural or human-caused disaster (e.g., the Disaster Behavioral Health response teams, the 24/7 365 day-a-year Disaster Distress Helpline, and the 988/Suicide Lifeline). In addition, SAMHSA will continue activities supported with *Bipartisan Safer Communities Act* (BSCA) advance appropriations as well as previously funded operations.⁴³ SAMHSA can also utilize available funds to provide resources to the Treatment Services Locator program, the Treatment Referral Line, and the Suicide Prevention Lifeline. SAMHSA will have staff available to receive and properly route letters that indicate suicidal ideation to the appropriate local crisis intervention services. SAMHSA will also continue receiving and responding to Opioid Treatment Program (OTP) regulation exception requests, and emergency situations related to the provision of medications for opioid use disorder (OUD).⁴⁴

Most SAMHSA grants awarded in the prior year will have funds that remain available to be spent by the grantee (e.g., the 988 and Behavioral Health Crisis Services program, the State Opioid Response Grant program, and the Mental Health and Substance Use Block Grants). The retained Commissioned Corps Officers (CCO) will assist with maintaining any required grants programs and activities, including grants funded with BSCA advance appropriations.⁴⁵

Many grants have periods of performance that begin on September 30, 2025.⁴⁶ For these grantees, a shutdown of less than one month would have limited impact. However, new grantees would appear to be most impacted. For new grantees, a shutdown would leave them without support to implement the program’s activities, as many Government Program Officer (GPO) staff would be furloughed. In addition, responses to grant recipient requests (e.g., prior approvals) would be delayed. A funding lapse would delay SAMHSA’s ability to provide summary statements to grant applications that were not funded. Further, such a lapse would adversely impact potential FY 2026 grant applications throughout the agency, as the release

⁴¹ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan Health Resources and Services Administration (HRSA), available at <https://www.hhs.gov/about/budget/fy-2026-hrsa-contingency-staffing-plan/index.html>.

⁴² FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan Substance Abuse and Mental Health Services Administration (SAMHSA), available at <https://www.hhs.gov/about/budget/fy-2026-samhsa-contingency-staffing-plan/index.html>.

⁴³ See *id.*; P.L. 117-159 (June 25, 2022), available at <https://www.congress.gov/117/plaws/publ159/PLAW-117publ159.pdf>.

⁴⁴ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan Substance Abuse and Mental Health Services Administration (SAMHSA), available at <https://www.hhs.gov/about/budget/fy-2026-samhsa-contingency-staffing-plan/index.html>.

⁴⁵ *Id.*

⁴⁶ *Id.*

of new Notice of Funding Opportunities (NOFOs) would be delayed, which would reduce the turnaround time for potential grant applicants.⁴⁷

During a government shutdown, a total of 98 (13 percent) SAMHSA staff will be retained, including 5 (1 percent) exempt staff and 93 (12 percent) who are excepted.⁴⁸

User Fees

User fees cannot be accepted during a shutdown, which means no new regulatory submissions can be accepted where a user fee would be required. Any remaining user fee funds collected before the shutdown can be used to continue user fee-supported work (until they run out). Specifically, prior to the 2019 government shutdown, FDA announced the following when providing guidance on what would happen in the absence of either an FY 2019 appropriation or a CR for FDA:

“In addition, the FDA will continue to support activities funded by carryover user fee balances, which allows us to continue to bring new therapeutic options to the patients that need them. However, during the lapse period, the FDA will not have legal authority to accept user fees assessed for FY 2019 until an FY 2019 appropriation or Continuing Resolution for the FDA is enacted. This will mean that the FDA will not be able to accept any regulatory submissions for FY 2019 that require a fee payment and that are submitted during the lapse period.”⁴⁹

There are additional nuances concerning user fee-related FDA operations during a government shutdown. If the FY 2019 shutdown is a guide, industry can expect additional information and clarification from FDA leading up to and during any government shutdown.

FDA Inspections

Not all types of FDA inspections are expected to take place during a government shutdown. However, certain types of inspections such as “for cause and certain surveillance inspections of regulated facilities” will continue to be conducted. **The FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, specifically the FY 2025 Lapse Plan for FDA, provides that:**

All FDA activities related to imminent threats to the safety of human life or protection of property would continue. This includes detecting and responding to public health emergencies and continuing to address existing critical public health challenges by managing recalls, mitigating drug shortages, and responding to outbreaks related to foodborne illness and infectious diseases. It also includes surveillance of adverse event reports for issues that could cause human harm, the review of import entries to determine potential risks to human health, conducting *for cause and certain surveillance inspections of regulated facilities, and related regulatory testing activities*, and criminal enforcement work and certain civil investigations.⁵⁰

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ FDA 2019 Lapse in Funding Information, *available at* <https://web.archive.org/web/20190207054202/https://www.fda.gov/AboutFDA/WorkingatFDA/ucm629100.htm>.

⁵⁰ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan Food and Drug Administration (FDA), *available at* <https://www.hhs.gov/about/budget/fy-2026-fda-contingency-staffing-plan/index.html>.

A total of 3,132 (19 percent of all staff) FDA staff are considered excepted (their activities are deemed necessary by implication, or for the safety of human life or protection of property).⁵¹ Excepted staff will continue to perform vital tasks related to imminent threats to human life, including, among others, conducting for cause and certain surveillance inspections of regulated facilities. A total of 10,740 (66 percent of all staff) will be exempt to support activities that have funding available during a lapse in appropriations (e.g., from carryover user fees or the Working Capital Fund).⁵²

National Institutes of Health

NIH activities that will continue during a shutdown include the safety, continued care, and emergency demands of patients at the NIH Clinical Center biomedical research hospital, as well as care for NIH research animals and necessary maintenance for ongoing experiments, operations, facilities, and other infrastructure.⁵³

The FY 2026 Lapse Plan for NIH includes the following summary for activities that will not continue:

- All NIH grant peer review meetings, advisory council meetings, issuance of new awards, and program/grants management activities.
- The admission of new patients at the NIH Clinical Center (unless deemed medically necessary by the NIH Clinical Center Director).
- Initiation of new protocols at the NIH Clinical Center.
- Basic research conducted by NIH scientists.
- Translational research conducted by NIH scientists that develops clinical applications of scientific knowledge.
- Training of graduate students and postdoctoral fellows at NIH facilities.
- Scientific meetings at NIH facilities.
- Travel of NIH scientists to scientific meetings.
- Some NIH veterinary services.
- NIH scientific equipment services.
- Almost all NIH administrative functions, including the onboard of non-excepted staff.
- Most NIH mail, cafeterias, and visitor services.⁵⁴

Should a shutdown occur, grant review meetings will be cancelled or postponed, awards will not be made, new grant opportunities will not be posted, and grant administrators will likely be furloughed and thus unavailable to grantees.⁵⁵ If the shutdown continues for some time, it is also possible that a backlog of grant reviews may cause long-standing delays in award decisions. However, researchers will be able to continue receiving funds for grants already awarded, as well as submit applications for grant opportunities that have been posted.⁵⁶

⁵¹ *Id.*

⁵² *Id.*

⁵³ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan National Institutes of Health (NIH), available at <https://www.hhs.gov/about/budget/fy-2026-nih-contingency-staffing-plan/index.html>.

⁵⁴ *Id.*

⁵⁵ See “U.S. scientists brace for looming government shutdown” *Science* (December 19, 2024) available at <https://www.science.org/content/article/u-s-scientists-brace-looming-government-shutdown>.

⁵⁶ See *id.*

NIH will retain 4,477 staff members (24.54 percent of total employees) to support the maintenance of services essential to the safety and care of patients, the protection of property, and the essential support of non-Federal health care, including the maintenance of biomedical databases within the National Library of Medicine.⁵⁷

Additional Resources

In addition to the HHS Contingency Staffing Plan for FY 2026,⁵⁸ recent contingency staffing plans are available for the following agencies:

- Department of Defense⁵⁹
- Department of Commerce⁶⁰
- Department of Education⁶¹
- Department of Justice⁶²
- Department of Labor⁶³
- Department of the Treasury⁶⁴
- Department of Veterans' Affairs⁶⁵
- Federal Trade Commission⁶⁶
- Internal Revenue Service⁶⁷
- National Labor Relations Board⁶⁸
- Small Business Administration⁶⁹

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We hope this overview was helpful to you. Please do not hesitate to contact us if you have any questions.

⁵⁷ FY 2026 HHS Contingency Staffing Plan for Operations in the Absence of Enacted Annual Appropriations, FY 2026 Lapse Plan National Institutes of Health (NIH), available at <https://www.hhs.gov/about/budget/fy-2026-nih-contingency-staffing-plan/index.html>.

⁵⁸ The most recent contingency plan for HHS can be found [here](#).

⁵⁹ The most recent contingency plan for the Department of Defense can be found [here](#).

⁶⁰ The most recent contingency plan for the Department of Commerce can be found [here](#).

⁶¹ The most recent contingency plan for the Department of Education can be found [here](#).

⁶² The most recent contingency plan for the Department of Justice can be found [here](#).

⁶³ The most recent contingency plan for the Department of Labor can be found [here](#).

⁶⁴ The most recent contingency plan for the Department of the Treasury can be found [here](#).

⁶⁵ The most recent contingency plan for the Department of Veterans' Affairs can be found [here](#).

⁶⁶ The most recent contingency plan for the Federal Trade Commission can be found [here](#).

⁶⁷ The most recent contingency plan for the Internal Revenue Service can be found [here](#).

⁶⁸ The most recent contingency plan for the National Labor Relations Board can be found [here](#).

⁶⁹ The most recent contingency plan for the Small Business Administration can be found [here](#).