

## Government Shutdown: Operations of the Department of Defense During a Lapse in Appropriations

Courtesy: Congressional Research Service (CRS)

### Summary

Funding for the Department of Defense, as for most other federal agencies, is being provided through a Continuing Resolution that may expire after April 8, 2011. If additional funding is not provided after then, DOD, like other agencies, may be subject to a lapse in appropriations during which agencies are generally required to shut down. In the past, however, the Office of Management and Budget (OMB) has identified a number of exceptions to the requirement that agencies cease operations, including a blanket exception for activities that "provide for the national security." If the Administration approves of such exceptions in the current circumstances, many Department of Defense activities would continue, though other activities would halt.

As a result, during a lapse in appropriations, some DOD personnel would be "excepted" from furloughs, including most or all uniformed military personnel, while others would not be permitted to work. Even "excepted" military and civilian personnel who would continue to work and whose pay is normally provided through annual appropriations would not be paid, however, until after appropriations are subsequently provided for that purpose. A frequent question is how this compares to the last government shutdown in 1995-1996. There were two shutdowns at that time, one of five days, from November 13 through November 19, 1995, and one of 21 days, from December 15, 1995 through January 5, 1996. The first shutdown was not long enough to affect pay checks, and DOD was not affected by the second because defense appropriations were enacted on December 1, so funding was available.

The authority to continue some activities during a lapse in appropriations is governed by the Anti-Deficiency Act, now codified at 31 U.S.C. 1341 and 1342, as interpreted by Department of Justice (DOJ) legal opinions and reflected in Office of Management and Budget (OMB) guidance to Executive agencies. Subject to review by OMB, each agency is responsible for making specific determinations on which activities may continue during a shutdown and which may not. Legally, according to DOJ and OMB guidance, activities that may continue during a lapse in appropriations include (1) activities "necessary to bring about the orderly termination of an agency's functions;" (2) administration of benefit payments provided through funds that remain available in the absence of new appropriations, including, in the case of DOD, military retirement benefits; (3) activities and purchases financed with prior year funds and ongoing activities for which funding has already been obligated; (4) activities undertaken on the basis of constitutional authorities of the President; and (5) activities related to "emergencies involving the safety of human life or the protection of property." The Defense Department attributes its authority to carry on national security-related operations mainly to Section 1342 of the Anti-Deficiency Act that permits the continuation of activities to protect human life and property.

Current DOD guidance on operations in the event of a shutdown is not available. Past guidance provides that ongoing military operations, such as those in Iraq and Afghanistan, may continue,

along with training of forces that are assigned to potential future operations and a broad range of activities that, in DOD's view, are needed to support national security-related operations. In the past, these have included operation of DOD Dependent Schools and child care centers. DOD medical activities may also continue, including TRICARE services for dependents, though non-essential services such as elective surgery may not be provided in military medical facilities. Pay of military and civilian personnel would soon be interrupted, however, potentially imposing hardships on many families. Payments to vendors derived from multiyear appropriations may continue, but payments from current appropriations would not be permitted, which may result in some confusion and, potentially, disruptions to supplies of some material and services.