

Government Shut-down: Update #6: The Government Opens and Debt Default Is Avoided

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Early this morning, President Obama signed into law [H.R. 2775](#), continuing appropriations for fiscal year 2014, thus reopening the government. The Office of Management and Budget (OMB) has ordered all federal agencies to open today. The Office of Personnel Management (OPM) has encouraged agencies to use all available workplace flexibilities and excused absences for hardship situations to ensure a smooth transition back to work for federal employees.

In broad outlines, the legislation funds the federal government (generally at sequester levels) until January 15, 2014, and extends the debt ceiling to the point that is expected to be reached on February 7, 2014. The debt ceiling could be extended beyond February 7th since “extraordinary measures” (such as suspending regular contributions to the retirement funds of federal workers) are allowed under the legislation. The legislation also contains an interesting mechanism for increasing the debt ceiling, which is discussed in more detail below.

The legislation passed first in the Senate, around 8:00 p.m. last night, by a margin of 81 to 18. All Senate Democrats voted for the legislation; 18 Republicans voted against it. The legislation then passed the House shortly after 10:00 p.m., with all 198 Democrats and 87 Republicans voting for the legislation. Voting against were 144 Republicans. One House Republican and two House Democrats did not vote.

THE LEGISLATION: THE CONTINUING APPROPRIATIONS ACT OF 2014


In addition to funding the government and raising the debt ceiling, the legislation contains some other interesting provisions:

HURRICANE SANDY RELIEF FUNDS PROTECTED FROM SEQUESTRATION

Section 101 of the Act protects Hurricane Sandy Relief Funds from sequestration cuts through January 15, 2014.

EMPLOYEES TO BE PAID DURING FURLOUGH AND CERTAIN CONTRACTS APPROVED RETROACTIVELY TO OCTOBER 1, 2013

Section 115(a) of the Act provides that federal employees, employees of the District of Columbia, employees of the District of Columbia Courts, and employees of the Public Defender Service of the District of Columbia will be paid retroactively to October 1, 2013. Retroactive pay for employees of government contractors who may have been furloughed is not addressed in this legislation. Departments and agencies were directed to pay federal employees their back pay “as soon as practicable.”



Section 115(c) ratifies certain federal “obligations” that were incurred during the gap in federal appropriations that occurred between October 1 and October 17, 2013.

REPAYMENT OF STATES FOR PERFORMING FEDERAL FUNCTIONS DURING THE FEDERAL GAP IN FUNDING

Section 116 of the legislation addresses the very important issue of reimbursing states for certain federal functions they took over during the gap in federal funding. Section 116 provides for the reimbursement of states, or other federal grantees, that used state or other non-federal funds to continue carrying out federal programs that they had been carrying out prior to the shut-down, or who furloughed employees whose compensation is paid for with federal funds. We understand that this provision was not intended to, and does not, address reimbursement to the states for funds that they provided to the National Park Service to reopen national parks during the shut-down.

INCREASE IN APPROPRIATIONS FOR CERTAIN CORPS PROJECTS

Section 123 contains a significant increase in funding authority for the Olmsted navigation and dam project on the lower Ohio River, from \$775 million to \$2.9 billion.

FEDERAL LANDS RECREATION ENHANCEMENT ACT EXTENDED

Section 134 of the legislation extends the Federal Lands Recreation Enhancement Act, which was scheduled to expire December 8, 2014, one year to December 8, 2015. This Act allows federal land management agencies to charge recreation fees and to invest these fees to improve facilities and visitor services.

FUNDS AUTHORIZED FOR COLORADO FLOOD DAMAGE

Section 155 authorizes the Secretary of Transportation to obligate up to \$450 million for emergency relief from 2013 flooding damage in Colorado.

VERIFICATION OF INCOME QUALIFICATION FOR AFFORDABLE CARE ACT PREMIUMS AND SUBSIDIES

Section 1001 of the Act requires that American Health Benefit Exchanges established under the Affordable Care Act (ACA) must verify the household income of persons applying for premium tax credits and reduced cost-sharing for health insurance under the ACA. The Secretary of Health and Human Services must certify to Congress that the verification mechanisms are in place. By January 1, 2014, the Secretary must submit a report to Congress detailing the verification procedures; and by July, 2014, the Inspector General of the Department of Health and Human Services must submit a report to Congress evaluating the effectiveness of these verification procedures.



DEFAULT PREVENTION ACT OF 2013

Perhaps one of the most significant provisions in the legislation is Section 1002, titled the “Default Prevention Act of 2013.” Since this process is different from the norm, we are focusing on it separately, even though it appears in the same legislation as the previous provisions.

Rather than increase the amount of the debt ceiling to a specific number, the Congress took the approach of giving the President the authority to lift the debt ceiling until February 7th subject to certain limitations. Under this approach to increase the debt ceiling, based on an approach floated by Senate Minority Leader Mitch McConnell in 2011:

- the President must certify to Congress within the next several days that he must raise the debt ceiling to pay the obligations of the nation;
- with the certification to Congress, the debt ceiling is suspended until February 7th;
- Congress can, within 22 days after receiving the certification of the President, adopt a joint resolution disapproving of raising the debt;
 - consideration of the motion is privileged and accompanied by expedited procedures to ensure a timely vote in the House and Senate;
 - if the Congress adopts such a joint resolution, the President may veto the resolution;
 - the Congress can override the Presidential veto by a two-thirds vote of each House of Congress;
- if the joint resolution of disapproval becomes law, the debt ceiling will be increased to the level then needed to cover all obligations issued to that date;
- if the President makes the certification, and either no joint resolution is adopted or any such joint resolution is successfully vetoed, on February 7th the debt ceiling is increased to the level necessary to cover all obligations of the federal government that were issued by that date, so long as those obligations were due to fund commitments incurred that required payment on or before February 7th.

WHAT HAPPENS NEXT?

The House and Senate yesterday appointed budget conferees who are directed to bring back a budget recommendation to both Houses of Congress by December 13th. This conference committee could, perhaps, reach a comprehensive budget, spending and long term government financing compromise that could avoid another government shut-down on January 15, 2014, and another debt default scare on or after February 7, 2014. Press reports indicate that the first meeting of the leaders of this conference may occur today.

House conferees are: Paul Ryan (R-WI), Chair, House Budget Committee, Tom Cole (R-OK), Tom Price (R-GA), Diane Black (R-TN), Chris Van Hollen (D-MD), Ranking Member, House Budget Committee, James Clyburn (D-SC) and Nita Lowey (D-NY).

Senate conferees are all members of the Senate Budget Committee: Patti Murray (D-WA), Chair, Senate Budget



Committee, Ron Wyden (D-OR), Bill Nelson (D-FL), Debbie Stabenow (D-MI), Bernie Sanders (I-VT), Sheldon Whitehouse (D-RI), Mark Warner (D-VA), Jeff Merkley (D-OR), Chris Coons (D-DE), Tammy Baldwin (D-WI), Tim Kaine (D-VA), Angus King (I-ME), Jeff Sessions (R-AL), Ranking Member, Senate Budget Committee, Chuck Grassley (R-IA), Mike Enzi (R-WY), Mike Crapo (R-ID), Lindsey Graham (R-SC), Rob Portman (R-OH), Pat Toomey (R-PA), Ron Johnson (R-WI), Kelly Ayotte (R-NH) and Roger Wicker (R-MS).

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Avi Zevin, Gabe Tabak, and Mike O'Neill, Van Ness Feldman's newest associates, contributed to this alert.

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