

# High Court To Carry On If No Deal To Avert Shutdown

Law360 (September 26, 2023, 3:51 PM EDT) · [Listen to article](#) -- A government shutdown could happen by the end of the week, yet the U.S. Supreme Court would continue its regular operations, and there would be about two weeks' worth of funding available for lower federal courts, insiders say.

The federal government will shut down at midnight on Oct. 1 if lawmakers and the White House fail to come to an agreement on either a short-term continuing resolution or full-year appropriations. Yet that won't delay argument in the justices' upcoming session, which begins Sept. 30.

"In the event of a lapse of appropriations, the [Supreme] Court will continue to conduct its normal operations," Patricia McCabe, public information officer for the high court, told Law360 on Monday. "The court will rely on permanent funds not subject to annual approval, as it has in the past, to maintain operations through the duration of short-term lapses of annual appropriations."

As for the lower federal courts, "all employees would report to work, and judiciary operations would continue using court fees and other available balances through at least Oct. 13, 2023," said Peter Kaplan, spokesperson for the judiciary. "We continue to assess available fees and balances to determine if operations can be sustained beyond Oct. 13."

If the judiciary uses all court fees and other available funds before Congress enacts a short-term or full-year funding plan, the judiciary would implement its shutdown plan and determine what functions would be allowed under the Anti-Deficiency Act, Kaplan continued.

The law bans agencies from spending or obligating funds either in excess or advance of congressional appropriations, with certain exceptions.

"Under those circumstances, federal courts would continue operating, but would be limited to activities needed to support the exercise of the judiciary's constitutional functions and to

address emergency circumstances," he said.

Additionally, the judiciary said in a post on Monday that a shutdown could impact funds used to pay for contract supplies and services, but unless notified, contractors should continue to fulfill their obligations.

And while the courts would be open, some U.S. Department of Justice "positions and position functions will indeed require furlough and no work during a shutdown," as explained in its contingency plan, Aram Gavoor, associate dean for academic affairs at the George Washington University Law School, told Law360 on Monday.

The contingency plan, updated on Sept. 25, says that for a shutdown that lasts the first five calendar days of fiscal year 2024, 84% of DOJ employees would be exempted from furlough.

"Criminal litigation will continue without interruption as an activity essential to the safety of human life and the protection of property," the plan states. "Civil litigation will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life or the protection of property."

The special counsels investigating former President Donald Trump and current President Joe Biden will not be impacted because they are funded through a "permanent, indefinite appropriation for independent counsels," as outlined in their financial reports.

This is counter to Trump's statement on his social media platform Truth Social last week that the looming shutdown is "the last chance to defund these political prosecutions against me and other patriots."

Lastly, the Tax Court will be open as usual on Monday if there is a shutdown, "and we expect to continue normal operations indefinitely," the court told Law360 on Monday. "All scheduled trial sessions will proceed as scheduled."

--Additional reporting from David Van Den Berg. Editing by Philip Shea.

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