

Consequences of a Federal Government Shutdown

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Committee on Foreign Investment in the United States ("CFIUS")

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October 1, 2025

On October 1, 2025, following Congress' failure to pass an appropriations bill to continue government funding, the federal government shut down.

During the shutdown, federal government operations will be limited. We summarize below the effects of the shutdown on certain federal government departments and agencies.

Antitrust—Department of Justice and Federal Trade Commission

The federal antitrust laws are administered and enforced by two agencies: the Federal Trade Commission's Bureau of Competition ("FTC") and the Antitrust Division of the Department of Justice ("DOJ"). Both agencies' operations will be circumscribed during the shutdown, as described in the FTC's [shutdown plan](#) and the DOJ's [contingency plan](#), both published September 29, 2025.

Merger Review

The FTC "has coordinated with the [DOJ] on how, in the event of a shutdown, the agencies will handle their joint statutory responsibility to accept [Hart-Scott-Rodino ('HSR')] filings. The Commission's Premerger Notification Office ('PNO') will ... have staff on duty to accept new filings and to process those filings but will not respond to questions or requests for information or advice from outside parties." This is a reversal of the prior administration's 2024 plan to shutter the PNO and not accept HSR filings during the pendency of a shutdown.

The HSR Act and Rules establish statutory time limits, typically 30 days, by which the FTC or DOJ may seek to investigate (via issuance of a "Second Request") or challenge a transaction before it is closed. The waiting period will be unaffected by the shutdown and will run as usual, but requests for early termination will not be granted.

The FTC's plan is not clear with regard to new or existing HSR investigations, but these are expected to continue to the extent failure to pursue its claims would result in "a substantial impairment of the government's legal interests and may foreclose its ability to vindicate its position later." The DOJ will also continue merger reviews and prepare cases that must be filed due to statutory deadlines "only when an extension or waiver cannot be obtained and [Antitrust Division] leadership determines that allowing a proposed merger to go forward without objection would pose a reasonable likelihood of peril to property in which the United States has an immediate interest."

While difficult to predict with certainty, in practice, absent an imminent deadline, most agency merger review work likely will slow significantly. Since the agencies are very short-staffed during a shutdown, they may be more likely to ask parties to "pull and refile" to allow an additional 30 days for review of a proposed merger, and there is some chance the staff may default to a Second Request in deals with a competitive overlap if they cannot quickly get comfortable with a transaction's competitive effects during the waiting period. If the parties are in the Second Request phase of a merger review, "timing agreements" with the government will often account for a shutdown by extending the agency's time for the length of the shutdown.

Parties to deals should consult counsel to discuss the implications of these developments for pending and future transactions.

Non-Merger Antitrust Enforcement

The FTC will suspend non-merger investigations during the pendency of the shutdown, "except as necessary to prevent statutes of limitations from precluding monetary remedies available to the Commission." In litigated matters in which preliminary relief has already been obtained or where the FTC does not plan to seek it, the agency will seek suspensions of dates for trials, hearings, and filings. If a court denies such requests, the FTC will continue to pursue its claims or defenses in the litigation.

Similar to merger litigation, the DOJ will commence non-merger antitrust cases that must be filed due to statutes of limitations and pursue them to the extent that it is not able to obtain deadline extensions or waivers. For more information, see "Department of Justice—Criminal and Civil Litigations and Investigations" below.

Committee on Foreign Investment in the United States ("CFIUS")

Under the Treasury Department's [Lapse of Appropriations Plan](#) published September 2025, during the shutdown, CFIUS will cease processing cases, and all case deadlines and

time limitations imposed on CFIUS—including those for notices and declarations—will be tolled. However, the Treasury Department’s CFIUS activities will continue to the extent appropriate to address exigent national security concerns. These activities are not entirely dependent on annually appropriated funding, as they are funded in part by filing fees.

Criminal and Civil Litigations and Investigations—Department of Justice

During the shutdown, DOJ operations will continue in accordance with the Antideficiency Act. The Antideficiency Act permits the following categories of activities to continue: (1) those funded by a source that has not lapsed, such as permanent indefinite appropriations; (2) those expressly authorized to continue during an appropriation lapse; (3) those necessarily authorized to continue during an appropriation lapse; (4) those related to the discharge of the president’s constitutional duties and powers; and (5) those related to “emergencies involving the safety of human life or the protection of property.” In general, this means the following:

Criminal Investigations

Criminal investigations will generally continue without interruption. Criminal investigations are considered critical to the law enforcement capacity of the U.S. government and essential to the safety of human life and the protection of property. Thus, for example, most agents and support personnel of the Federal Bureau of Investigation will continue to work as normal. It is worth noting, however, that certain criminal investigations may be impacted to the extent that criminal investigators are working alongside noncriminal investigators at other agencies (or within DOJ itself).

Criminal Litigation

Criminal litigation will generally continue without interruption—subject, however, to the availability of federal courts (discussed below). Like criminal investigations, such litigation is considered essential to the safety of human life and the protection of property. Thus, for example, ongoing criminal prosecutions will proceed, as will other criminal litigation, such as extradition proceedings.

Civil Litigation and Investigations

Civil litigation and investigations will be postponed to the extent possible, without compromising human life or the protection of property. DOJ’s civil litigation lawyers will approach courts and request that active cases, except for those in which a delay would compromise to a significant degree the safety of human life or the protection

of property, be postponed until funding is available. If a court denies such a request and orders a case to continue, DOJ will comply with the court's order but will limit its civil litigation staffing. More generally, many personnel in the divisions of DOJ that conduct civil litigation and investigations will be furloughed, and nonemergency work in those divisions will be paused.

Federal Courts

Federal courts are expected to continue operations largely as normal for a period of time, perhaps two to three weeks, using court fee balances and other available funding. Hearings and filing dates may be rescheduled where litigants are affected by the shutdown, such as furloughed government attorneys. If, however, federal courts exhaust available balances, each court will determine the necessary staffing resources to support mission-critical work. At that point, the judiciary's availability and activities will become much more restricted.

Intellectual Property Protection

The U.S. Patent and Trademark Office ("USPTO") will continue operating as normal during the government shutdown—at least for a while. The office maintains a limited operating reserve fund that it will draw upon in the event of a lapse in appropriated funds. Appropriated funds are expected to sustain the USPTO for about two to three months, although reserve funds may last significantly longer for the Office of Trademarks. For context, the longest government shutdown in U.S. history lasted 34 days from December 22, 2018 through January 25, 2019. The USPTO is prepared to stay open for roughly double that time at a minimum. If a lapse in congressional appropriation does extend so long as to deplete the USPTO's reserve funds, most USPTO employees would need to be furloughed.

The Department of Commerce's [lapse plan](#) ("Lapse Plan"), published September 29, 2025, outlines the functioning of its offices in the event of such an extended closure. Importantly, the USPTO's online filing systems will remain operational even if the office is closed. Therefore, although staff may be delayed in processing patent and trademark applications, priority dates will be preserved, as described further below.

Patent Office

In the unlikely event of a multiple months-long shutdown that exhausts all non-appropriated funds, the Patent Office's plan is aimed squarely at protecting property rights. Even if funds are depleted, the Patent Office will maintain a minimum level of staffing necessary to ensure that all newly filed patent applications are processed to

protect patent filing dates. Staff also will be retained to maintain critical licensing and review functions, including requests for foreign licenses under 35 USC § 184. This will ensure that property holders do not lose property rights due to untimely filing. Similarly, employees who field questions related to Hatch-Waxman will be retained to advise patent holders concerning interim extensions to ensure that property rights are not lost if deadlines are not timely extended.

Trademark Office

According to the Lapse Plan, the Trademark Office is also focused on preserving trademark rights during a shutdown. It plans to except employees from furlough who are responsible for protecting mission-critical intellectual property. It will ensure staff is present to oversee all foreign activity, including activity related to the Madrid Protocol. The Trademark Office will also maintain IT staff to support systems necessary to “meet legal obligations to the public and international treaties.” Online filing systems will remain operational to preserve filing dates.

Patent Trial and Appeal Board (“PTAB”) & Trademark Trial and Appeal Board (“TTAB”)

The Lapse Plan’s guidance with respect to the PTAB and TTAB is less clear. The Lapse Plan does assure that the Boards will “retain a minimum level of staff excepted from the furlough to manage [their] critical functions related to the preservation of property rights.” This includes staff necessary to issue judicial orders “entered to preserve party rights” (although it is unclear exactly what orders would fall into that category), “evidentiary rulings for depositions and other discovery proceedings, and contested proceedings scheduled on a pre-set independent of the USPTO’s closing.” The Lapse Plan also mentions “emergency motions” and “stay orders” necessary to “maintain the status quo of property rights between parties in contested cases.” However, it does not elaborate further on how exactly this skeletal guidance would be implemented in practice. What is clear is that some level of work will continue at the Boards to protect property rights, though the exact nature of that work and any potential delays remain unclear.

Temporary Restraining Orders and Preliminary Injunctions

Provisional relief will be available in federal courts, which will continue operating as described above in “Department of Justice—Criminal and Civil Litigations and Investigations.”

Copyright Office

During the shutdown, all non-Constitutional functions of the Copyright Office will cease. According to [a plan](#) last modified by the Committee on House Administration

on September 29, 2025, the Library of Congress, under which the Copyright Office is nested, will be closed to the public. The Library of Congress Newsroom released an [update](#) on September 29, 2025 confirming that Copyright.gov will remain available through the shutdown. However, inquiries made through the website, such as registration or recordation requests, “will not be received or responded to until the shutdown ends.” This procedure mirrors that of the 2013 shutdown, during which applicants were still be able to file copyright applications online, but these registrations were not processed until the government reopened.

International Trade Commission

During the shutdown, the U.S. International Trade Commission (“USITC”) will cease all functions other than those directly supporting active litigation to which the USITC or the United States is a party and those named in the Commission’s [Contingency Plan for an Orderly Shutdown of Operations](#), updated on March 14, 2025. Agency activities that will cease include investigative activities, the provision of technical assistance to the U.S. Trade Representative and Congress, and processing of FOIA requests. It is likely that the USITC will cease accepting new electronic case filings as well, as previous shutdown plans warned. However, the updated plan removes any mention of electronic case filings, leaving open the possibility the electronic filing system will remain available online, as with other agencies. The USITC will maintain network services required for security, activities necessary for the protection of life or federal property, and the [Harmonized Tariff Schedule](#) (“HTS”) throughout a funding lapse. The HTS, which is based on the international Harmonized System, sets out the tariff rates and statistical categories for goods imported into the United States, ensuring consistency with international nomenclature.

Internal Revenue Service

During the shutdown, taxpayers must continue to file tax returns and pay estimated taxes by existing deadlines; however, many of the Internal Revenue Service’s (“IRS”) routine functions may be impacted, depending on the length of the shutdown. On September 29, 2025, the IRS released an agency contingency plan, providing that the IRS expects to use funds received under the Inflation Reduction Act of 2022 to continue normal operations for five business days following the shutdown. To the extent the shutdown extends beyond this period, most audit functions would cease and IRS representatives would not be available to answer taxpayer phone calls, which could delay the closing of ongoing tax examinations and prevent taxpayers from timely resolving questions they may have. In such a case, the IRS will continue to process payments, protect statutes of limitations, and conduct certain seasonal filing work.

Sanctions and Anti-Money Laundering—Treasury Department Offices and Bureaus

The activities of the U.S. Treasury Department's offices and bureaus, including the Financial Crimes Enforcement Network ("FinCEN") and the Office of Foreign Assets Control ("OFAC"), will be severely restricted during the shutdown.

FinCEN has said that it will implement pressing matters, such as engaging in urgent rulemakings, providing time-sensitive intelligence support to law enforcement, supporting priority national security efforts (such as maximizing Iran pressure efforts), and administering USA PATRIOT Act Section 314(a) requests from law enforcement and targeted financial measures, such as those imposed under USA PATRIOT Act Section 311. FinCEN has said that other matters, such as routine Bank Secrecy Act compliance and enforcement measures, will not be continued during the shutdown.

OFAC will continue to administer the Specially Designated Nationals list and implement any new sanctions, as directed by the Treasury Secretary. OFAC also will continue enforcing sanctions and "limited handling of incoming inquiries (Hotline calls)." Importantly, processing of OFAC licenses will cease during the government shutdown period.

Securities and Exchange Commission

SEC operations will be quite limited during the government shutdown, as described in the SEC's [operations plan](#) dated August 7, 2025 and the SEC's [guidance](#) last updated on September 30, 2025.

EDGAR

EDGAR is expected to remain functional as long as funding for the contractor that runs EDGAR remains available. While it is possible that EDGAR could cease operations in the event of a prolonged federal government shutdown, in the most recent government shutdown, which lasted just over one month in 2018–2019, EDGAR remained functional for the duration of the shutdown. SEC personnel will be able to provide limited EDGAR services (such as processing requests for access codes and password resets and answering questions about fee-bearing filings). Registrants will continue to be able to submit filings, but the SEC will not process filings that require staff review or other action (e.g., accelerating effectiveness of registration statements, as discussed below).

Investment Adviser Registration Depository ("IARD")

During the government shutdown, IARD is expected to function. IARD will accept annual and other amendments to Form ADV, Form ADV-W, and Form ADV-E filings. However, the Commission staff will be unable to approve applications for registration by investment advisers or give interpretive advice regarding the Investment Advisers Act of 1940 (the "Advisers Act") and related regulations. No new or pending investment adviser registration applications will be processed during the shutdown.

SEC Guidance and Exemptive Applications

During the shutdown, the staff of the SEC will not respond to requests for written or oral guidance on interpretive or legal questions, including no-action requests. In addition, the Division of Investment Management will be unable to consider applications for exemptive relief under the Advisers Act.

Registration Statements

- **New Offerings.** Well-known seasoned issuers ("WKSIs") may continue to file registration statements that become effective automatically upon filing. Both WKSIs and non-WKSIs with effective shelf registration statements may offer securities by way of a shelf takedown that only requires filing a prospectus supplement that is not subject to SEC review or other action.
- **Acceleration and Qualification Requests.** The SEC will not approve acceleration or qualification requests during the shutdown.
- **Delaying Amendments.** Companies that filed a registration statement with a delaying amendment prior to the shutdown may, during the shutdown, amend such registration statement and remove the delaying amendment statement so that the registration statement will become effective 20 days after the date of the amendment of such registration statement. During the shutdown, companies also may file a new registration statement without a delaying amendment, such that the registration statement will become effective 20 days after filing.

Companies considering this path should proceed with caution. The risk of an SEC enforcement action or civil litigation arising out of the registration statement should be discussed with counsel before allowing a registration statement to become effective prior to clearing SEC review. The filing company should consider carefully the risks of removing or omitting the delaying amendment, depending on the particular facts and circumstances, including whether there are outstanding SEC staff comments that raise material issues. In all cases, the registration statement must be complete, and the filing company should ensure that the

registration statement does not contain any material misstatements or omissions of material information required to be stated therein or necessary to make the statements therein not misleading.

If the shutdown ends during the 20-day period before the registration becomes effective, the SEC may request that the company amend the registration statement to include the delaying amendment statement. During the shutdown, the SEC may still issue a stop order under Section 8(d) of the Securities Act of 1933.

- **Pricing Delays.** If a registration was declared effective just prior to the shutdown, but the issuer will not be able to price the associated offering within the 15 business days following the effective date, the issuer may submit a post-effective amendment pursuant to Rule 462(c), which will automatically restart the 15-business-day period (provided that there are no substantive changes to the prospectus in the post-effective amendment).

Proxy Statements

During the shutdown, registrants may file definitive proxy statements 10 calendar days after the preliminary proxy statement was filed. SEC staff may review the preliminary proxy statement after the shutdown ends, but preliminary proxy statements will not be reviewed while the shutdown is ongoing.

Exchange Act Reporting Deadlines

The shutdown does not suspend regular SEC filing deadlines, such as for Forms 8-K, 10-Q and 10-K, and registrants must continue to comply with such deadlines. There is no change to the SEC's "business day" counting convention as a result of the shutdown.

Examinations and Enforcement Actions

The shutdown freezes in place the vast majority of active SEC examinations, Enforcement investigations and ongoing settlement discussions because (1) most examinations and Enforcement Staff are nonessential personnel who are prohibited from working during the shutdown, and (2) the majority of Examinations and Enforcement investigations are not emergency or time-sensitive matters (for example, involving the active dissipation of retail investor assets) that cannot be paused during the shutdown. The Division designates staff responsible for ongoing litigated and emergency matters, as well as Senior Officers, as "exempt" or "excepted" personnel who are permitted to continue working during the shutdown. The

shutdown does not toll any applicable statutes of limitations for Enforcement matters.

Comment Letters

While comment letters can be submitted on the SEC website, by email or postal mail, the SEC will not post them on its website during the shutdown.

Operating Status

The latest updates on the SEC's operating status will be posted to the SEC [website](#).

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Please do not hesitate to contact us with any questions.

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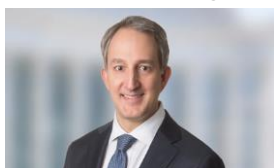


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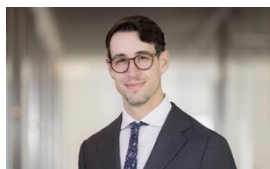
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National Security

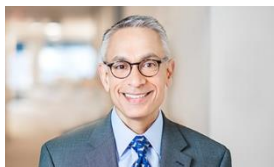


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White Collar

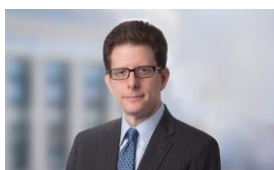
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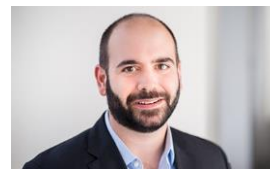
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