

*United States Senate*  
**PERMANENT SUBCOMMITTEE ON INVESTIGATIONS**  
*Committee on Homeland Security and Governmental Affairs*

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*Rob Portman, Chairman*  
*Tom Carper, Ranking Member*

# The True Cost of Government Shutdowns

## STAFF REPORT

### PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

UNITED STATES SENATE



# The True Cost of Government Shutdowns

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## I. EXECUTIVE SUMMARY

The Constitution grants Congress the power of the purse. Specifically, Congress has the sole responsibility to raise revenue and appropriate money to fund the federal government. When Congress and the President fail to reach agreement on legislation to appropriate funds, affected federal agencies shut down and suspend most activities. During this time, federal law prevents most federal employees from working and most are sent home without pay. In recent shutdowns, however, the spending legislation ultimately agreed upon by Congress and the President provided back pay for federal employees. As such, the American taxpayer funded furloughed federal employees' salaries for the duration of each shutdown, even when employees were not permitted to go to work.

This report documents the cost to the American taxpayer of the last three government shutdowns. Federal workers were furloughed and unable to work for 54 days during those three government shutdowns. The Subcommittee surveyed 26 federal agencies and found the last three government shutdowns cost taxpayers nearly \$4 billion—at least \$3.7 billion in back pay to furloughed federal workers, and at least \$338 million in other costs associated with the shutdowns, including extra administrative work, lost revenue, and late fees on interest payments. Agencies reported to the Subcommittee that the combined total of furlough days during all three shutdowns was about 14,859,144, representing an estimated 56,938 years of lost productivity for those agency employees. These figures, however, do not include data from some of the largest government agencies, which were unable to provide complete shutdown cost estimates to the Subcommittee, including the Departments of Defense, Agriculture, Justice, and Commerce and the Environmental Protection Agency.

This report also documents the impacts that shutdowns have on important core government functions.

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*Congress created a process to pass appropriations to fund the federal government.* Under the Congressional Budget and Impoundment Control Act of 1974, the budget process begins the first Monday in February with the President sending the House of Representatives and Senate Budget Committees a proposed budget. This proposed budget is the President's recommendation for funding the government the following fiscal year, which begins October 1. The Budget Committees consider that request and develop their own budget proposal. The full House and Senate are then required to pass a formal budget resolution outlining topline spending levels by April 15. The House and Senate Appropriations

Committees then pass and send appropriations bills to the full House and Senate for consideration; the process divides funding for the entire government into 12 separate bills. Each of the 12 regular appropriations bills must pass both chambers, and the two chambers work out any differences in the bills in conference. Once the House and Senate pass the same versions of an appropriations bill, Congress sends the bill to the President for signature.

Congress designed this process to orderly fund the federal government as it determines what programs to fund and the funding allocated to each program. This process also allows the President to make recommendations for program funding levels and permits agencies to plan for the year ahead. Today, that orderly process is rarely followed.

*The federal government routinely operates on temporary continuing resolutions.* Ideally, Congress and the President complete the budget process before the end of the fiscal year and enact all 12 appropriations bills before October 1. Since 1997, however, some or all of the executive branch has operated under a continuing resolution or “CR.” A CR provides temporary funding when Congress is unable to pass a comprehensive budget. Since 1997, Congress has passed 117 CRs to temporarily fund the government—often passing multiple CRs each fiscal year. The CRs have ranged in duration from one day to the entire fiscal year.

When Congress cannot pass the 12 appropriations bills or a CR, the portion of the government without appropriated funding shuts down. In the last five years, this has occurred three times resulting in three government shutdowns: 16 days in October 2013; 3 days in January 2018; and most recently, 35 days from December 2018 to January 2019.

*Rather than saving taxpayer money, shutdowns produce significant costs to the American taxpayer.* While federal workers are not paid during a shutdown, Congress routinely provides full back pay to those workers when it ultimately passes appropriations. The government pays federal workers for the time they were furloughed and unable to work due to the shutdown. However, the American taxpayer incurs significant lost productivity costs due to the furlough. Federal agencies reported they were unable to perform important functions during the shutdowns, including:

- Investigations of bad actors who were potentially breaking federal laws were suspended, including investigations by the Departments of Justice and Treasury, the Securities and Exchange Commission, and the Federal Trade Commission. Investigators were unable to pursue leads, develop evidence of crimes, or bring enforcement actions against individuals and corporate entities for bad acts.

- The Department of Justice canceled approximately 60,000 immigration hearings for non-detained aliens scheduled to take place during the FY 2019 shutdown. This delay likely extended the current two-year wait time for individuals waiting for a hearing to determine their immigration status.
- The Consumer Product Safety Commission (“CPSC”) tabled any outstanding decisions regarding the recall of potentially dangerous consumer products, leaving potentially dangerous products on the market and available to consumers. No recalls were posted on the CPSC website during the FY 2019 shutdown. A recall notice posted on February 5, 2019 after the shutdown noted that a drill posing a shock hazard to consumers was “previously announced independently on January 10, 2019 by the firm due to the government furlough.”
- National Parks, including Yellowstone National Park and Grand Canyon National Park, were either closed or unattended. Park visitors either had no access to parks or encountered unattended parks with overflowing trashcans. The lack of park attendants and rangers left sensitive habitats vulnerable to damage. Nor were park rangers on site to help lost or injured park visitors.
- The Smithsonian Institution closed museums during certain shutdowns. Tourists could not see any of the world-renowned paintings in the National Gallery of Art in Washington, D.C. Nor were they able to access other popular destinations like the National Museum of American History and the National Air and Space Museum. With its museums closed, the Smithsonian also lost significant revenue from its on-site shops, theaters, and dining facilities.

*Some agencies could not determine the cost of the shutdown.* The Subcommittee based its cost estimate of nearly \$4 billion on the information provided by 26 federal agencies. Some agencies, however, were unable to provide one or more categories of the requested financial information. For example, the Departments of Defense, Agriculture, Justice, Commerce, and the Environmental Protection Agency did not know the amount paid to employees in back pay following certain shutdowns. Other agencies were unable to provide information about other costs associated with shutdown impacts such as extra administrative work, lost revenue, project delays, and late payment fees. Therefore, certain shutdown costs from those agencies are not included in the Subcommittee’s estimate.

*The cost of a shutdown to the national economy.* Shutting down the government also affects the national economy. The Congressional Budget Office (“CBO”) determined the most recent partial shutdown “delayed approximately \$18

billion in federal discretionary spending for compensation and purchases of goods and services and suspended some federal services.” As a result of this reduced spending, the Congressional Budget Office estimated that the shutdown reduced real GDP in the fourth quarter of 2018 and the first quarter of 2019 to what it would have been otherwise by \$3 billion and \$8 billion, respectively. CBO explained that real GDP should have grown at a significantly faster rate if the shutdown had been averted. Specifically, CBO quantified the effect of the partial shutdown on the rate of annualized real GDP growth at 0.4 percent in the first quarter of 2019, finding that quarterly real GDP growth would have been 3.5 percent instead of the 3.1 percent that actually occurred.

## II. THE SUBCOMMITTEE’S INVESTIGATION

The Subcommittee requested the same information from 26 agencies and departments regarding the costs incurred as a result of three separate government shutdowns, as well as information about the shutdowns’ effects on agency operations.

The Subcommittee’s requests included the following:

1. *Employee Furloughs.*
  - a. The number of federal employees furloughed.
  - b. The total number of combined employee furlough days.
  - c. The total amount of “back pay” compensation paid to federal workers for the time they were furloughed.
  - d. Any additional costs or financial consequences associated with lost productivity.
2. *Federal Contractors.*
  - a. The number of contractor employees laid off or required to use leave.
3. *Administrative Costs.*
  - a. The total costs associated with development and implementation of contingency plans and completion of shutdown activities.
  - b. The total costs associated with monitoring the shutdown.
  - c. The total costs associated with reopening and restarting normal operation of agency activities.
4. *Miscellaneous Costs and Effects.*
  - a. Information describing any unique disruptions to operations or other effects experienced during the shutdown period, including, but not limited to:
    - i. Halted or delayed permitting, approvals, reviews, inspections, or investigations;

- ii. Any disruption or delay related to law enforcement activities;
- iii. Any disruption to research, scientific or otherwise;
- iv. Delayed disbursement of grant funds or other monetary assistance;
- v. Costs associated with canceled travel;
- vi. Costs associated with delayed or canceled maintenance or facilities operations activities;
- vii. Delayed projects, acquisitions, or contracts;
- viii. Lost revenues or fees, including donations; and
- ix. Interest due on late payments.

*5. Long-Term Effects.*

- a. Information regarding any expected long-term effects of each shutdown.

The responses varied in terms of data and information provided. Some agencies provided quantitative data or estimates representing certain costs, while others stated that they were unable to do so, or unwilling to calculate estimates due to concerns about accuracy. This report provides information, where relevant, regarding agency explanations about any missing data and other gaps in responses provided to the Subcommittee.

This is not a new problem. For several decades, agencies have been unable to provide accurate data on shutdown costs to Congress and other oversight entities. . After a one-day shutdown in November 1981—almost 40 years ago—Senator Alan Cranston of California asked GAO to ascertain the costs of paying employees who had been furloughed, as well as “other costs directly or indirectly related to the shutdown.”<sup>1</sup> After meeting with agency officials and requesting data, GAO concluded that the requested data was “neither readily available nor easily obtainable.”<sup>2</sup> GAO noted that the agencies’ abilities to respond varied significantly, and that those agencies that did respond took multiple approaches to calculating costs.<sup>3</sup>

Congress made similar inquiries after two much-longer shutdowns in FY 1996,<sup>4</sup> and found that the problems with data accuracy and collection still had not been resolved. OMB provided one lump sum: an estimated combined cost of “over \$1.4 billion” for the two shutdowns.<sup>5</sup> OMB noted that there were other costs, such

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<sup>1</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, PAD-82-24, COST TO THE GOVERNMENT OF THE RECENT PARTIAL SHUTDOWN OF GOVERNMENT OFFICES 1 (Dec. 10, 1981).

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> CLINTON BRASS ET AL., CONG. RESEARCH SERV., RL34680, SHUTDOWN OF THE FEDERAL GOVERNMENT: CAUSES, PROCESSES, AND EFFECTS 34 (Dec. 10, 2018), <https://crsreports.congress.gov/product/pdf/RL/RL34680>.

<sup>5</sup> *Id.*

as additional work hours, late fees, and interest payments which could not be determined.<sup>6</sup> OMB did not break down the \$1.4 billion figure for the FY 1996 shutdowns until years later, in a report issued after the FY 2014 shutdown.<sup>7</sup> And even then, the costs were not broken down in a detailed manner.<sup>8</sup>

Three weeks after the FY 2014 shutdown ended, OMB released a report on its costs and effects. .<sup>9</sup> Although the report provided rough estimates of some costs, OMB did not quantify several cost categories in monetary terms, resulting in an incomplete picture of the cost to taxpayers.<sup>10</sup> OMB noted that the total amount paid to federal employees who were furloughed during the FY 2014 shutdown was “roughly” \$2.0 billion, but that estimate was based on the *average* salary costs for furloughed employees by agency.<sup>11</sup> By using the average salary rather than actual data from the agencies—particularly for larger agencies—the estimates are likely lower than the actual costs.

In examining the costs and effects of the FY 2014, 2018, and 2019 shutdowns, the Subcommittee found that it was difficult to obtain actual quantitative data on the costs and effects of shutdowns. The Subcommittee has determined that this type of data still—after almost 40 years—is “[not] readily available [or] easily obtainable,” even from the primary source—the agencies themselves.<sup>12</sup>

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<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 33–34; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 13 n.10 (Nov. 2013).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See, e.g., *id.* at 15 and 21.

<sup>11</sup> *Id.* at 4 n.2.

<sup>12</sup> GOV’T ACCOUNTABILITY OFFICE, PAD-82-24, COST TO THE GOVERNMENT OF THE RECENT PARTIAL SHUTDOWN OF GOVERNMENT OFFICES 1 (Dec. 10, 1981).

### **III. FINDINGS OF FACT AND RECOMMENDATIONS**

#### **Findings of Fact**

- (1) The three government shutdowns in the past five years cost the taxpayers nearly \$4 billion—at least \$3.7 billion in back pay to federal workers, and at least \$338 million in other costs associated with the shutdowns, including extra administrative work, lost revenue, and late fees on interest payments. Since federal workers were furloughed and unable to work during the shutdowns, taxpayers lost the equivalent of 56,938 years of work. The cost of back pay for furloughed workers for each shutdown is below.

<b>Shutdown</b>	<b>Estimated Back Pay</b>	<b>Lost Productivity of Furloughed Workers</b>
FY 2014	\$1,335,518,111	29,965.1 Years
FY 2018	\$68,180,462	1,672 Years
FY 2019	\$2,257,623,672	25,301.3 Years
<b>Total</b>	<b>\$3,661,322,245</b>	<b>56,938.4 Years</b>

- (2) Government shutdowns cause important government functions to lapse. Agencies reported a wide range of suspended activities, including:
- (a) The Department of Justice (“DOJ”) canceled approximately 60,000 hearings for non-detained aliens scheduled to take place during the FY 2019 shutdown.
- (b) The Department of Homeland Security (“DHS”) delayed maintenance of facilities, which had a serious impact on law enforcement officer operations and safety, including at the border. The lack of these critical maintenance and repair services endangered the lives of law enforcement officers and created significant border security vulnerabilities.
- (c) The Consumer Product Safety Commission (“CPSC”) suspended efforts to keep potentially unsafe products off the market. All CPSC import surveillance activities were suspended; no

potentially dangerous shipments from abroad were stopped at U.S. ports because CPSC port inspectors were furloughed and unable to screen thousands of products, including children's merchandise that could contain excessive lead and sleepwear that may violate flammability standards. CPSC was unable to perform many of its other key duties, including protecting consumers by facilitating product recalls and informing the public of risks posed by certain consumer products.

- (d) The Federal Aviation Administration ("FAA") furloughed most of its aviation safety inspectors who are responsible for the certification of new aircraft, as well as for the oversight of pilots and aircraft maintenance.
- (e) The Small Business Administration ("SBA") was unable to administer many programs that make capital available to small business owners who would otherwise be unable to access capital through conventional means. For example, the SBA was unable to approve loans or accept new loan applications from small businesses.
- (f) The National Park Service was unable to provide adequate daily maintenance at certain parks, resulting in trash buildup, vandalism, trespassing, and destruction of the natural environment at those parks.

## **Recommendations**

- (1) Congress should resume its annual budget responsibilities to better help House of Representatives and Senate appropriators provide funding for federal agencies on an annual basis. This allows federal agencies to plan for the fiscal year ahead and helps avoids any possibility of a lapse in funding resulting in a government shutdown.
- (2) Congress should pass legislation to permanently prevent the federal government from shutting down through an automatic CR for any regular appropriations bill or existing CR, thereby ensuring that essential government services are not disrupted and protecting American taxpayers who must bear the resulting cost. This would also ensure federal workers were able to continue working.
- (3) The Office of Management and Budget ("OMB") should examine the financial management policies and practices at agencies that were

unable to provide the Subcommittee with complete information on the cost of the last three shutdowns. The OMB Director should then report to Congress on any legislation necessary to ensure senior agency officials have access to the timely and accurate financial data they need.

#### IV. BACKGROUND

Ideally, federal agency activities are funded annually by one or more of the 12 regular appropriations bills.<sup>13</sup> If action on the regular appropriations acts is delayed, a continuing resolution (“CR”) may be used to provide interim budget authority.<sup>14</sup> If Congress fails to pass a full set of appropriations bills or a CR that keeps funding at current levels, or if the President fails to sign one or more of those bills, the unfunded portions of the government will shut down.<sup>15</sup> Government shutdowns often necessitate furloughs of hundreds of thousands of federal workers, require the suspension or reduction of many government activities, and affect numerous sectors of the national economy.<sup>16</sup>

*Causes of Government Shutdowns.* The federal government’s fiscal year begins on October 1.<sup>17</sup> For agencies and programs that rely on funding through annual appropriations acts, Congress and the President must enact an interim CR or full-year appropriations by this date in order to ensure the continuity of many governmental activities.<sup>18</sup> If this does not happen, a funding gap<sup>19</sup> may occur, which in turn, may cause a government shutdown.<sup>20</sup> If a funding gap occurs and funding does not appear likely to resume during the first calendar day of the gap, the federal government generally begins a “shutdown” of affected agencies and activities.<sup>21</sup> The affected agencies must cease operations and furlough certain personnel in accordance with the Antideficiency Act (“ADA”), except in certain situations in which the law authorizes continued activity.<sup>22</sup> The complex criteria

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<sup>13</sup> JAMES V. SATURNO, CONG. RESEARCH SERV., RS20348, FEDERAL FUNDING GAPS: A BRIEF OVERVIEW 1 (Feb. 4, 2019), <https://crsreports.congress.gov/product/pdf/RS/RS20348>.

<sup>14</sup> *Id.*

<sup>15</sup> CLINTON BRASS ET AL., CONG. RESEARCH SERV., RL34680, SHUTDOWN OF THE FEDERAL GOVERNMENT: CAUSES, PROCESSES, AND EFFECTS 1 (Dec. 10, 2018).

<sup>16</sup> *Id.* at Summary page and 18; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 7–13 (Nov. 2013).

<sup>17</sup> CLINTON BRASS ET AL., at 2.

<sup>18</sup> CLINTON BRASS ET AL., at 2. Discretionary funding refers to budgeting authority that is provided in and controlled by Congress through annual appropriations acts, as opposed to mandatory funding that is provided in and controlled by other laws. See GOV’T ACCOUNTABILITY OFFICE, GAO-05-734SP, A GLOSSARY OF TERMS USED IN THE FEDERAL BUDGET PROCESS 46, 66 (Sept. 2005).

<sup>19</sup> “Funding gaps” may also be referred to in this report as “lapses in appropriations.”

<sup>20</sup> CLINTON BRASS ET AL., at 2.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at Summary page and 2.

that govern which federal activities are “excepted” and may continue during a shutdown are discussed later in this report.

*Legal Framework of Shutdowns and Agency Planning Requirements.* The Constitution, federal statutory law, Department of Justice (“DOJ”) opinions, and Office of Management and Budget (“OMB”) guidance provide the legal framework and agency planning requirements for funding gaps and shutdowns. In sum, if there is no enacted legislation that provides funding to a department or agency, only activities deemed critical by agencies or exempted under the Constitution will be carried out in agencies without a funded budget.<sup>23</sup>

## A. The Constitution

Language in the Constitution triggers a shutdown after a funding gap occurs. Article I of the Constitution gives Congress the authority and the responsibility of appropriating federal funds.<sup>24</sup> Specifically, Article I, Section 9 states that “No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law.”<sup>25</sup> This means that during a shutdown, agencies may not issue any paychecks to their federal employees or contractors, nor may they enter into any new contractual agreements.<sup>26</sup> Notwithstanding, the Constitution requires that members of Congress, the Supreme Court, federally appointed judges, and the President continue to receive pay during any partial or full government shutdown.<sup>27</sup>

## B. Federal Statutory Law

The primary source of federal statutory law governing funding gaps and shutdowns is the Antideficiency Act (“ADA”). The ADA prohibits federal officials from “mak[ing] or authoriz[ing] an expenditure or obligation exceeding an amount available in appropriation or fund,” except as authorized by law.<sup>28</sup> Therefore, the government generally cannot pay federal employees if appropriations are not available.<sup>29</sup> The ADA does, however, provide an exception which allows federal agency activities related to “emergencies involving the safety of human life or the protection of property” to continue during a funding gap.<sup>30</sup> The ADA bars federal officials from “accept[ing] voluntary services for either government or employ[ing] personal services exceeding that authorized by law,”<sup>31</sup> unless those “voluntary services” are related to “emergencies involving the safety of human life or the

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<sup>23</sup> *Id.*

<sup>24</sup> U.S. CONST. art. I; CLINTON BRASS ET AL., at 4.

<sup>25</sup> U.S. CONST. art. I, § 9 cl. 7; CLINTON BRASS ET AL., at 4.

<sup>26</sup> CLINTON BRASS ET AL., at 4, 18.

<sup>27</sup> U.S. CONST. art. II, § 1; art. I, § 6; amend. XXVI; art. III, § 1.

<sup>28</sup> 31 U.S.C. § 1341(a)(1)(A) (2019).

<sup>29</sup> 31 U.S.C. § 1342 (2019); CLINTON BRASS ET AL., at 4.

<sup>30</sup> 31 U.S.C. § 1342 (2019).

<sup>31</sup> *Id.*

protection of property” which are excepted by preceding provisions of the law.<sup>32</sup> In a 1990 amendment to the ADA, Congress clarified that the emergencies exception “does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.”<sup>33</sup>

### C. U.S Department of Justice Guidance and Interpretation

Opinions issued by former U.S. Attorney General Benjamin Civiletti in 1980 and 1981 (“Civiletti Opinions”) and the DOJ’s Office of Legal Counsel (“OLC”) provide additional legal guidance and more context about what activities may continue under the ADA.<sup>34</sup> Until 1980, funding gaps generally did not result in government shutdowns; federal agencies took the position that Congress did not intend for the ADA to require operations to shut down during a funding lapse.<sup>35</sup> Instead, agencies continued to operate while minimizing nonessential operations and obligations.<sup>36</sup> In a March 1981 report to Congress, the Office of the Comptroller General<sup>37</sup> indicated it agreed with this interpretation.<sup>38</sup>

The Civiletti Opinions marked a significant departure from the agency norms at that time. In his April 1980 Opinion, Civiletti stated that in his view, the determination that Congress did not intend for agencies to shut down during funding lapses was “legally insupportable.”<sup>39</sup> He implied that such an interpretation of the ADA rested on “mere speculation” that Congress did not want agencies to carry out the law’s “unambiguous mandates.”<sup>40</sup> He also noted that any exception to the “plain mandate” of the ADA “would have to rest on a rationale that would undermine the statute”<sup>41</sup> because its “manifest purpose” is to ensure that Congress has the power of the purse—a goal that is “elementary to a proper distribution of governmental powers.”<sup>42</sup> Ultimately, the 1980 Opinion found that during a lapse in appropriations, affected federal agencies must shut down, and may only continue activities that are “authorized by law.”<sup>43</sup> The Opinion also found

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<sup>32</sup> 31 U.S.C. § 1341(a)(1)(A) (2019).

<sup>33</sup> 31 U.S.C. § 1342 (2019).

<sup>34</sup> See 43 Op. Att’y Gen. 224 (Apr. 25, 1980); 43 Op. Att’y Gen. 293 (Jan. 16, 1981); Op. O.L.C. (Aug. 16, 1995).

<sup>35</sup> CLINTON BRASS ET AL., at 5.

<sup>36</sup> *Id.*

<sup>37</sup> Also referred to as the U.S. Government Accountability Office.

<sup>38</sup> GOV’T ACCOUNTABILITY OFFICE, PAD-81-31, FUNDING GAPS JEOPARDIZE FEDERAL GOVERNMENT OPERATIONS 3–4 (Mar. 3, 1981).

<sup>39</sup> 43 Op. Att’y Gen. 224, 19 (Apr. 25, 1980).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> *Id.* at 20.

<sup>43</sup> *Id.* The 1980 Opinion addressed only limited legal questions, which did not involve any interpretation of the ADA’s emergencies exception language.

that the ADA “does permit agencies [that are shutting down] to fulfill certain legal obligations connected with the orderly termination of agency operations.”<sup>44</sup>

Civiletti’s 1981 Opinion reflected a more lenient standard for agency operations during a lapse in appropriations, and identified three categories of activities that could continue during a shutdown: those “authorized by law,” those supporting “exercises of executive power,” and those within the scope of the ADA’s emergencies exception.<sup>45</sup>

1. *Activities Authorized by Law.* Civiletti’s 1981 Opinion provided clarification about federal agency activities that are excepted because they are “authorized by law.”<sup>46</sup> This category includes federal programs funded by multi-year or no-year appropriations that do not expire at the end of a fiscal year; activities explicitly authorized by statute to incur obligations without funding<sup>47</sup>; and activities that have been authorized by “necessary implication from the specific terms of duties that have been imposed on, or of authorities that have been invested in the agency.”<sup>48</sup> Activities that fall within any of these categories programs may continue during a funding gap and an ensuing shutdown.
2. *Activities Supporting Executive Authority.* In his 1981 Opinion, Civiletti expressed concern that an interpretation of the ADA as “necessarily precluding exercises of executive power” could raise “grave constitutional questions.”<sup>49</sup> He therefore concluded that all executive and legislative operations that are “necessarily incident to presidential initiatives undertaken within his constitutional powers” are excepted and may continue during lapses in appropriations.<sup>50</sup> Notably, Civiletti admitted that it was impossible to clearly lay out the boundaries of this exception, but said that exercises of presidential power “could most readily be justified if the functions to be performed would assist the President in fulfilling his peculiar constitutional role.”<sup>51</sup> He also stated that “[o]ther factors to be considered would be the urgency of the initiative and the likely extent to which funds would be obligated in advance of appropriations.”<sup>52</sup>

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<sup>44</sup> 43 Op. Att’y Gen. 293, 2 (Jan. 16, 1981) (discussing his 1980 opinion).

<sup>45</sup> *Id.* at 2, 4–9.

<sup>46</sup> *Id.* at 2.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.* at 3.

<sup>49</sup> *Id.* at 4.

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

3. *Emergency Activities.* Civiletti clarified the ADA's emergencies exception language, stating that in his view, all agency operations must be suspended during a funding lapse unless the activity has "some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property."<sup>53</sup> Civiletti said he believed that in order for an agency activity to continue during a funding lapse, "there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question."<sup>54</sup>

In 1995, DOJ's OLC issued an opinion ("OLC Opinion") interpreting a 1990 amendment to the ADA. This amendment clarified that the emergencies exception language in the ADA "does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."<sup>55</sup> The OLC Opinion found that the amendment narrowed the scope of activities that meet the "human life or protection of property" standard; that these activities should only continue during a shutdown if the safety of human life or the protection of property would be compromised, in some *significant* degree (as opposed to Civiletti's language "in some degree"), by delay in the performance of the function in question.<sup>56</sup> Ultimately, the OLC Opinion concluded that the 1981 Civiletti Opinion, but for that one change, remained a valid analysis of the legal framework controlling government operations during a funding gap.<sup>57</sup>

Additionally, although the ADA does not address which federal agencies and organizations may continue to operate during a lapse in appropriations, certain provisions of the law and OMB precedent suggest that entities acting in a national security capacity may continue operating during this period.<sup>58</sup>

#### **D. OMB Guidance, Requirements, and Agency Contingency Plans**

*OMB Guidance.* OMB provides guidance to executive branch agencies on how to prepare for and operate in the case of a funding gap in its annual *Circular No. A-11*.<sup>59</sup> The guidance notes that during funding gaps, agencies must follow the two "policies" set forth in the ADA. First, agencies cannot incur obligations unless

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<sup>53</sup> *Id.* at 5.

<sup>54</sup> *Id.*

<sup>55</sup> 31 U.S.C. § 1342 (2019).

<sup>56</sup> Op. O.L.C. 8 (Aug. 16, 1995); CLINTON BRASS ET AL., at 7 n.41.

<sup>57</sup> Op. O.L.C. 8 (Aug. 16, 1995); CLINTON BRASS ET AL., at 7 n.43.

<sup>58</sup> CLINTON BRASS ET AL., at 39.

<sup>59</sup> *Id.* at 8. See OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 124 (June 2019).

otherwise authorized by law.<sup>60</sup> Second, agencies may incur obligations in order to terminate operations, but may not issue payment for those services until the funding gap is resolved.<sup>61</sup> More generally, OMB memoranda may provide additional guidance and insight regarding which activities and personnel might be considered to be excepted. Most of these memoranda are focused on identifying broad categories of excepted activities and on explaining key principles that apply during a funding gap. But, one OMB memorandum issued in November 1981 to heads of executive agencies identifies concrete “examples of excepted activities.”<sup>62</sup> The 1981 OMB memo explained:

Beginning [on the first day of the funding lapse], agencies may continue activities otherwise authorized by law, those that protect life and property and those necessary to begin phasedown of other activities. Primary examples of activities agencies may continue are those which may be found under applicable statutes to:

1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.
2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.
3. Conduct essential activities to the extent that they protect life and property, including:
  - a. Medical care of inpatients and emergency outpatient care;
  - b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous material;
  - c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;
  - d. Border and coastal protection and surveillance;
  - e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;
  - f. Care of prisoners and other persons in the custody of the United States;
  - g. Law enforcement and criminal investigations;
  - h. Emergency and disaster assistance;

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<sup>60</sup> OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR No. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 20.4 (June 2019).

<sup>61</sup> *Id.* at § 124.

<sup>62</sup> OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB MEMORANDUM, AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS (Nov. 17, 1981).

- i. Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;
- j. Activities that ensure production of power and maintenance of the power distribution system; and
- k. Activities necessary to maintain protection of research property.

[Agencies] should maintain the staff and support services necessary to continue these essential functions.<sup>63</sup>

*Contingency Plans.* OMB also requires that each agency submit detailed “contingency plans”—plans to be implemented during a lapse in appropriations—at least every two years.<sup>64</sup> These plans must address agency operations during two time periods of a shutdown: a period of one to five days known as a “short” lapse, and a longer period if the shutdown exceeds five days.<sup>65</sup> Contingency plans are also required to include details about which activities will continue; which activities will be suspended; an estimate of how long it will take for agency employees to prepare for the shutdown; the number of employees that will be furloughed; and the number of employees that will be retained to perform excepted activities according to the exceptions listed in the ADA.<sup>66</sup> The OMB guidance instructs agency heads, in consultation with their general counsels, to use the Civiletti Opinions, the 1995 OLC opinion, and the OMB Annual Circular to “decide what agency activities are expected or otherwise legally authorized to continue during a lapse in appropriations.”<sup>67</sup> Agency contingency plans are available online via the White House website.<sup>68</sup>

*Back Pay for Furloughed Employees.* An immediate and high-profile effect of a lapse in funding and subsequent shutdown is the furlough of certain federal employees—that is, placement of the employees in a temporary, nonduty, nonpay

<sup>63</sup> *Id.*

<sup>64</sup> OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 124.2–3 (June 2019); CLINTON BRASS ET AL., at 8.

<sup>65</sup> OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 124.2–3 (June 2019); CLINTON BRASS ET AL., at 9.

<sup>66</sup> *Id.*

<sup>67</sup> CLINTON BRASS ET AL., at 9 (quoting OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 124.1 (June 2019)).

<sup>68</sup> OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, AGENCY CONTINGENCY PLANS, <https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans/> (last visited Aug. 1, 2019).

status.”<sup>69</sup> “Shutdown furloughs are not considered a break in service and are generally creditable for retaining benefits and seniority.”<sup>70</sup> With regard to pay, there is no guarantee, statutory or otherwise, that furloughed employees will receive pay for the time they are placed on furlough.<sup>71</sup> Nevertheless, in historical practice, federal employees who are furloughed under a shutdown have received their salaries retroactively as a result of legislation passed by Congress.<sup>72</sup>

*National Security Concerns.* Shutdowns potentially pose threats to national security because some bad actors may perceive the United States as weakened and could attempt to exploit political, technological, and physical vulnerabilities.<sup>73</sup> ADA provisions and OMB precedent suggest that activities related to national security may continue during a funding gap,<sup>74</sup> and federal employees responsible for “supporting the nation’s global security activities, public safety efforts, and foreign relations pursuits” have historically been retained during a shutdown.<sup>75</sup> In 2018, the Trump Administration released specific guidance on this topic in an OMB Memorandum, and also specifically exempted cybersecurity functions from shutdown requirements on the basis that such activities are “necessary to avoid imminent threat to Federal property.”<sup>76</sup> The Memorandum emphasizes that proper shutdown planning and preparation related to agency technological infrastructure for shutdowns can help mitigate any negative effect of a national security incident during a lapse.<sup>77</sup> Moreover, the guidance provides greater flexibility and protection for those agencies and organizations that have not traditionally been considered to be part of the national security community, and allows them to prepare for and respond to existing and emerging cyber threats.<sup>78</sup>

## E. Relevant Government Shutdowns

This report focuses on three recent government shutdowns:

1. **FY 2014:** A funding gap began on October 1, 2013, the first day of FY 2014, after funding for FY 2013 expired at the end of September, and resulted in a 16-day full government shutdown.<sup>79</sup> The FY 2014 funding

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<sup>69</sup> CLINTON BRASS ET AL., at 13.

<sup>70</sup> *Id.* at 13–14.

<sup>71</sup> *Id.* at 14.

<sup>72</sup> *Id.* at 14 n.70 (Noting that “CRS is not aware of past instances” where furloughed employees were not paid after a lapse in funding is resolved).

<sup>73</sup> *Id.* at 39.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB M-18-05 REVISED, PLANNING FOR AGENCY OPERATIONS DURING A POTENTIAL LAPSE IN APPROPRIATIONS 10 (Jan. 19, 2018).

<sup>77</sup> CLINTON BRASS ET AL., at 40.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 17.

gap and shutdown occurred for all 12 regular appropriations bills, and the effects were extensive for federal government operations.<sup>80</sup> A looming deadline put additional pressure on lawmakers and the President during the shutdown—the United States was scheduled to hit its debt limit on October 17, 2013.<sup>81</sup> The funding gap and subsequent shutdown ended when the President signed an interim CR early in the morning on October 17, 2013.<sup>82</sup> This was the first government shutdown in over 17 years, since a 21-day shutdown took place in FY 1996.<sup>83</sup>

2. **FY 2018:** When a continuing resolution expired at the end of the day on Friday, January 19, 2018, a brief funding gap and shutdown ensued over the weekend.<sup>84</sup> OMB directed agencies to execute shutdown plans, and OPM stated that the lapse in appropriations could affect agency operations beginning Saturday, January 20.<sup>85</sup> Congress passed another CR on Monday, January 22, technically closing the funding gap.<sup>86</sup> However, many federal agencies remained shut down that day, because the CR was not enacted until after working hours had ended on Monday evening.<sup>87</sup> OMB announced later that evening that due to the enactment of the CR, all affected employees would be expected to return to work on Tuesday, January 23, 2018.<sup>88</sup>
3. **FY 2019:** The most recent funding gap was caused by lack of agreement on seven appropriations bills, leaving nine federal departments and several smaller departments unfunded.<sup>89</sup> The CR in place at the time was scheduled to expire on December 22, 2018, and no agreement was reached before funding expired.<sup>90</sup> This resulted in a five-week partial government shutdown that began at the end of the day on December 22, 2018 and

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<sup>80</sup> *Id.* at 29.

<sup>81</sup> Timothy Ahmann & Rachelle Younglai, *U.S. to exhaust borrowing capacity by October 17: Treasury*, REUTERS, Sept. 23, 2013, <https://www.reuters.com/article/us-usa-fiscal-debt/u-s-to-exhaust-borrowing-capacity-by-october-17-lew-idUSBRE98O0LU20130925>.

<sup>82</sup> CLINTON BRASS ET AL., at 18.

<sup>83</sup> *Id.* at 3.

<sup>84</sup> *Id.*

<sup>85</sup> *Id.* at 3–4.

<sup>86</sup> *Id.* at 4.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> Jacob Pramuk, *House passes bill to end US government shutdown without border wall money*, CNBC, Jan. 18, 2019, <https://www.cnbc.com/2019/01/04/house-passes-bill-to-end-government-shutdown-without-border-wall-money.html>.

<sup>90</sup> Michael Collins and David Jackson, *Federal government shutdown to begin at midnight after House, Senate fail to resolve budget impasse*, USA TODAY, Dec. 21, 2018, <https://www.usatoday.com/story/news/politics/2018/12/21/government-shutdown-lawmakers-have-just-hours-strike-budget-deal/2383394002/>.

ended on January 25, 2019.<sup>91</sup> This partial shutdown lasted 35 days, making it the longest to date.<sup>92</sup>

## V. DISCUSSION

This section discusses the effects of the FY 2014, 2018, and 2019 shutdowns on each agency that provided information to the Subcommittee. For each agency included in the report, the Subcommittee has summarized estimated quantitative costs incurred as a result of each of the relevant shutdowns, as well as the qualitative impacts and effects experienced by the agencies. Not all agencies were able to provide the Subcommittee with quantitative cost estimates, and not all agencies used the same methods to calculate their estimates. Where relevant, the Subcommittee has noted the methods used by agencies to calculate estimates, and the report highlights any instance where calculations were done in a way that may call into question the accuracy of the data.

The terms used throughout this report and in the charts titled “Summary of Estimated Cost to Taxpayers” represent the following sets of data, unless otherwise specified:

- *Back Pay for Furloughed Employees* — the estimated amount of compensation paid by each agency to workers furloughed during the shutdown once the funding gap was resolved.
- *Administrative Costs* — the estimated cumulative amount of costs incurred as a result of implementing and completing shutdown activities, monitoring the status of the shutdown, and reopening and restarting normal agency operations once the funding gap was resolved.<sup>93</sup>
- *Miscellaneous* — other quantitative costs associated with each shutdown (e.g., lost revenue, late payment interest fees, and delayed project costs).

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<sup>91</sup> CONG. BUDGET OFFICE, THE EFFECTS OF THE PARTIAL SHUTDOWN ENDING IN JANUARY 2019 1 (Jan. 2019), <https://permanent.access.gpo.gov/gpo115381/54937-PartialShutdownEffects.pdf>.

<sup>92</sup> CONG. RESEARCH SERV., R41759, PAST GOVERNMENT SHUTDOWNS: KEY RESOURCES 13 (updated Feb. 7, 2019), <https://crsreports.congress.gov/product/pdf/R/R41759>.

<sup>93</sup> OMB’s annual Circular No. A-11 asks agencies to include in their contingency plans estimates of the amount of time needed to: complete shutdown activities, implement and adjust contingency plans, monitor shutdown progress and any changing agency needs, and assist with the process of re-opening and resuming agency activities. See OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET (June 2019).

- Where applicable, the Subcommittee has used “N/A” in the charts in place of an estimated cost to indicate that an agency had sufficient funds to continue operation and was not affected by the shutdown.
- Where applicable, the Subcommittee has used “Not provided” in the charts in place of an estimated cost to indicate that an agency did not provide any relevant quantitative data or information for that particular cost category.

The terms used throughout this report and in the charts titled “Employee Furloughs” represent the following sets of data, unless otherwise specified:

- *Number of Employees Furloughed* — the estimated number of employees furloughed by each agency. In some cases, the agencies were able to provide actual data for each shutdown, but other agencies were unable to do so, and instead provided estimates based on their contingency plans.
- *Number of Combined Furlough Days* — the estimated total number of furlough days, calculated by multiplying the number of employees furloughed by the number of furlough work days during each shutdown.
- *Lost Productivity of Furloughed Workers* — the approximate amount of employee work years “lost” during each shutdown due to furloughs. According to the OMB, payroll costs for “work not performed” by furloughed federal employees during represent the “largest direct cost” of shutdowns.<sup>94</sup> This estimate is calculated by taking the number of combined furlough days and dividing that by the number of compensable work days for the particular fiscal year; converting the day-based figure into an annual, work-year equivalent. “On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year.”<sup>95</sup> OMB set the number of compensable days at 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019.<sup>96</sup> The Subcommittee used these numbers to calculate the work-year equivalent estimates.

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<sup>94</sup> CLINTON BRASS ET AL., at 30.

<sup>95</sup> *Id.*, at n.175.

<sup>96</sup> OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 85 (July 2013); OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND

## A. Securities and Exchange Commission

The U.S. Securities and Exchange Commission (“SEC” or “the Commission”) is an independent federal government agency with a three-part mission: (1) protect investors; (2) maintain fair, orderly, and efficient markets; and (3) facilitate capital formation.<sup>97</sup> The Commission was able to remain open during the FY 2014 and FY 2018 shutdowns by using unobligated funds from the prior year to support agency operations.<sup>98</sup> During the FY 2019 partial government shutdown, the SEC used its balances to continue full agency operations for three additional days (December 24–26, 2018) before shutting down.<sup>99</sup> After shutting down, the SEC was unable to conduct normal agency activities, such as processing filings, providing interpretive advice and guidance, and investigating and pursuing violations of securities laws.<sup>100</sup>

### Summary of Estimated Cost to Taxpayers<sup>101</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	N/A	\$36,150	N/A	\$36,150
FY 2018	N/A	\$43,862	N/A	\$43,862
FY 2019	\$65,324,382	\$259,824	\$14,100	\$65,598,306
<b>TOTAL COST</b>				<b>\$65,678,318</b>

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EXECUTION OF THE BUDGET § 85 (July 2017); OFFICE OF MGMT. AND BUDGET, EXEC. OFFICE OF THE PRESIDENT, OMB CIRCULAR NO. A-11, PREPARATION, SUBMISSION, AND EXECUTION OF THE BUDGET § 85 (June 2019).

<sup>97</sup> U.S. SEC. AND EXCH. COMM’N, ABOUT THE SEC, <https://www.sec.gov/about.shtml> (last visited July 10, 2019).

<sup>98</sup> Letter from Bryan Wood, Director, Sec. and Exch. Comm’n, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent. Subcomm. on Investigations (Mar. 22, 2019) (on file with the Subcomm.) [hereinafter, “SEC Letter”].

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> *Id.*

### Employee Furloughs<sup>102</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Lost Productivity of Furloughed Workers<sup>103</sup></b>
FY 2014	0	0	0
FY 2018	0	0	0
FY 2019	3,966	89,547	343.1 Years

### Selected Shutdown Impacts

- About 94 percent of the Commission’s employees were furloughed, leaving only “an extremely limited number of staff members available to respond to emergency situations.”<sup>104</sup>
- The SEC suspended ongoing enforcement investigations and enforcement staff were unable to file lawsuits against financial institutions committing fraud, develop new leads, or conduct proactive surveillance except where investor property was potentially subject to imminent harm<sup>105</sup>—negatively impacting the agency’s ability to hold bad actors accountable and return money to retail investors.
- The SEC stopped conducting regular compliance inspections and examinations of registrants and stopped review of periodic reports and other filings.<sup>106</sup> This potentially puts American investors at increased risk of being exposed to investment fraud schemes or misleading disclosure statements.

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<sup>102</sup> *Id.*

<sup>103</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB CIRCULAR NO. A-11 § 85 (June 2019); OMB CIRCULAR NO. A-11 § 85 (July 2017); OMB CIRCULAR NO. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>104</sup> U.S. SEC. AND EXCH. COMM’N, OPERATIONS PLAN UNDER A LAPSE IN APPROPRIATIONS AND GOVERNMENT SHUTDOWN 4 (Dec. 2018), <https://www.sec.gov/files/sec-plan-of-operations-during-lapse-in-appropriations-2018.pdf>.

<sup>105</sup> SEC Letter.

<sup>106</sup> SEC Letter. The SEC continued to conduct “for cause” examinations and inspections. *See id.* Such examinations are generally initiated by information regarding potential specific violations or wrongdoing. *See H. DAVID KOTZ, FINANCIAL REGULATION AND COMPLIANCE* 57, Jul. 6, 2015.

## **Overview of Agency Operations and Funding**

The SEC oversees the key participants in the financial markets, including securities exchanges, broker-dealers, investment advisers, investment companies, and mutual funds.<sup>107</sup> The agency is responsible for interpreting and enforcing federal securities laws; issuing new rules and amending existing rules; overseeing the inspection of securities firms, broker-dealers, investment advisers, and ratings agencies; overseeing private regulatory organizations across the securities, accounting, and auditing fields; and coordinating U.S. securities regulation with federal, state, and foreign authorities.<sup>108</sup>

The SEC's operations are funded through an annual appropriation that is deficit-neutral and offset by private sector transaction fees.<sup>109</sup> SEC appropriation language does not require the agency to use all of its funds within one year; funds remain available until they have been spent.<sup>110</sup> As the Commission did not shut down due to the lapses in funding in FY 2014 and FY 2018, the information provided below is specific to the FY 2019 lapse.

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* The SEC told the Subcommittee that it furloughed 3,966 employees for a combined total of 89,547 furlough days.<sup>111</sup> The Commission paid an estimated \$65,324,382 in back pay to its furloughed workers once the shutdown ended.<sup>112</sup>

*Federal Contractors.* Although the SEC did not provide the Subcommittee with data on the number of contractor personnel who were laid off or required to use leave, the Commission stated that it “did not experience a discernable reduction in individual contracts due to any such layoffs.”<sup>113</sup>

Of approximately 1,300 active contracts, the SEC determined that 114 supported excepted activities in limited circumstances that were “consistent with investor protection and the preservation of property.”<sup>114</sup> The SEC suspended performance for the remaining contracts during the shutdown period.<sup>115</sup> According to the Commission, none of the suspended contractors were fully terminated and

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<sup>107</sup> U.S. SEC. AND EXCH. COMM'N, WHAT WE DO, <https://www.sec.gov/Article/whatwedo.html> (last visited July 15, 2019).

<sup>108</sup> *Id.*

<sup>109</sup> SEC Letter (noting that the current transaction fee rate is about two cents for every \$1,000 in covered securities sales).

<sup>110</sup> *Id.*

<sup>111</sup> *Id.*

<sup>112</sup> *Id.*

<sup>113</sup> *Id.*

<sup>114</sup> *Id.*

<sup>115</sup> *Id.*

“the vast majority returned to full performance immediately or soon after the shutdown.”<sup>116</sup>

*Shutdown Preparation Activities.* The Commission estimates that it spent approximately \$45,540 on activities related to preparing for the shutdown.<sup>117</sup>

*Monitoring the Shutdown.* While the SEC was shut down from December 27, 2018 through January 25, 2019, excepted staff engaged in activities that were necessary to monitor the shutdown and make adjustments to furlough plans and excepted employee lists.<sup>118</sup> The Commission estimates that the total cost of these monitoring activities was between \$160,000 and \$200,000.<sup>119</sup> These activities included consultations with appropriations law experts in the Office of the General Counsel, daily conference calls led by the Chief Operating Officer, and daily briefings held by the Office of Human Resources.<sup>120</sup> Each division and office of the Commission also provided support related to monitoring activities within their specific areas and worked with the Office of Human Resources to discuss relevant issues or concerns.<sup>121</sup>

### **Disruptions to Agency Operations**

During the FY 2019 lapse in appropriations, a number of the SEC’s day-to-day activities were disrupted and delayed.<sup>122</sup>

*Division of Enforcement.* The SEC enforcement division primarily supports the Commission by investigating possible violations of the federal securities laws and prosecuting civil suits in the federal courts and in administrative proceedings.<sup>123</sup> Ongoing investigations of securities laws violations were suspended during the shutdown—with the exception of any work deemed necessary for the protection of property against imminent harm.<sup>124</sup> This type of long-term disruption to enforcement activities hinders complex investigations that are essential to fulfilling the SEC’s mission. Most importantly, the disruption of investigations also jeopardizes the Commission’s ability to return money to retail investors when they are harmed by bad actors who violate federal securities laws.

During the shutdown period, enforcement staff did not proactively develop new investigative leads or conduct any proactive surveillance activities related to

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<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *Id.*

<sup>121</sup> *Id.*

<sup>122</sup> *Id.*

<sup>123</sup> U.S. SEC. & EXCH. COMM’N, DIV. OF ENFORCEMENT, <https://www.sec.gov/page/enforcement-section-landing> (last visited Aug. 1, 2019).

<sup>124</sup> SEC Letter.

potential violations of securities laws.<sup>125</sup> The Office of Market Intelligence, however, did retain “a small staff to monitor and address any market events or disruptions that could pose a risk of imminent harm to investors or property”.<sup>126</sup> “The Tips, Complaints, and Referrals system remained operational and was monitored,” but submissions from the public that did not appear to pose a “risk of imminent harm to investors or property” were not fully addressed until the shutdown ended.<sup>127</sup>

*Office of Compliance Inspections and Examinations.* The Office of Compliance Inspections and Examinations (“OCIE”) is responsible for overseeing about 13,200 investment advisers, 10,000 mutual funds and exchange-traded funds, 3,800 broker-dealers, 330 transfer agents, 600 municipal advisors, 21 national securities exchanges, and seven clearing agencies.<sup>128</sup> OCIE, despite having “limited resources,” is responsible for operating a complex inspection and examination program that focuses on ensuring robust corporate compliance systems, preventing fraud, identifying and monitoring risk, and informing policy.<sup>129</sup> During the FY 2019 shutdown, OCIE did not conduct examinations and inspections and ceased processing of all registrations and related filings.<sup>130</sup> The SEC told the Subcommittee that exam metrics for FY 2019 will likely be affected by the government shutdown.<sup>131</sup>

*Division of Corporation Finance.* The Division of Corporation Finance (“Corporation Finance”) is responsible for reviewing and regulating the information that companies make available to the public and for ensuring “that investors are provided with material information in order to make informed investment decisions.”<sup>132</sup> During the FY 2019 shutdown, Corporation Finance stopped work relating to reviewing registration statements, including initial public offerings, except in limited circumstances—such as to recommend the Commission prevent an offering from taking place.<sup>133</sup> “Corporation Finance also ceased routine review of periodic reports and other filings,” and did not respond to non-emergency requests for no-action letters or other interpretative guidance.<sup>134</sup>

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<sup>125</sup> SEC Letter.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> U.S. SEC. & EXCH. COMM’N, 2019 EXAMINATION PRIORITIES: OFFICE OF COMPLIANCE INSPECTIONS AND EXAMINATIONS 1 (2019).

<sup>129</sup> *Id.* at 2.

<sup>130</sup> SEC Letter.

<sup>131</sup> *Id.*

<sup>132</sup> U.S. SEC. & EXCH. COMM’N, ABOUT THE DIVISION OF CORPORATION FINANCE (last updated June 5, 2012), <https://www.sec.gov/divisions/corpfin/cfabout.shtml>.

<sup>133</sup> SEC Letter.

<sup>134</sup> *Id.*; U.S. SEC. AND EXCH. COMM’N, OPERATIONS PLAN UNDER A LAPSE IN APPROPRIATIONS AND GOVERNMENT SHUTDOWN 18 (Dec. 2018).

*Division of Investment Management.* The Division of Investment Management (“IM”) is responsible for regulating the asset management industry, including investment companies and advisers.<sup>135</sup> IM “review[s] and respond[s] to thousands of registration statements, requests for exemptions, requests for assistance, and other inquiries each year.”<sup>136</sup> These services are important considering that many Americans are turning to investment companies as a means to meet their financial goals. Millions of Americans, particularly “Main Street investors,” have invested trillions of dollars in mutual funds, exchange-traded funds, and money market funds.<sup>137</sup> Assets under management by investment advisers have grown to nearly \$84 trillion, with over 13,000 advisers registered with the Commission.<sup>138</sup> “These assets represent the earnings and investments of millions of Americans who are saving for retirement, college tuition, and other goals.”<sup>139</sup>

IM stopped work relating to “reviewing registration statements, including those for new investment funds.”<sup>140</sup> IM stopped reviewing periodic reports and other filings, and did not respond to non-emergency requests for no-action letters or other interpretative guidance from investment funds, investment advisers, and other market participants.<sup>141</sup> IM did not “conduct Sarbanes-Oxley accounting reviews of investment fund financial statements.”<sup>142</sup> These types of reviews help to ensure that companies are in compliance with critical public disclosure and accounting requirements.<sup>143</sup> Moreover, IM was only able to “conduct limited monitoring of investment funds and advisers for market disruptions and emerging risks.”<sup>144</sup>

*Division of Trading and Markets.* The Division of Trading and Markets (“TM”) provides day-to-day oversight of “the major securities market participants, such as broker-dealers, transfer agents, securities information processors, securities

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<sup>135</sup> U.S. SEC. AND EXCH. COMM’N, DIVISION OF INVESTMENT MANAGEMENT, [https://www.sec.gov/investment/Article/investment\\_about.html](https://www.sec.gov/investment/Article/investment_about.html) (last visited Aug. 1, 2019).

<sup>136</sup> See *Oversight of the SEC’s Division of Investment Management Statement: Hearing before the H. Comm. on Fin. Servs., Subcomm. on Capital Markets, Securities, and Investment*, 115th Cong. 1 (2018) (statement of Dalia Blass, Director, Div. of Inv. Mgmt., U.S. Sec. and Exch. Comm’n), <https://docs.house.gov/meetings/BA/BA16/20180926/108737/HHRG-115-BA16-Wstate-BlassD-20180926.pdf>.

<sup>137</sup> *Id.*

<sup>138</sup> *Id.* (citing analysis of data from Form ADV filings through the Investment Adviser Registration Depository system as of August 31, 2018).

<sup>139</sup> *Id.*

<sup>140</sup> SEC Letter.

<sup>141</sup> *Id.*; U.S. SEC. AND EXCH. COMM’N, OPERATIONS PLAN UNDER A LAPSE IN APPROPRIATIONS AND GOVERNMENT SHUTDOWN 18 (Dec. 2018).

<sup>142</sup> SEC Letter.

<sup>143</sup> SEC Letter; U.S. SEC. AND EXCH. COMM’N, DIVISION OF CORPORATE FINANCE FILING REVIEW PROCESS, <https://www.sec.gov/divisions/corpfin/cffilingreview.htm> (last visited Aug. 1, 2019).

<sup>144</sup> SEC Letter.

exchanges, and clearing agencies;” it also oversees self-regulatory organizations (“SROs”), such as the Financial Industry Regulatory Authority (“FINRA”).<sup>145</sup> Through its various offices, TM conducts key oversight of securities markets, including (1) monitoring the financial integrity program for broker-dealers; (2) reviewing and approving rules and rule changes filed by SROs; (3) assisting the Commission on matters affecting the operation of the securities markets; and (4) monitoring the markets.<sup>146</sup> TM stopped “processing any new registration applicants, such as exchange or clearing applications for new entrants.”<sup>147</sup> TM also stopped processing all submissions related to proposed self-regulatory organization rules changes.<sup>148</sup> In order to avoid disruptions or losses, TM did continue to monitor “exchanges, non-exchange markets, clearing agency functions, and Broker-Dealer risk management reports.”<sup>149</sup>

*The Office of Credit Ratings.* The SEC’s Office of Credit Ratings is responsible for overseeing credit rating agencies, and supports the Commission by monitoring the activities and conducting examinations of these agencies and by ensuring the accuracy and increased transparency of credit ratings.<sup>150</sup> The Office was created in the wake of the 2007–2009 global financial crisis, when global credit agencies came under scrutiny and were accused of contributing to the crisis and defrauding investors by assigning inflated favorable ratings to insolvent financial institutions and risky mortgage-backed securities.<sup>151</sup> During the shutdown, staff were unable to perform routine examinations of ratings agencies, including annual examinations required by law.<sup>152</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* The SEC told the Subcommittee that it is difficult to quantify the costs associated with resuming normal agency operations, but was able to explain the steps involved in reopening.<sup>153</sup> First, all employees were notified via an automated alert of the

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<sup>145</sup> U.S. SEC. & EXCH. COMM’N, TRADING AND MARKETS (last updated Jan. 30, 2017), <https://www.sec.gov/page/tmsectionlanding>; *Review of the FY2020 Budget Request for the CFTC & SEC: Hearing Before the S. Comm. on Appropriations, Subcomm. on Fin. Servs and Gen. Gov’t*, 116th Cong. 15 (2019) (statement of Jay Clayton, Chairman, U.S. Sec. and Exch. Comm’n),

<sup>146</sup> U.S. SEC. AND EXCH. COMM’N, WHAT WE DO, <https://www.sec.gov/Article/whatwedo.html#marketreg> (last visited Aug. 15, 2019).

<sup>147</sup> SEC Letter.

<sup>148</sup> *Id.* (The one exception to this was that TM designated a longer period within which to take action on proposed SRO rules that were pending at the time of the lapse in appropriations).

<sup>149</sup> *Id.*

<sup>150</sup> U.S. SEC. AND EXCH. COMM’N, ABOUT THE OFFICE OF CREDIT RATINGS, <https://www.sec.gov/ocr/Article/ocr-about.html> (last visited Aug. 1, 2019).

<sup>151</sup> *The Credit Rating Controversy*, COUNCIL ON FOREIGN RELATIONS (Feb. 19, 2015), <https://www.cfr.org/backgrounder/credit-rating-controversy>.

<sup>152</sup> SEC Letter.

<sup>153</sup> *Id.*

agency's reopening.<sup>154</sup> Second, all managers received guidance from the Office of Human Resources ("OHR") that included tips for re-engaging with returning employees and prioritizing workloads.<sup>155</sup> "To ensure that all employees received back pay as soon as possible after returning from the furlough, OHR staff worked weekend hours to code, review, and validate approximately 8,844 time sheets—one for every SEC employee for both pay periods" covered by the shutdown.<sup>156</sup> The SEC estimates that the total cost incurred for these and other reopening activities, such as handling and addressing various employee inquiries, was \$14,284.<sup>157</sup>

*Expected Long-Term Effects.* The Commission told the Subcommittee that upon reopening on January 25, 2019, SEC leadership and staff "worked hard to triage and prioritize tasks so as to mitigate the effects of the shutdown as quickly as possible."<sup>158</sup> However, the Commission noted that certain metrics such as the number of investment adviser examinations and enforcement actions will likely decrease for FY 2019 as a result of the disruption to agency operations during the shutdown.<sup>159</sup>

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<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> *Id.*

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

## B. Department of the Treasury

The Department of the Treasury (“Treasury”) is “responsible for promoting economic prosperity and ensuring the financial security of the United States.”<sup>160</sup> “Treasury operates and maintains systems that are critical to the nation’s financial infrastructure, such as the production of coin and currency, the disbursement of payments to the American public, revenue collection, and the borrowing of funds necessary to run the federal government.”<sup>161</sup> Government shutdowns have a significant impact on Treasury operations, and hinder the Department’s efforts to ensure a strong American economy.<sup>162</sup>

### Summary of Estimated Cost to Taxpayers<sup>163</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$288,182,498	\$22,000,000	Not provided	\$310,182,498
FY 2018	\$14,212,752	\$10,000,000	Not provided	\$24,212,752
FY 2019	\$499,147,042	\$22,000,000	Not provided	\$521,147,042
<b>TOTAL COST</b>				<b>\$855,542,292</b>

### Employee Furloughs<sup>164</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>165</sup>
FY 2014	88,761	1,065,132	4,081 Years
FY 2018	48,311	48,311	185.8 Years
FY 2019	74,768	1,869,200	7,161.7 Years

<sup>160</sup> U.S. DEPT OF THE TREASURY, ROLE OF THE TREASURY, <https://home.treasury.gov/about/general-information/role-of-the-treasury> (last visited Aug. 1, 2019).

<sup>161</sup> *Id.*

<sup>162</sup> See generally, OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN (Nov. 2013).

<sup>163</sup> Letter from Frederick Vaughan, Deputy Assistant Sec'y, Dep't of Treasury, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. On Investigations (Apr. 19, 2019) (on file with the Subcomm.) [hereinafter referred to as “Treasury Letter”].

<sup>164</sup> *Id.*

<sup>165</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019.

*See* OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

## **Selected Shutdown Impacts**

- IRS walk-in taxpayer assistance centers were closed and unable to assist taxpayers with hardships, and also could not assist identity theft victims required to visit an IRS office to establish their identity.<sup>166</sup> The IRS also canceled all scheduled appointments with taxpayers related to ongoing audits, collections, and appeals.<sup>167</sup>
- Treasury suspended most fiscal service accounting functions.<sup>168</sup> The regular collection of Treasury International Capital data—which is used as an important economic indicator to help understand and predict the direction of the U.S. dollar<sup>169</sup>—and other data releases required by statute were suspended, resulting in data gaps for the shutdown periods and causing a number of government-wide reporting delays.<sup>170</sup>
- The Financial Crimes Enforcement Network (“FinCEN”)—which is crucial to identifying suspicious financial transactions and protecting the U.S. financial system from money laundering<sup>171</sup>—was unable to respond to routine foreign financial intelligence unit requests used to support critical law enforcement investigations such as those related to anti-money laundering law violations.<sup>172</sup> All routine Bank Secrecy Act investigations and enforcement actions— which involve crimes such as tax evasion, narcotics trafficking, and identify theft—were also suspended.<sup>173</sup>

## **Overview of Agency Operations and Funding**

“The Department of the Treasury is organized into two major components”—Departmental offices and operating bureaus.<sup>174</sup> The Departmental offices are primarily responsible for formulating policy and for the overall management of the

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<sup>166</sup> Treasury Letter. *See also* INTERNAL REVENUE SERV., IRS OPERATIONS DURING THE APPROPRIATIONS LAPSE, <https://www.irs.gov/newsroom/irs-operations-during-the-appropriations-lapse> (last visited Aug. 1, 2019).

<sup>167</sup> *Id.*

<sup>168</sup> Treasury Letter.

<sup>169</sup> CME GRP., US: TREASURY INTERNATIONAL CAPITAL (Jan. 31, 2019), <https://www.cmegroup.com/education/events/econoday/2019/01/feed498959.html>.

<sup>170</sup> Treasury Letter.

<sup>171</sup> U.S. DEP’T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, <https://www.treasury.gov/about/history/Pages/fincen.aspx> (last visited Aug. 1, 2019).

<sup>172</sup> Treasury Letter.

<sup>173</sup> *Id.*; U.S. DEP’T OF THE TREASURY, INVESTIGATIONS ASSISTED BY BANK SECRECY DATA ACT, <https://www.fincen.gov/investigations-assisted-bank-secrecy-act-data> (last visited Aug. 1, 2019).

<sup>174</sup> U.S. DEP’T OF THE TREASURY, ROLE OF THE TREASURY, <https://home.treasury.gov/about/general-information/role-of-the-treasury> (last visited Aug. 1, 2019).

Department, while the operating bureaus carry out the specific operations and programs assigned to the Department.<sup>175</sup> Examples of these bureaus include the Internal Revenue Service (“IRS”), the Office of the Comptroller of the Currency (“OCC”), and FinCEN.<sup>176</sup>

Annual appropriations provide most of the funding for Treasury’s bureaus and offices.<sup>177</sup> All three relevant government shutdowns impacted Treasury; the Department had to furlough employees and operational activity was limited.<sup>178</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, Treasury furloughed approximately 88,761 employees for a combined total of 1,065,132 furlough days.<sup>179</sup> The Department paid its furloughed employees approximately \$288,182,498 in back pay once the shutdown ended.<sup>180</sup>

During the FY 2018 shutdown, Treasury furloughed approximately 48,311 employees for one day.<sup>181</sup> The Department paid its furloughed employees approximately \$14,212,752 in back pay once the shutdown ended.<sup>182</sup>

During the FY 2019 shutdown, Treasury furloughed approximately 74,768 employees for a total of 1,869,200 combined furlough days.<sup>183</sup> The Department paid its furloughed employees approximately \$499,147,042 in back pay once the shutdown ended.<sup>184</sup>

*Federal Contractors.* Treasury stated that it was unable to provide the Subcommittee with data on the number of contractor personnel who were laid off or required to use leave, but noted that:

[i]n accordance with our lapse plan, all contractors are sent an email with instructions for checking to confirm the status of their contract—i.e., whether the contract is excepted. As a general matter, the contractors are responsible for managing those employees, including decisions as to whether a contractor's employees are reassigned to other work, laid off, or required to use leave during

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<sup>175</sup> *Id.*

<sup>176</sup> *Id.*

<sup>177</sup> GARY GUENTHER, CONG. RESEARCH SERV., R44649, TREASURY DEPARTMENT APPROPRIATIONS, FY2017 1 (June 6, 2017), <https://crsreports.congress.gov/product/pdf/R/R44649>.

<sup>178</sup> Treasury Letter.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> *Id.*

any period when performance on a contract is interrupted, and the Department is not informed of such decisions.<sup>185</sup>

*Shutdown Preparation Activities.* Treasury told the Subcommittee that the development and implementation of shutdown plans typically requires diverting resources from all Treasury bureaus and offices.<sup>186</sup> Rank-and-file employees from all areas of the Department have to review and interpret lapse-related guidance and conduct orderly shutdown activities.<sup>187</sup> While Treasury said its internal systems did not capture those discrete costs, the Department told the Subcommittee it estimates, on average, that every Treasury employee devoted one hour to reviewing guidance and two hours conducting shutdown related activities—resulting in costs of about \$10 million for each of the three relevant shutdowns.<sup>188</sup>

*Monitoring the Shutdowns.* Treasury told the Subcommittee that it was unable to develop a reliable estimate of costs incurred by activities related to monitoring shutdowns.<sup>189</sup>

### **Disruptions to Agency Operations**

The FY 2014 and FY 2019 lapses in appropriations disrupted and delayed a number of the Treasury's day-to-day activities. The Department did not identify any unique effects of the FY 2018 shutdown, which occurred over a weekend and one business day.<sup>190</sup>

*Internal Revenue Service.* During shutdowns, the IRS typically suspends all taxpayer audit functions and examinations of returns.<sup>191</sup> During the FY 2014 shutdown, the IRS suspended the processing of certain non-electronic tax returns, which in turn delayed almost \$4 billion in tax refunds and delayed the start of the 2014 tax season by about two weeks.<sup>192</sup> Treasury revised its contingency plan for the FY 2019 shutdown to allow processing of these returns and refunds.<sup>193</sup> During both shutdowns, the IRS suspended important taxpayer services, such as walk-in assistance centers and telephone hotlines.<sup>194</sup> Additionally, the IRS was unable to

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<sup>185</sup> *Id.*

<sup>186</sup> *Id.*

<sup>187</sup> *Id.*

<sup>188</sup> *Id.*

<sup>189</sup> *Id.*

<sup>190</sup> *Id.*

<sup>191</sup> *Id.*

<sup>192</sup> *Id.*; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 4 (Nov. 2013).

<sup>193</sup> Treasury Letter.

<sup>194</sup> *Id.*

conduct most enforcement activities during shutdowns, which normally collect about \$1 billion per week.<sup>195</sup>

Disruptions to IRS operations interfere with the private sector's ability to lend money to individuals and small businesses.<sup>196</sup> "Financial institutions depend on IRS income verification to determine eligibility for loans such as mortgages;" and typically receives hundreds of thousands of these requests per week.<sup>197</sup> Two weeks into the FY 2014 shutdown, the IRS had an inventory of 1.2 million income verification requests that could not be processed.<sup>198</sup>

*Anti-Money Laundering and Counter-Terrorist Financing Activities.*

Shutdowns restrict Treasury's ability to fully engage in its anti-money laundering and counter-terrorist financing efforts. Specifically, the Office of Terrorism and Financial Intelligence ("TFI") and FinCEN are subjected to significant staff furloughs.<sup>199</sup> OFAC, an office within TFI that is responsible for implementing sanctions against individuals and countries that pose threats to national and international security, operated in a limited capacity during the relevant shutdowns.<sup>200</sup> FinCEN continued to provide financial intelligence information to U.S. law enforcement and intelligence agencies in support of money laundering and terror finance investigations, but was unable to respond to "routine foreign intelligence unit requests to exchange information in support of foreign law enforcement investigations."<sup>201</sup>

*Alcohol and Tobacco Tax and Trade Bureau.* "All non-criminal investigative activities, audit functions, and examinations of [tax] returns" are typically suspended during shutdowns.<sup>202</sup> The Bureau is responsible for regulating alcohol production and distribution—including issuing approvals for new alcoholic beverage

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<sup>195</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 6 (Nov. 2013).

<sup>196</sup> *Id.* at 10.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.*

<sup>199</sup> *Id.* at 20–21.

<sup>200</sup> U.S. DEP'T OF THE TREASURY, TERRORISM AND FINANCIAL INTELLIGENCE ORGANIZATIONAL STRUCTURE (last updated May 23, 2018), <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Terrorism-and-Financial-Intelligence.aspx>; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 20 (Nov. 2013); Brian Monroe, *In Shutdown, AML, Terror Agencies Scrimp on Guidance, Regulations, GTOs, Foreign Info Sharing*, ASSOC. OF CERTIFIED FIN. CRIME SPECIALISTS, Jan. 14, 2019, <https://www.acfcs.org/news/433643/In-shutdown-AML-terror-agencies-scrimp-on-guidance-regulations-GTOs-foreign-info-sharin.htm>.

<sup>201</sup> Treasury Letter. See also U.S. DEP'T OF THE TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, LAPSE IN APPROPRIATION PLAN 1–2 (Dec. 2018), <https://home.treasury.gov/system/files/266/FinCEN-Lapse-in-Appropriation-FY-2019-December.pdf>.

<sup>202</sup> Treasury Letter.

products before they are sold to the public.<sup>203</sup> During shutdowns, the Bureau stops processing permits and certificates of label approvals, and suspends all related laboratory testing activities.<sup>204</sup> Businesses are unable to access and submit applications through the Bureau’s e-Government portal, including applications for Certificates of Label Approvals/Exemptions, new business permits, and formula and sample submissions for domestic and imported alcoholic beverages.<sup>205</sup> In FY 2014, the Bureau could not issue export certifications for beer, wine, and distilled spirits in response to 100 requests from approximately 65 businesses.<sup>206</sup> “As a result, more than two million liters of U.S. products were left sitting at ports, unable to ship.”<sup>207</sup>

During the FY 2019 shutdown, there was significant media coverage of the effects of the Bureau’s closure—in particular, the hardships faced by small businesses. For example, Vermilion Valley Vineyards, a small business in Lorain County, Ohio, submitted six approval requests to the Bureau just prior to the shutdown.<sup>208</sup> One of the owners explained during the shutdown that the vineyard was in a state of limbo as he and his co-owners waited for approval to sell across state lines.<sup>209</sup> Many other small vineyards and craft breweries across the nation were unable to ship new beers to out-of-state retailers and buyers, proceed with planned expansion projects, or open new locations, resulting in lost revenue and delayed openings or product launches.<sup>210</sup>

*Fiscal Service.* Shutdowns force Treasury to suspend most of its fiscal service accounting activities.<sup>211</sup> The preparation and publication of monthly treasury statements are delayed.<sup>212</sup> This is a significant disruption; these statements

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<sup>203</sup> ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, TTB’S MISSION—WHAT WE DO, <https://www.ttb.gov/consumer/responsibilities.shtml> (last visited Aug. 1, 2019).

<sup>204</sup> Treasury Letter.

<sup>205</sup> *Id.*; ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, TTB ONLINE CUSTOMER PAGE, [https://www.ttb.gov/main\\_pages/ttb-online-homepage.shtml](https://www.ttb.gov/main_pages/ttb-online-homepage.shtml), (last visited Aug. 1, 2019); ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, APPLYING FOR A PERMIT AND/OR REGISTRATION, <https://www.ttb.gov/applications/index.shtml> (last visited Aug. 1, 2019); ALCOHOL AND TOBACCO TAX AND TRADE BUREAU, COLAS ONLINE CUSTOMER PAGE, <https://www.ttb.gov/labeling/colas.shtml> (last visited Aug. 1, 2019).

<sup>206</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 10 (Nov. 2013).

<sup>207</sup> *Id.*

<sup>208</sup> Kevin Barry, *Ohio Wine and beer Industry Impacted by Government Shutdown*, NEWS 5 CLEVELAND, Jan. 21, 2019, <https://www.news5cleveland.com/news/state/ohio-wine-and-beer-industry-impacted-by-government-shutdown>.

<sup>209</sup> *Id.*

<sup>210</sup> Beth Newhart, *US Government Shutdown Stalls Craft Beer Innovation*, BEVERAGEDAILY.COM, Jan. 8, 2019, <https://www.beveragedaily.com/Article/2019/01/08/US-government-shutdown-stalls-craft-beer-innovation>; THE ASSOCIATED PRESS, *Craft Beer Taps Squeezed as Shutdown Delays New Releases*, Jan. 16, 2019, <https://www.cnbc.com/2019/01/16/government-shutdown-craft-beer-taps-squeezed-delays-new-releases.html>.

<sup>211</sup> Treasury Letter.

<sup>212</sup> *Id.*

summarize “the financial activities of the federal government and off-budget federal entities,” including receipts and outlays, surplus or deficit, and means of financing on a modified cash basis.<sup>213</sup> Impacts on Treasury’s fiscal accounting services also affect law enforcement activities during shutdowns—federal, state, and local law enforcement only have limited access to Bank Secrecy Act information that is critical to enforcing anti-money laundering laws and other statutes.<sup>214</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* Treasury told the Subcommittee that it estimates that the average employee spent about one hour communicating about procedures for restarting operation and about three hours engaging in activities related to resuming normal operations.<sup>215</sup> This average of four hours per employee results in estimated Treasury-wide costs of \$11 to \$12 million for each of the relevant shutdowns.<sup>216</sup>

*Expected Long-Term Effects.* Treasury’s response to the Subcommittee included several descriptions of long-term effects caused by shutdowns. For example, during shutdowns, Treasury suspends the regular collection of Treasury International Capital data—which is used as an important economic indicator to help understand and predict the direction of the U.S. dollar<sup>217</sup>—and other data releases required by statute were suspended, which results in data gaps for the shutdown periods and causes a number of government-wide reporting delays.<sup>218</sup> And, due to the Department’s inability to conduct most accounting activities during shutdowns, fiscal year-end close processing, audit activities, warrant requests, and other cross-agency government-wide accounting activities are delayed and result in a significant backlog of work for Treasury staffers.<sup>219</sup> Treasury told the Subcommittee that the shutdown delayed the release of the U.S. Government FY 2018 Financial Report.<sup>220</sup> Additionally, the Alcohol and Tobacco Tax and Trade Bureau’s plan to enhance its website as part of its implementation of the Tax Cuts and Jobs Act of 2017 has been pushed back until FY 2020.<sup>221</sup>

The IRS was able to mitigate many impacts of the FY 2019 shutdown, and despite the “major tax law changes made by the Tax Cuts and Jobs Act, the IRS was

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<sup>213</sup> U.S. DEP’T OF THE TREASURY, MONTHLY TREASURY STATEMENT, <https://fiscal.treasury.gov/reports-statements/mts/> (last visited Aug. 1, 2019).

<sup>214</sup> Treasury Letter.

<sup>215</sup> *Id.*

<sup>216</sup> *Id.*

<sup>217</sup> CME GRP., US: TREASURY INTERNATIONAL CAPITAL (Jan. 21, 2019), <https://www.cmegroup.com/education/events/econoday/2019/01/feed498959.html>.

<sup>218</sup> Treasury Letter.

<sup>219</sup> *Id.*

<sup>220</sup> *Id.*; E-mail from Treasury Dep’t Staff to Subcomm. Staff (Sept. 5, 2019) (on file with the Subcomm.).

<sup>221</sup> *Id.*

able to open [the 2019] filing season one day earlier” than the 2018 season.<sup>222</sup> Additionally, the IRS was able to issue nine out of ten refunds within 21 days, as it has been able to in previous filing seasons.<sup>223</sup>

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<sup>222</sup> INTERNAL REVENUE SERV., IR-2019-7, IRS KICKS OFF 2019 TAX-FILING SEASON AS TAX AGENCY REOPENS; USE IRS.GOV TO AVOID PHONE DELAYS (Jan. 28, 2019), <https://www.irs.gov/newsroom/irs-kicks-off-2019-tax-filing-season-as-tax-agency-reopens-use-irsgov-to-avoid-phone-delays>.

<sup>223</sup> E-mail correspondence between Subcomm. Staff and Treasury Dep’t Staff (Sept. 10, 2019) (on file with the Subcomm.); INTERNAL REVENUE SERV., WHAT TO EXPECT FOR REFUNDS IN 2019 (last updated May 1, 2019), <https://www.irs.gov/refunds/what-to-expect-for-refunds-this-year>.

## C. Consumer Product Safety Commission

The Consumer Product Safety Commission (“CPSC”) is charged with protecting the public from “unreasonable risks of serious injury or death from thousands of types of consumer products under its jurisdiction, including products that pose a fire, electrical, chemical, or mechanical hazard or can injure children.”<sup>224</sup> Government shutdowns hinder the CPSC’s ability to perform many of its key duties, including protecting consumers by facilitating product recalls and informing the public of risks posed by certain consumer products.<sup>225</sup> The CPSC is also unable to keep potentially unsafe products off the market during shutdowns.<sup>226</sup>

### Summary of Estimated Cost to Taxpayers<sup>227</sup>

<b>Shutdown Period</b>	<b>Back Pay for Furloughed Employees</b>	<b>Administrative Costs</b>	<b>Misc.</b>	<b>Total</b>
FY 2014	\$3,294,000	\$624,911	Not provided	\$3,918,911
FY 2018	\$601,000	\$191,676	Not provided	\$792,676
FY 2019	\$7,603,000	\$995,233	Not provided	\$8,598,233
<b>TOTAL COST</b>				<b>\$13,309,820</b>

### Employee Furloughs<sup>228</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Lost Productivity of Furloughed Workers</b> <sup>229</sup>
FY 2014	498	5,976	23 Years
FY 2018	533	1,066	4.1 Years
FY 2019	525	13,125	50.3 Years

<sup>224</sup> U.S. CONSUMER PROD. SAFETY COMM’N, AGENCY DETAILS, <https://www.usa.gov/federal-agencies/consumer-product-safety-commission> (last visited Aug. 1, 2019).

<sup>225</sup> Letter from Ann Marie Buerkle, Acting Chairman U.S. Consumer Prod. Safety Comm’n, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Mar. 22, 2019) (on file with the Subcomm.) [hereinafter referred to as “CPSC Letter”].

<sup>226</sup> *Id.*

<sup>227</sup> *Id.*

<sup>228</sup> *Id.*

<sup>229</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

### **Selected Shutdown Impacts**

- Ongoing inspections and investigations to identify and analyze the risks of products did not take place, resulting in delays in decisions on whether companies should issue recalls of products that could cause injuries.<sup>230</sup>
- All import surveillance activities were suspended; no potentially dangerous shipments from abroad were stopped at U.S. ports because CPSC port inspectors were furloughed and unable to screen thousands of products, including children's merchandise that could contain excessive lead and sleepwear that may violate flammability standards.<sup>231</sup>
- Product testing activities intended to evaluate possible defects and ensure consumer safety and compliance with mandatory federal regulations were suspended.<sup>232</sup>

### **Overview of Department Operations and Funding**

CPSC investigates the safety of thousands of consumer products in an effort to protect the American public from harm.<sup>233</sup> CPSC administers and enforces federal laws “to protect the public against unreasonable risks of injuries and deaths associated with consumer products,” issues regulations related to consumer product safety, works with manufacturers to issue product recalls, and has the ability to ban the sale of items it finds unsafe or hazardous.<sup>234</sup> CPSC carries out its mission through five primary activities: hazard identification and analysis; hazard assessment and reduction; compliance and enforcement; communication of consumer information; and agency management.<sup>235</sup>

CPSC’s operations are funded through an annual appropriation process.<sup>236</sup> CPSC implemented shutdown procedures, to at least some degree, during all three

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<sup>230</sup> CPSC Letter; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 19 (Nov. 2013).

<sup>231</sup> *Id.*

<sup>232</sup> CPSC Letter.

<sup>233</sup> U.S. CONSUMER PROD. SAFETY COMM’N, AGENCY DETAILS, <https://www.usa.gov/federal-agencies/consumer-product-safety-commission> (last visited Aug. 1, 2019).

<sup>234</sup> CONSUMER PROD. SAFETY COMM’N, REGULATION, LAWS, & STANDARDS, <https://www.cpsc.gov/Regulations-Laws--Standards> (last visited Aug. 30, 2019); U.S. CONSUMER PROD. SAFETY COMM’N, ABOUT CPSC: CONTACT/FAQ, <https://www.cpsc.gov/About-CPSC>Contact-Information> (last visited Aug. 30, 2019).

<sup>235</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-HRD-92-37R, INFORMATION ON CPSC 4 (1992).

<sup>236</sup> U.S. CONSUMER PROD. SAFETY COMM’N, PERFORMANCE AND BUDGET, <https://www.cpsc.gov/About-CPSC/Agency-Reports/Performance-and-Budget> (last visited Aug. 1, 2019).

shutdowns.<sup>237</sup> This included the suspension of certain agency functions and furloughs.<sup>238</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* The CPSC furloughed about 498 employees during the FY 2014 shutdown for a total of 5,976 combined furlough days, and paid those workers approximately \$3,294,000 in back pay once the shutdown ended.<sup>239</sup> The CPSC furloughed about 533 employees during the FY 2018 shutdown for a total of 1,066 combined furlough days, and paid them approximately \$601,000 in back pay.<sup>240</sup> And, the CPSC furloughed 525 employees during the FY 2019 shutdown for a total of 13,125 combined furlough days, and paid those employees approximately \$7,603,000 in back pay.<sup>241</sup>

*Federal Contractors.* The CPSC told the Subcommittee that it did not have information about contractor employees that may have been laid off during the three relevant shutdown periods.<sup>242</sup> The CPSC issued two stop-work orders during both the FY 2014 and FY 2019 shutdowns.<sup>243</sup> The FY 2018 shutdown did not affect any contracts.<sup>244</sup>

*Shutdown Preparation and Monitoring Activities.* The CPSC estimates that costs associated with staff time spent on shutdown preparation activities were \$65,310 for FY 2014; \$72,055 for FY 2018; and \$42,706 for FY 2019.<sup>245</sup> And, the CPSC estimates that costs associated with staff time spent monitoring each of the relevant shutdowns were \$370,741 for FY 2014; \$68,314 for FY 2018; and \$733,337 for FY 2019.<sup>246</sup>

### **Disruptions to Agency Operations**

Government shutdowns significantly restrict the CPSC's ability to operate across all of its programs and in turn, put the public at risk of being exposed to potentially dangerous consumer products.

*Hazard Identification and Reduction.* The CPSC told the Subcommittee that all hazard identification and reduction activities were suspended during each of the relevant shutdowns.<sup>247</sup> All testing in support of regulatory enforcement and defect

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<sup>237</sup> CPSC Letter.

<sup>238</sup> *Id.*

<sup>239</sup> *Id.*

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> *Id.*

<sup>243</sup> E-mail correspondence between Subcomm. Staff and CPSC Office of Leg. Affairs Staff (Sep. 5, 2019) (on file with the Subcomm.).

<sup>244</sup> CPSC Letter.

<sup>245</sup> *Id.*

<sup>246</sup> *Id.*

<sup>247</sup> *Id.*

investigations stopped, and no product tests were conducted to evaluate possible defects and ensure that products complied with mandatory federal regulations.<sup>248</sup> All lab applications activities were suspended as well; staff were unable to review applications from laboratory businesses seeking certain certifications that would enable them to conduct CPSC-approved testing.<sup>249</sup>

*Compliance Investigations.* All compliance investigation and enforcement activities were suspended during each of the relevant shutdowns.<sup>250</sup> As soon as each shutdown began, the CPSC stopped accepting and processing new requests for inspections and investigations related to product compliance with consumer product safety regulations and rules.<sup>251</sup> The Commission also halted all “review, analysis, and administrative actions on active inspections, investigations, and enforcement cases related to failures to meet minimum safety” standards required by law.<sup>252</sup> All surveillance efforts and review of consumer and commercial incident data (e.g., reports of injuries or defects) were suspended.<sup>253</sup> This data is critical to CPSC operations and serves as the main source of inspections and investigations related to potentially unsafe products.<sup>254</sup>

*Field Investigations.* Product Safety Investigators located throughout the United States, known as “field staff,” were unable to complete ongoing In-Depth Investigations, which in turn slowed larger investigations and pending enforcement actions.<sup>255</sup> The shutdowns also prevented field staff from investigating potential product safety incidents; the investigators were unable to immediately evaluate incident scenes and collect evidence in a timely manner.<sup>256</sup>

*Defects and Recalls.* During each shutdown, CPSC employees were unable to continue inspection and investigation activities, which in turn caused delays in CPSC negotiations with companies regarding decisions on whether to issue recalls.<sup>257</sup> These delays subsequently halted joint public recall announcements during the shutdowns, and may have allowed potentially unsafe and hazardous products to remain on the market.<sup>258</sup>

*International Import Surveillance.* All CPSC activities at ports related to the surveillance and inspection of products imported from other countries were

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<sup>248</sup> *Id.*

<sup>249</sup> *Id.*

<sup>250</sup> *Id.*

<sup>251</sup> *Id.*

<sup>252</sup> *Id.*

<sup>253</sup> *Id.*

<sup>254</sup> *Id.*

<sup>255</sup> *Id.*

<sup>256</sup> *Id.*

<sup>257</sup> *Id.*; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 19 (Nov. 2013).

<sup>258</sup> CPSC Letter.

suspended during the shutdowns.<sup>259</sup> All CPSC port inspectors were furloughed, so during the shutdowns, no incoming foreign import shipments were stopped at the ports and reviewed for potential violations.<sup>260</sup> This lack of CPSC screening at the ports during shutdown periods increases the likelihood that potentially unsafe foreign products are able to pass through the border, enter the stream of commerce, and be sold to American consumers.<sup>261</sup>

*Other International Programs.* The CPSC provides education and training programs for manufacturers in other countries to promote sound manufacturing practices and ensure the safety of foreign products that are sold in the United States.<sup>262</sup> All of these activities were disrupted during the three relevant shutdowns.<sup>263</sup> During the FY 2019 shutdown, two international training events were canceled.<sup>264</sup> A scheduled two-day March 2019 training in Guangzhou, China for about 350 expected attendees was canceled because staff were unable to work on logistics and planning during the shutdown.<sup>265</sup> Additionally, a one-day training scheduled to be held for 150 attendees in Ho Chi Minh City, Vietnam was canceled for similar reasons.<sup>266</sup> CPSC staff spent approximately 675 hours planning and preparing for these training events that never took place, resulting in about \$50,000 in sunk payroll costs.<sup>267</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* The CPSC estimates that costs associated with staff time spent on activities related to reopening the CPSC and resuming normal operations were \$188,860 for FY 2014; \$51,307 for FY 2018; and \$219,190 for FY 2019.<sup>268</sup>

*Long-Term Effects of Shutdowns.* The CPSC told the Subcommittee that as of March 22, 2019, it had cleared the backlog of work from the FY 2019 shutdown.<sup>269</sup> However, the CPSC emphasized that as an agency with a “relatively modest budget, any lapse in appropriation is disruptive and adversely affects [the staff’s ability] to protect the public” from risk or harm.<sup>270</sup> The CPSC told the

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<sup>259</sup> *Id.*

<sup>260</sup> *Id.*

<sup>261</sup> *Id.*; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 19 (Nov. 2013).

<sup>262</sup> CPSC Letter.

<sup>263</sup> *Id.*

<sup>264</sup> *Id.*

<sup>265</sup> *Id.*

<sup>266</sup> *Id.*

<sup>267</sup> *Id.*

<sup>268</sup> *Id.*

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

Subcommittee that it needs additional resources to fulfill its mission, but noted that this is an issue that predates the three relevant shutdowns.<sup>271</sup>

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<sup>271</sup> *Id.*

## D. Department of State

The U.S. Department of State (“State Department”) leads America’s foreign policy through diplomacy, advocacy, and various forms of assistance.<sup>272</sup> The State Department negotiates treaties and agreements with foreign entities, and represents the United States at the United Nations.<sup>273</sup> Government shutdowns have impacted a broad range of Department activities, including diplomatic relationships, reporting from abroad, domestic and foreign public outreach, staffing and training, and personnel suitability reviews.<sup>274</sup>

### Summary of Estimated Cost to Taxpayers<sup>275</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$1,700,000	\$19,256,000	Not provided	\$20,956,000
FY 2018	\$6,200,000	\$2,682,000	Not provided	\$8,882,000
FY 2019	\$87,400,000	\$22,300,000	Not provided	\$109,700,000
<b>TOTAL COST</b>				<b>\$139,538,000</b>

### Employee Furloughs<sup>276</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>277</sup>
FY 2014	278	3,336	12.8 Years
FY 2018	10,600	10,600	40.8 Years
FY 2019	8,200	139,400	534.1 Years

<sup>272</sup> U.S. DEP’T OF STATE; ABOUT THE U.S. DEP’T OF STATE, <https://www.state.gov/about/about-the-u-s-department-of-state/>.

<sup>273</sup> *Id.*

<sup>274</sup> Letter from Mary Elizabeth Taylor, Assistant Sec’y, Bureau of Leg. Affairs, U.S. Dep’t of State, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 23, 2019) (on file with the Subcomm.) [hereinafter referred to as “State Dep’t Letter”].

<sup>275</sup> *Id.*

<sup>276</sup> *Id.*

<sup>277</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019.

*See* OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

### **Selected Shutdown Impacts**

- The Department had to delay a number of construction and improvement projects at U.S. embassies around the world.<sup>278</sup>
- The Department canceled events for U.S. industries and companies, which resulted in lost opportunities to support American economic growth at home and abroad.<sup>279</sup>
- Department personnel were unable to advocate for U.S. foreign policy objectives at important international meetings on crucial national security issues.<sup>280</sup>

### **Overview of Department Operations and Funding**

The Department of State, the main U.S. foreign affairs agency within the executive branch, is responsible for American diplomatic activities.<sup>281</sup> The Secretary of State is the head of the Department and serves as the President's principal foreign policy advisor.<sup>282</sup> Overall, the Department is responsible for promoting peace and stability in regions of vital interest; creating jobs at home by opening markets abroad; helping developing nations establish investment and export opportunities; and forging partnerships with other countries to address global challenges.<sup>283</sup>

The State Department's operations are funded through an annual appropriations process.<sup>284</sup> The Department's Diplomatic Programs ("D&CP") account<sup>285</sup> funds more than sixty percent of its U.S. Direct Hire ("USDH") staff.<sup>286</sup> During the FY 2014 shutdown, the Department had "residual balances in several working capital fund and multi-year accounts, including DC&P. Thus, the Department remained mostly operational during the government-wide shutdown—

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<sup>278</sup> State Dep't Letter.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.*

<sup>281</sup> U.S. DEP'T OF STATE, ABOUT THE U.S. DEP'T OF STATE, <https://www.state.gov/about/about-the-u-s-department-of-state/> (last visited Aug. 1, 2019).

<sup>282</sup> U.S. DEP'T OF STATE, THE SECRETARY OF STATE, <https://www.state.gov/secretary/> (last visited Aug. 1, 2019).

<sup>283</sup> U.S. DEP'T OF STATE, FY 2018 ANNUAL PERFORMANCE REPORT AND FY 2020 ANNUAL PERFORMANCE PLAN 5–9 (Mar. 2019), <https://www.state.gov/wp-content/uploads/2019/05/FY-2020-Annual-Performance-Plan-and-FY-2018-Annual-Performance-Report.pdf>.

<sup>284</sup> JAMES SATURNO ET AL., CONG. RESEARCH SERV., THE CONGRESSIONAL APPROPRIATIONS PROCESS, R42388, 1–2 (Nov. 30, 2016).

<sup>285</sup> This account was previously called the "Diplomatic and Consular Programs" account, and the name was changed to "Diplomatic Programs" in the FY 2019 Department of State, Foreign Operations, and Related Programs appropriations bill. E-mail from State Dep't Leg. Affairs Staff (Sept. 5, 2019) (on file with the Subcomm.).

<sup>286</sup> State Dep't Letter.

only Department entities with single-year funding were shut down.<sup>287</sup> During the FY 2018 shutdown, “the DC&P account did not have sufficient balances readily available for USDH salaries to continue operations and the Department” implemented shutdown procedures, including furloughs, for one business day.<sup>288</sup> During the FY 2019 shutdown, the D&CP account “did not have sufficient balances readily available for USDH salaries to continue operations from December 22 through January 19,” and the Department implemented shutdown procedures, including furloughs.<sup>289</sup>

#### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*FY 2014 Employee Furloughs.* During the FY 2014 shutdown, the State Department furloughed approximately 278 USDH employees for a total of 3,336 combined furlough days.<sup>290</sup> The Department paid these employees approximately \$1,700,000 in back pay once the shutdown ended.<sup>291</sup>

*FY 2018 Employee Furloughs.* During the FY 2018 shutdown, the State Department furloughed approximately 10,600 USDH employees for one business day.<sup>292</sup> The Department paid these furloughed employees approximately \$6,200,000 in back pay once the shutdown ended.<sup>293</sup>

*FY 2019 Employee Furloughs.* During the FY 2019 shutdown, the State Department’s D&CP account did not have sufficient balances to continue operations from December 22 through January 19.<sup>294</sup> While the number of furloughed employees varied throughout the shutdown, the Department told the Subcommittee that it furloughed approximately 8,200 USDH personnel for a total of 139,400 combined furlough days.<sup>295</sup> Secretary Pompeo made the decision to recall furloughed personnel funded by D&CP back to work from January 21 through January 25 by following steps to make additional Department funds available for an additional pay period.<sup>296</sup> Once the shutdown ended and Congress approved back pay measures in a continuing appropriations act, the Department paid employees approximately \$87,400,000 in back pay for days they were furloughed.<sup>297</sup>

*Federal Contractors.* The State Department did not provide specific data about contractors for each of the three shutdown periods, but noted that

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<sup>287</sup> *Id.*

<sup>288</sup> *Id.*

<sup>289</sup> *Id.*

<sup>290</sup> *Id.*

<sup>291</sup> *Id.*

<sup>292</sup> *Id.*

<sup>293</sup> *Id.*

<sup>294</sup> *Id.*

<sup>295</sup> *Id.*

<sup>296</sup> *Id.*

<sup>297</sup> *Id.*

“contractors generally continued to work during the shutdowns under the terms of their contracts until obligations were liquidated so long as the Department could provide adequate supervision” of the contractor projects.<sup>298</sup> The Department said that although it “does not centrally track how contracting companies manage their employees” it “understands that some contracting companies asked their employees to stop working during the shutdown” and acknowledged that “this was a hardship” for those employees.<sup>299</sup>

*Shutdown Preparation and Monitoring Activities.* The State Department provided data reflecting the approximate combined costs of preparing for and monitoring the shutdowns.<sup>300</sup> The Department stated that the costs for these activities were \$15,755,000 for the FY 2014 shutdown; \$2,206,000 for the FY 2018 shutdown; and \$18,422,000 for the FY 2019 shutdown.<sup>301</sup> The Department told the Subcommittee that these estimates include the costs of activities performed by “a central, Executive lapse coordination team; management and budget officials from domestic executive offices; and management and budget officials at 170 embassies worldwide.”<sup>302</sup>

### **Disruptions to Agency Operations**

The Department of State told the Subcommittee that each of the three lapses in appropriations and resulting shutdowns “presented unique challenges based on the varying availability of residual balances needed to enable continued operations consistent with the Department’s guidance.”<sup>303</sup> The Department noted that the FY 2019 shutdown impacted:

a broad range of Department activities, including but not limited to, diplomatic relationships, Department and embassy operations, reporting from abroad, public outreach both domestically and abroad, staffing and training (including training at the National Defense University and other military colleges, which were in session [during the shutdown]), and reviews of personnel suitability.<sup>304</sup>

Notably, even if a particular Department entity “had resources available for payroll, this did not mean all operations continued normally” within that entity.<sup>305</sup> The Department “did not know how long the lapse would last” and therefore, “restricted activities such as contracting and travel to only those activities that were

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<sup>298</sup> *Id.*

<sup>299</sup> *Id.*

<sup>300</sup> *Id.*

<sup>301</sup> *Id.*

<sup>302</sup> *Id.*

<sup>303</sup> *Id.*

<sup>304</sup> *Id.*

<sup>305</sup> *Id.*

necessary for life, safety or national security” in order to preserve available balances for as long as possible.<sup>306</sup>

According to the Department, “[s]everal posts canceled representation events for U.S. companies, which resulted in lost opportunities to support economic growth at home and abroad.”<sup>307</sup> Additionally, personnel were unable to “advance [the Department’s] foreign policy objectives, including participating in international meetings on such topics as preventing the proliferation and transfer of weapons of mass destruction and conventional weapons across borders.”<sup>308</sup> The Department had to delay a number of construction and improvement projects at U.S. embassies in January 2019, as well as the shipment and delivery of classified diplomatic pouches, which are used to transport important official communications, documents, and articles of the U.S. Government across international borders.<sup>309</sup> The Department noted that these impacts described above were experienced to “a lesser degree” during the FY 2014 shutdown, because although there were constraints on travel, contracts, and other activities, most Department employees continued to work.<sup>310</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* The Department told the Subcommittee that it estimates the costs associated with reopening and restarting normal operations after the shutdowns were \$3,501,000 for the FY 2014 shutdown; \$476,000 for the FY 2018 shutdown; and \$3,878,000 for the FY 2019 shutdown.<sup>311</sup> These estimates include activities performed by “a central, Executive lapse coordination team; management and budget officials from domestic executive offices; and management and budget officials at 170 embassies worldwide.”<sup>312</sup>

*Expected Long-Term Effects.* The State Department stated that “[t]he consensus of anecdotal evidence from employees at every level is that government shutdowns negatively affect employee morale.”<sup>313</sup> The Department noted that the FY 2019 shutdown in particular “led to a significant slow-down in the Department’s hiring intake” and that the Department’s “civil service declined by a net 90 personnel during [the shutdown] period, as the Department was unable to continue

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<sup>306</sup> *Id.*

<sup>307</sup> *Id.*

<sup>308</sup> *Id.*

<sup>309</sup> *Id.*; U.S. DEP’T OF STATE, DIPLOMATIC POUCH–14 FAM 720 (Jun. 12, 2019), <https://fam.state.gov/FAM/14FAM/14FAM0720.html>.

<sup>310</sup> State Dep’t Letter.

<sup>311</sup> *Id.*

<sup>312</sup> *Id.*

<sup>313</sup> *Id.*

hiring and onboarding procedures, delaying the process of filling vacant positions.”<sup>314</sup>

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<sup>314</sup> *Id.*

## E. Federal Trade Commission

The U.S. Federal Trade Commission (“FTC”) works to protect consumers and competition by preventing anticompetitive, fraudulent, deceptive, and unfair business practices.<sup>315</sup> This includes enforcing laws against advertising that is misleading to public consumers. The FTC generally experiences significant disruptions to its operations during shutdowns; which impede the agency’s important law enforcement and research activities.<sup>316</sup>

### Summary of Estimated Cost to Taxpayers<sup>317</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$6,106,470	\$527,950	None provided	\$6,634,420
FY 2018	\$445,579	\$523,187	None provided	\$968,766
FY 2019	\$8,936,412	\$632,588	\$16,173	\$9,585,173
<b>TOTAL COST</b>				<b>\$17,188,359</b>

### Employee Furloughs<sup>318</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>319</sup>
FY 2014	1,164	13,443	51.5 Years
FY 2018	1,120	883	3.4 Years
FY 2019	1,108	16,647	63.8 Years

<sup>315</sup> FED. TRADE COMM’N, AGENCY DETAILS, <https://www.usa.gov/federal-agencies/federal-trade-commission> (last visited Aug. 1, 2019); FED. TRADE COMM’N, ABOUT THE FTC, <https://www.ftc.gov/about-ftc> (last visited July 10, 2019).

<sup>316</sup> Letter from Joseph Simons, Chairman, Fed. Trade Comm’n, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm.on Investigations (Mar. 22, 2019) (on file with the Subcomm.) [hereinafter referred to as “FTC Letter”].

<sup>317</sup> FTC Letter.

<sup>318</sup> *Id.*

<sup>319</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

### **Selected Shutdown Impacts**

- Scammers had the opportunity to exploit the FTC's absence and ramp up fraud activities. Consumers were vulnerable because the Commission was unable to issue public warnings or track scams.<sup>320</sup>
- Consumers were unable to submit complaints to the FTC, resulting in a data gap that complicates efforts to build law enforcement cases and protect victims of fraud.<sup>321</sup>
- The FTC was unable to monitor activities of investigative targets and to pursue new leads, and also stopped all investigations of mergers or anti-competitive conduct where there was no imminent deadline.<sup>322</sup>

### **Overview of Department Operations and Funding**

The FTC “is a bipartisan federal agency with a unique dual mission to protect consumers and promote competition.”<sup>323</sup> The FTC has the exclusive power to enforce the Federal Trade Commission Act, which prohibits unfair methods of competition, including any antitrust violations.<sup>324</sup> The President appoints the FTC’s five commissioners.<sup>325</sup>

The FTC’s operations are funded through an annual appropriation that is offset by collections from Hart-Scott-Rodino Act (“HSR”) Premerger Filing fees and Do Not Call fees.<sup>326</sup> The HSR fees are split equally between the FTC and the Antitrust Division of the DOJ.<sup>327</sup> The FTC uses the Do Not Call fees to maintain a National Do Not Call Registry of consumers who have chosen not to receive telemarketing calls.<sup>328</sup> Each of the three relevant shutdowns affected the FTC’s

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<sup>320</sup> FTC Letter.

<sup>321</sup> *Id.*

<sup>322</sup> *Id.*

<sup>323</sup> FED. TRADE COMM’N, WHAT WE DO, <https://www.ftc.gov/about-ftc/what-we-do> (last visited Aug. 1, 2019).

<sup>324</sup> 3 West’s Fed. Admin. Prac. § 3016 (2018).

<sup>325</sup> *Id.*

<sup>326</sup> FED. TRADE COMM’N, FISCAL YEAR 2020 CONG. BUDGET JUSTIFICATION 5 (Mar. 11, 2019), [https://www.ftc.gov/system/files/documents/reports/fy-2020-congressional-budget-justification/fy\\_2020\\_cbj.pdf](https://www.ftc.gov/system/files/documents/reports/fy-2020-congressional-budget-justification/fy_2020_cbj.pdf); 15 U.S.C. § 18a (2019); 15 U.S.C. § 18(a) (2019).

<sup>327</sup> *Id.*; FED. TRADE COMM’N, PREMERGER NOTIFICATION PLAN, <https://www.ftc.gov/enforcement/premerger-notification-program> (last visited July 10, 2019) (defining HSR Filing fees as fees parties pay to file Premerger Notification and Report Form, which certain parties to large transactions must submit to the FTC and the DOJ under the HSR Act).

<sup>328</sup> FED. TRADE COMM’N, FISCAL YEAR 2020 CONG. BUDGET JUSTIFICATION 5 (Mar. 11, 2019); FED. TRADE COMM’N., <https://www.ftc.gov/news-events/press-releases/2017/08/telemarketer-fees-access-ftcs-do-not-call-registry-rise-slightly> (last visited Aug. 1, 2019) (defining Do Not Call Fees as the fees paid by telemarketers to download the Do Not Call registry, a required action for telemarketers).

ability to operate; the agency had to furlough employees and significantly restrict many of its primary activities.

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*FY 2014 Employee Furloughs.* The FTC furloughed approximately 1,164 employees for a combined total of 13,443 furlough days, and paid them an estimated \$6,106,470 in back pay once the shutdown ended.<sup>329</sup>

*FY 2018 Employee Furloughs.* The FTC furloughed approximately 1,120 employees for a combined total of 883 furlough days, and paid them an estimated \$445,579 in back pay once the shutdown ended.<sup>330</sup>

*FY 2019 Employee Furloughs.* The FTC furloughed approximately 1,108 employees for a combined total of 16,647 furlough days, and paid them an estimated \$8,936,412 in back pay once the shutdown ended.<sup>331</sup>

*Federal Contractors.* The FTC was unable to provide information about the number of contractors who were required to stop work or the number of contractor employees who had to use leave or were laid off.<sup>332</sup>

*Shutdown Preparation Activities.* The FTC told the Subcommittee that estimated costs related to employee time spent preparing and planning for the shutdowns were \$441,026 for the FY 2014 shutdown; \$476,227 for the FY 2018 shutdown; and \$469,946 for the FY 2019 shutdown.<sup>333</sup> The FTC noted that when a funding lapse begins, employees typically stop doing their typical day-to-day duties and instead have to spend time on shutdown-related activities.<sup>334</sup> For example, the agency said that prior to the FY 2019 shutdown, it expended “significant resources” seeking litigation stays in dozens of active cases.<sup>335</sup>

*Monitoring the Shutdowns.* The FTC told the Subcommittee that costs associated with employee time spent monitoring the shutdown were \$54,251 for the FY 2014 shutdown; \$12,193 for the FY 2018 shutdown; and \$119,347 for the FY

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<sup>329</sup> FTC Letter.

<sup>330</sup> *Id.*

<sup>331</sup> *Id.*

<sup>332</sup> *Id.*

<sup>333</sup> The FTC noted that it does not have any historical data for the FY 2014 and FY 2018 shutdowns, but was able to calculate estimated costs by modifying the cost per hour calculations to reflect the differences in salaries between fiscal years. See FTC Letter.

<sup>334</sup> FTC Letter.

<sup>335</sup> *Id.*

2019 shutdown.<sup>336</sup> The FTC noted that the varying costs reflect the durations of each shutdown.<sup>337</sup>

### **Disruptions to Agency Operations**

The FTC's core operations, including law enforcement and research activities, are typically disrupted during shutdowns.<sup>338</sup> The FTC's response to the Subcommittee focused primarily on the FY 2019 shutdown's effects on agency operations.<sup>339</sup>

*Law Enforcement.* For over a month, the FTC was unable to monitor consumer protection investigative targets or to pursue investigative leads.<sup>340</sup> And unless a deadline was imminent, the FTC could not pursue investigations related to mergers or anticompetitive conduct.<sup>341</sup> According to the FTC, consumers were not able to submit complaints to the agency and the resulting gap in complaint data continues to complicate efforts to build law enforcement cases.<sup>342</sup> Additionally, the FTC stated that "scammers could have exploited [the agency's] absence to ramp up their harmful activities."<sup>343</sup> The Commission identified one such instance where "fraudsters began an immigration-related scam" and, due to the shutdown, the FTC was unable to issue warnings to consumers or track the progression or extent of the scam.<sup>344</sup> The FTC also noted that its various law enforcement partners were unable to access certain resources—including the Consumer Sentinel Network and the Do Not Call Program—that they rely on for enforcement purposes.<sup>345</sup>

*Other Operations.* The FTC was unable to participate in an annual American Economic Association conference that is the sole means by which all employers recruit newly graduating PhD economists.<sup>346</sup> The Commission told the Subcommittee that "[m]issing this once-a-year recruiting meeting has been particularly devastating" because a number of the agency's most senior economists retired in 2018 and still have not been replaced.<sup>347</sup> The FTC incurred one significant travel expense associated with seeking litigation stays in active cases—

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<sup>336</sup> The FTC noted that it does not have any historical data for the FY 2014 and FY 2018 shutdowns, but was able to calculate estimated costs by modifying the cost per hour calculations to reflect the differences in salaries between fiscal years. *See* FTC Letter.

<sup>337</sup> FTC Letter.

<sup>338</sup> *Id.*

<sup>339</sup> *Id.*

<sup>340</sup> *Id.*

<sup>341</sup> *Id.*

<sup>342</sup> *Id.*

<sup>343</sup> *Id.*

<sup>344</sup> *Id.*

<sup>345</sup> *Id.*

<sup>346</sup> *Id.*

<sup>347</sup> *Id.*

the agency had entered into a \$16,173 contract with a hotel in San Francisco for a planned trial that was postponed due to the shutdown, and lost that money.<sup>348</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* The FTC told the Subcommittee that its estimated costs associated with reopening and restarting normal operation of agency activities were: \$32,673 for the FY 2014 shutdown; \$34,767 for the FY 2018 shutdown, and \$43,195 for the FY 2019 shutdown. The Commission explained that the costs they provided are based on the estimated time that FTC employees spent on activities related to re-opening.<sup>349</sup>

*Expected Long-Term Effects.* The FTC did not provide any information about actual or expected long-term effects of shutdowns.

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<sup>348</sup> *Id.*

<sup>349</sup> *Id.*

## F. Department of Transportation

The U.S. Department of Transportation’s (“DOT”) mission is to ensure “a fast, safe, efficient, accessible, and convenient transportation system that meets our vital national interests and enhances the quality of life of the American people today and into the future.”<sup>350</sup> DOT consists of the Office of the Secretary of Transportation (“OST”) and ten operating administrations and bureaus, which each have their own management and organizational structures.<sup>351</sup> DOT provided limited quantitative data regarding costs incurred during the three shutdowns. Therefore, the total estimated costs for DOT are likely lower than the actual amounts.

### Summary of Estimated Cost to Taxpayers<sup>352</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$62,300,000	Not provided	Not provided	\$62,300,000
FY 2018	Not provided <sup>353</sup>	Not provided	Not provided	Unknown
FY 2019	\$186,400,000	Not provided	Not provided	\$186,400,000
<b>TOTAL COST</b>				<b>\$248,700,000</b>

<sup>350</sup> Letter from Adam Sullivan, Assistant Sec'y, Governmental Affairs, Dep't of Transp., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (May 24, 2019) (on file with the Subcomm.) [hereinafter referred to as “DOT Letter”].

<sup>351</sup> U.S. DEP'T OF TRANSP., OUR ADMINISTRATIONS, <https://www.transportation.gov/administrations> (last visited Aug. 1, 2019).

<sup>352</sup> E-mail from Dep't of Transp. Staff (May 24, 2019) (on file with the Subcomm.); DOT Letter.

<sup>353</sup> The DOT told the Subcommittee that “[b]ecause the Department’s payroll records are maintained weekly, and some DOT employees work weekend hours, it is not feasible to disaggregate the data to provide a reliable estimate of the salaries paid” during the FY 2018 shutdown. DOT Letter; E-mail from Dep't of Transp. Staff (May 24, 2019) (on file with the Subcomm.).

### Employee Furloughs<sup>354</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>355</sup>
FY 2014	19,000	304,000	1,164.8 Years
FY 2018	24,000	72,000	276.9 Years
FY 2019	18,000	630,000	2,413.8 Years

### Selected Shutdown Impacts

- The National Highway Traffic Safety Administration (“NHTSA”), which is responsible for the safety of millions of people on U.S. roads and highways, suspended vehicle safety activities, including defects investigations, recall reviews, research, and testing.<sup>356</sup> All pending safety defect investigations were put on hold and potential defects that emerge during shutdowns are not investigated right away, leaving consumers and our highways at risk.<sup>357</sup>
- The Federal Aviation Administration (“FAA”) furloughed most of its aviation safety inspectors who are responsible for the certification of new aircraft as well as for the oversight of pilots and aircraft maintenance.<sup>358</sup> FAA air traffic

<sup>354</sup> *Id.* DOT indicated that this data represents “the number of employees furloughed at the beginning of each lapse in appropriations” and that they “do not reflect furloughed employees subsequently recalled, excepted employees subsequently furloughed...or other staff changes, such as retirements.” Because the number of furloughed employees can fluctuate during a lapse, the Department used available payroll records from the first day of each lapse. As a result, the combined furlough days and lost productivity are estimates. DOT Letter; E-mail from Dep’t of Transp. Staff to Subcomm. Staff (Sep. 5, 2019) (on file with the Subcomm.).

<sup>355</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB CIRCULAR NO. A-11 § 85 (June 2019); OMB CIRCULAR NO. A-11 § 85 (July 2017); OMB CIRCULAR NO. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>356</sup> DOT Letter.

<sup>357</sup> *The Impacts of the Government Shutdown on our Economic Security: Hearing Before the S. Comm. on Commerce, Science, and Transp.*, 113th Cong. (2013) (statement of Rachel Weintraub, Legislative Dir. and Senior Counsel, Consumer Fed’n of America, Senate Comm. On Commerce, Science, and Transportation 23 (Oct. 11, 2013) <https://www.govinfo.gov/content/pkg/CHRG-113shrg93946/pdf/CHRG-113shrg93946.pdf>; *Impacts of the 2013 Government Shutdown, Majority Staff Report for Chairman Rockefeller*, S. Comm. On Commerce, Science, and Transp. (Oct. 11, 2013), <https://www.govinfo.gov/content/pkg/CHRG-113shrg93946/pdf/CHRG-113shrg93946.pdf> at 28

<sup>358</sup> DOT Letter; FED. AVIATION ADMIN., AVIATION SAFETY (AVS) (last updated May 2, 2019), [https://www.faa.gov/about/office\\_org/headquarters\\_offices/avs/](https://www.faa.gov/about/office_org/headquarters_offices/avs/); *FAA bringing back safety inspectors sidelined by shutdown*, ASSOCIATED PRESS, Jan. 12, 2019, <https://www.apnews.com/f2b651eeef58d426b80f64ecfdbcae624> (noting that during the FY 2019

controllers continued to work without many of their support staffers, who were furloughed.<sup>359</sup>

- The Pipeline and Hazardous Materials Safety Administration (“PHMSA”) suspended routine activities, including rulemaking—which during the FY 2019 shutdown—delayed the review of an important proposed rule intended to protect the public from natural gas disasters, including fatal explosions and fires.<sup>360</sup>

### **Overview of Agency Operations and Funding**

DOT is the principal department responsible for implementing national transportation policy and administering most federal transportation programs.<sup>361</sup> DOT has 10 components—also known as bureaus or administrations—that operate within the Department and handle specialized policy and operations areas.<sup>362</sup> Many of DOT’s appropriations are available for one year; with those appropriations, the Department does not have access to funds from prior fiscal years, and therefore has less flexibility to continue activities during a government shutdown than some other agencies may have.<sup>363</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*FY 2014 Employee Furloughs.* DOT furloughed approximately 19,000 employees during the FY 2014 shutdown, and paid those workers approximately \$62,300,000 in back pay once the shutdown ended.<sup>364</sup>

*FY 2018 Employee Furloughs.* DOT furloughed approximately 24,000 employees during the FY 2018 shutdown.<sup>365</sup> These employees were furloughed for

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shutdown, FAA modified its contingency plan and recalled about 500 safety inspectors in mid-January 2019). See also Fed. Aviation Admin, FAA Statement on Continuing Operations of the FAA During a Lapse in Appropriations (Updated Feb. 2, 2019),

[https://www.faa.gov/news/updates/?newsId=92945&omniRss=news\\_updatesAoc&cid=101\\_N\\_U](https://www.faa.gov/news/updates/?newsId=92945&omniRss=news_updatesAoc&cid=101_N_U).

<sup>359</sup> DOT Letter; *The Impacts of the Government Shutdown on our Economic Security: Hearing Before the S. Comm. on Commerce, Science, and Transp.*, 113th Cong. (2013) (statement of Rachel Weintraub, Legislative Dir. and Senior Counsel, Consumer Fed’n of America, Senate Comm. On Commerce, Science, and Transportation (Oct. 11, 2013) <https://www.govinfo.gov/content/pkg/CHRG-113shrg93946/pdf/CHRG-113shrg93946.pdf>

<sup>360</sup> DOT Letter; *Craig LeMoult, Delays Persist in Federal Natural Gas Safety Regulations*, WGBH NEWS, Jan. 10, 2019, <https://www.wgbh.org/news/local-news/2019/01/10/delays-persist-in-federal-natural-gas-safety-regulations>.

<sup>361</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS 10 (Oct. 2014).

<sup>362</sup> DEP’T OF TRANSP., OUR ADMINISTRATIONS, <https://www.transportation.gov/administrations> (last visited Aug. 1, 2019).

<sup>363</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS 11 (Oct. 2014).

<sup>364</sup> DOT Letter; E-mail from Dep’t of Transp. Staff (May 24, 2019) (on file with the Subcomm.).

<sup>365</sup> DOT Letter

three days, two of which were weekend days.<sup>366</sup> Because the Department maintains its payroll records weekly, and some DOT employees work weekend hours, the Department was unable to disaggregate the data to provide the Subcommittee with a reliable estimate of the amount paid to these employees for the days on which they did not work.<sup>367</sup>

*FY 2019 Employee Furloughs.* DOT furloughed approximately 18,000 employees during the FY 2019 shutdown, and paid those workers about \$186,400,000 in back pay once the shutdown ended.<sup>368</sup>

*Federal Contractors.* The Department told the Subcommittee that it does not make staffing decisions for DOT grantees and contractors, and therefore does not maintain information related to employees of those entities.<sup>369</sup> For example, if a DOT component issued a stop-work order to a contractor, the Department would not require any information on whether the contractor made any resulting staffing decisions.<sup>370</sup> The Department did not provide any information on the number of stop-work orders it issued to contractors.<sup>371</sup>

*Shutdown Preparation and Monitoring Activities.* DOT told the Subcommittee that it was unable to provide estimates for costs incurred as a result of shutdown preparation and monitoring activities, and stated that “specific costs and time spent” on such activities “are not available.”<sup>372</sup>

### **Disruptions to Agency Operations**

Within DOT and the majority of its 10 components, there is a wide range of activities that are suspended during government shutdowns. This section highlights selected disruptions that occurred during government shutdowns.

*Federal Aviation Administration.* The FAA has excepted certain employees from furlough status during shutdowns as permitted by the Antideficiency Act and related regulations and guidance. This includes many positions within Air Traffic Organization, Aviation Safety Organization, and Office of Security and Hazardous Materials functions.<sup>373</sup> There are still a number of operations, however, that are suspended. For example, though air traffic safety oversight operations and aircraft certification services generally continue, they both do so on a limited basis.<sup>374</sup> Some of the FAA activities suspended during shutdowns are:

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<sup>366</sup> *Id.*

<sup>367</sup> *Id.*

<sup>368</sup> *Id.*; E-mail from Dep’t of Transp. Staff to Subcomm. Staff (May 24, 2019) (on file with the Subcomm.).

<sup>369</sup> DOT Letter.

<sup>370</sup> *Id.*

<sup>371</sup> *Id.*

<sup>372</sup> *Id.*

<sup>373</sup> DOT-PSI-0003.

<sup>374</sup> DOT-PSI-0004.

- Facility security inspections;
- Air traffic performance analysis;
- Hiring and training of new air traffic control specialists;
- Law enforcement assistance support;
- Aviation rulemaking;
- Development of NextGen technologies and safety standards;<sup>375</sup>
- Audits and evaluations;
- Continuity of Operations Planning;
- Investment planning and financial analysis;
- Financial operations, controls, reporting, and accountability; and
- Most budgeting functions.<sup>376</sup>

*National Highway Traffic Safety Administration.* During the relevant shutdowns, the National Highway Traffic Safety Administration (“NHTSA”) has suspended its annually appropriated Vehicle Safety activities, including enforcement and consumer testing programs.<sup>377</sup> “Important rulemakings, including those with Congressional deadlines” have been delayed, along with new car assessment testing activities and the release of assessment ratings to consumers.<sup>378</sup> NHTSA suspended all ongoing vehicle defect investigations and recall reviews, and was unable to review new information about potential defects or recalls.<sup>379</sup> NHTSA, noted, however, that “automakers continue to have a legal obligation to recall vehicles for noncompliance or safety defects, notwithstanding a lapse in appropriations...and independent of NHTSA oversight.<sup>380</sup>

About half of NHTSA’s staff is funded by multi-year or other alternative appropriations and is able to continue working during shutdowns.<sup>381</sup> Therefore, NHTSA Highway Safety Research and Development activities (including research related to occupant protection, alcohol, and motorcycles) and grants managed under the Highway Traffic Grants account are not disrupted during shutdowns.<sup>382</sup> NHTSA’s cybersecurity functions also generally continue to the extent allowed under the Antideficiency Act.<sup>383</sup>

*Federal Transit Administration.* During the relevant shutdowns, the Federal Transit Administration (“FTA”) suspended all reimbursements to transit agencies

<sup>375</sup> NextGen is an FAA-led effort to modernize America’s air transportation system in order to make flying even safer, more efficient, and more predictable. See FED. AVIATION ADMIN., NEXTGEN: MODERNIZATION OF U.S. AIRSPACE (updated June 25, 2019), <https://www.faa.gov/nextgen/>.

<sup>376</sup> DOT Letter.

<sup>377</sup> DOT-PSI-0011

<sup>378</sup> *Id.*

<sup>379</sup> DOT-PSI-0012

<sup>380</sup> E-mail from Dep’t of Trans. Staff to Subcomm. Staff (Sep. 5, 2019) (on file with the Subcomm.).

<sup>381</sup> DOT-PSI-0011.

<sup>382</sup> *Id.*

<sup>383</sup> *Id.*

that are used for ongoing operations, construction projects, and salaries for workers.<sup>384</sup> The FTA also did not distribute or award any grant funds to its grantees across the country.<sup>385</sup> These grants primarily fund operating expenses and capital projects.<sup>386</sup> The FDA was unable to conduct essential reviews of ongoing projects that were already funded, such as those related to environmental and legal issues.<sup>387</sup> Additionally, the FTA suspended all program and project oversight activities unless there is sufficient funding from prior year appropriations to continue those activities.<sup>388</sup>

*Federal Railroad Administration.* Key offices and positions within the Federal Railroad Administration (“FRA”) continue to operate during shutdowns in order to support FRA’s critical safety missions.<sup>389</sup> However, FRA’s Office of Railroad Policy and Development—the primary grantor of Federal funding to Amtrak for operations, capital, and debt servicing requirements—ceases operations during shutdowns.<sup>390</sup> FRA is unable to administer grant, financial, and technical assistance to Amtrak and all other grantees and funding partners.<sup>391</sup>

*Pipeline and Hazardous Materials Safety Administration.* During shutdowns, PHMSA continues all critical operations necessary to ensure the safety of the public, including investigations of accidents, inspections to remediate safety concerns, and enforcement of safety regulations.<sup>392</sup> Activities such as strategic planning and program evaluation, program and policy development, standards and rulemaking, grants, regular approval and permitting activities, Hazardous Materials special investigations, regulatory analysis and planning, FOIA activities, and regular budget and financial operations and planning, are all suspended.<sup>393</sup>

*Office of the Secretary.* During shutdowns, OST operations principally associated with functions necessary to secure life and safety and to preserve property continue, including support of IT systems and functions related to cybersecurity.<sup>394</sup> Additionally, activities necessary to support presidential appointees within OST in discharging their responsibilities continue during shutdowns.<sup>395</sup> There are also a number of programs that are funded by multi-year or no-year appropriations that continue to operate, including Transportation Planning, Research, and Development; Essential Air Service; the Transportation

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<sup>384</sup> DOT-PSI-0014

<sup>385</sup> *Id.*

<sup>386</sup> *Id.*

<sup>387</sup> *Id.*

<sup>388</sup> *Id.*

<sup>389</sup> DOT-PSI-0017

<sup>390</sup> *Id.*

<sup>391</sup> *Id.*

<sup>392</sup> DOT-PSI-0019

<sup>393</sup> DOT-PSI-0020

<sup>394</sup> DOT-PSI-0027

<sup>395</sup> *Id.*

Safety Institute; and Small and Disadvantaged Business Utilization and Outreach.<sup>396</sup> The following OST activities, however, are typically suspended during a shutdown: media outreach and response; non-essential budget and financial operations; implementation of congressional mandates; IT policy oversight; legal functions related to acquisitions, aviation licensing, regulatory policies, and FOIA; and operation of the Administrative Law Judges Program.<sup>397</sup>

*DOT Office of Inspector General.* While law enforcement activities continue and the crisis management center and hotline remain open, DOT's Office of Inspector General suspends certain activities during shutdowns—including audits, as well as all legal, legislative, and external affairs operations.<sup>398</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* DOT told the Subcommittee that it was unable to provide estimates for costs incurred as a result of reopening and resuming full agency operations and stated that “specific costs and time spent” on such activities “are not available.”<sup>399</sup> However, the Department was able to provide some illustrations of adverse impacts and issues that occurred after the shutdowns were over:

- Some DOT employees must pay union dues out of their paychecks, and when those employees are furloughed, the Department develops and employs a mechanism to process past union dues once those employees receive their back pay. This results in extra work for the DOT employees who handle payroll activities.<sup>400</sup>
- The FY 2019 lapse in appropriations occurred over two pay periods and several Federal holidays. This situation “created numerous complexity [sic] in handling payroll matters as the Department reopened and led to numerous employee questions about their paychecks.”<sup>401</sup>
- The FY 2019 lapse in appropriations crossed into a new calendar year, which impacted tax withholdings and caused concern among employees regarding treatment of back pay for tax purposes.<sup>402</sup> The Department held three in-person sessions and a webinar to help address employees’ concerns and to ensure they understood the mechanics of their back pay and withholdings.<sup>403</sup>

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<sup>396</sup> DOT-PSI-0028

<sup>397</sup> *Id.*

<sup>398</sup> DOT-PSI-0030

<sup>399</sup> DOT Letter.

<sup>400</sup> *Id.*

<sup>401</sup> *Id.*

<sup>402</sup> *Id.*

<sup>403</sup> *Id.*

- Once a shutdown is over, the Department has to conduct additional work related to employee leave, “including the need to ensure that DOT’s timekeeping system did not reflect any leave during the lapse itself”—particularly where previously scheduled leave had already been entered into the system.<sup>404</sup>

*Expected Long-Term Effects.* The Department’s response to the Subcommittee did not include information about any actual or expected long-term effects of the three relevant shutdowns. However, FAA stated that the FY 2019 government shutdown was one of the reasons it reduced the projected number of air traffic controller hires for FY 2019 by about 37 percent.<sup>405</sup> The National Air Traffic Controllers Association—the union that represents air traffic controllers—says that the industry is at a “30 year low of fully certified controllers in the system, of which 20 percent...can retire at any moment,”<sup>406</sup> and claims that many controllers at some of the busiest hub airports are required to work six-day weeks.<sup>407</sup>

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<sup>404</sup> *Id.*

<sup>405</sup> FED. AVIATION ADMIN., AIR TRAFFIC CONTROLLER WORKFORCE PLAN 2019–2028, 5–6 (2019), [https://www.faa.gov/air\\_traffic/publications/controller\\_staffing/media/2018-ABA-200-CWP\\_2019\\_Report\\_508.pdf](https://www.faa.gov/air_traffic/publications/controller_staffing/media/2018-ABA-200-CWP_2019_Report_508.pdf).

<sup>406</sup> NAT’L AIR TRAFFIC CONTROLLERS ASSOC., OPENING STATEMENT BY NATCA PRESIDENT AT HOUSE AVIATION SUBCOMM. HEARING (Feb. 13, 2019), <https://www.natca.org/index.php/newsroom-member-side/news-archive/2693-opening-statement-by-by-natca-president-at-house-aviation-subcommittee-hearing>.

<sup>407</sup> Robert Silk, *Union and FAA at odds over effect of fewer air traffic controller hires*, TRAVEL WEEKLY (Jun. 7, 2019), <https://www.travelweekly.com/Travel-News/Airline-News/Union-and-FAA-at-odds-over-effect-of-fewer-air-traffic-controller-hires>.

## G. Department of Education

The U.S. Department of Education (“Education”) is responsible for establishing financial aid policy, distributing and monitoring financial aid funds, collecting and analyzing data on U.S. schools, prohibiting discrimination and ensuring equal access to education, and promoting awareness about key educational issues.<sup>408</sup>

Education was affected by the FY 2014 and FY 2018 shutdowns, but agency appropriations were in place for the FY 2019 partial shutdown, and all regular operations continued.<sup>409</sup> Though the Department reported that it furloughed over 90 percent of its employees during the FY 2014 and FY 2018 shutdowns, Education told the Subcommittee that since most of its key programs (e.g., Pell Grants and Federal Direct Student Loans) are mandatory spending programs—funded by laws other than annual appropriations acts—there have been few, if any, negative effects as a result of recent government shutdowns.<sup>410</sup>

The Department’s Contingency Plan for a Lapse in FY 2019 Appropriation describes several potential negative effects on Education’s operations during a shutdown.<sup>411</sup> Since the Department provided very limited information to the Subcommittee, the Subcommittee relied on the Contingency Plan issued by Secretary Betsy DeVos for much of the information below.

### Summary of Estimated Cost to Taxpayers<sup>412</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$22,554,596	\$17,524	Not provided	\$22,572,120
FY 2018	\$2,070,677	\$8,111	Not provided	\$2,078,788
FY 2019	\$0	\$0	\$0	\$0
<b>TOTAL COST</b>				<b>\$24,650,908</b>

<sup>408</sup> U.S. DEPT OF EDUC., OVERVIEW AND MISSION STATEMENT, <https://www2.ed.gov/about/landing.jhtml?src=ft> (last visited July 30, 2019).

<sup>409</sup> Letter from Peter Oppenheim, Ass’t Sec’y, Office of Legis. And Congressional Affairs, Dep’t of Educ, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (May 7, 2019) (on file with the Subcomm.) [hereinafter referred to as “Education Letter”].

<sup>410</sup> *Id.*; Telephone Conference with Dep’t of Educ. Staff (June 3, 2019). See also Memorandum from Betsy DeVos, Sec’y of Educ., to the Office of Mgmt. and Budget 3 (Sept. 25, 2018), <https://www2.ed.gov/about/shutdown/contingency-plan-2018.pdf>.

<sup>411</sup> Memorandum from Betsy DeVos, Sec’y of Educ., to the Office of Mgmt. and Budget 3 (Sept. 25, 2018), <https://www2.ed.gov/about/shutdown/contingency-plan-2018.pdf>.

<sup>412</sup> Education Letter.

### Employee Furloughs<sup>413</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Lost Productivity of Furloughed Workers<sup>414</sup></b>
FY 2014	3,785	41,636	159.5 Years
FY 2018	3,299	3,299	12.7 Years
FY 2019	0	0	0

### Selected Shutdown Impacts

- The Department’s Contingency Plan states that a protracted delay in its obligations and payments beyond one week “would severely curtail the cash flow to school districts, college and universities and vocational rehabilitation agencies” that depend on Department funds.<sup>415</sup>
- Disruption to Department grant programs could result in a “potential delay in activities necessary to make competitive and formula grant awards later in the fiscal year.”<sup>416</sup>
- Citizens and institutions seeking specific information regarding the impact of a shutdown have limited access to information from the Department, due to employee furloughs.<sup>417</sup>
- The Department’s release of its Annual Financial Report was delayed by approximately one month due to the FY 2014 shutdown.<sup>418</sup>

### Overview of Department Operations and Funding

The Department of Education’s primary purpose is to oversee the United States’ education system. The Department engages in four major types of activities:

<sup>413</sup> *Id.*

<sup>414</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB CIRCULAR NO. A-11 § 85 (June 2019); OMB CIRCULAR NO. A-11 § 85 (July 2017); OMB CIRCULAR NO. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>415</sup> Memorandum from Betsy DeVos, Sec’y of Educ., to the Office of Mgmt. and Budget 4 (Sept. 25, 2018), <https://www2.ed.gov/about/shutdown/contingency-plan-2018.pdf>.

<sup>416</sup> *Id.*

<sup>417</sup> *Id.*

<sup>418</sup> Education Letter.

establishing policies related to federal education funding and administering and monitoring the distribution and use of funds; collecting data and oversees research on America's schools; identifying major issues in education and focuses national attention on them; and enforcing federal laws prohibiting discrimination in programs that receive federal funds.<sup>419</sup>

The Department of Education's operations are funded through an annual fiscal year appropriation.<sup>420</sup> Some of the Department's programs are funded through mandatory or advance appropriations, or through unobligated multi-year or no-year "carryover" funding from a prior year.<sup>421</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*FY 2014 Employee Furloughs.* The Department furloughed approximately 3,785 employees, and paid them approximately \$22,554,596 in back pay once the shutdown ended.<sup>422</sup>

*FY 2018 Employee Furloughs.* The Department furloughed approximately 3,299 employees for one day, and paid them approximately \$2,070,677 in back pay once the shutdown ended.<sup>423</sup>

*Federal Contractors.* During the FY 2014 shutdown, the Department did not issue stop-work orders on most operational contracts with the exception of "Advisory and Assistance type contracts."<sup>424</sup> The Department told the Subcommittee that "[t]he limited time for which those contractors were not working did not significantly impact operations" and also noted that "vendors seeking equitable adjustments for their stop work orders were generally denied."<sup>425</sup> For the FY 2018 shutdown, the Department also only issued stop-work orders to a limited group of contractors, and they were reversed the next day when the shutdown ended.<sup>426</sup> According to the Department's Contingency Plan, contractors allowed to continue their work would not immediately receive payment for their services, but the Department would be obligated to pay those contractors, along with any Prompt Payment Act interest to compensate for the delay, once funds become available.<sup>427</sup>

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<sup>419</sup> U.S. DEP'T OF EDUC., ABOUT ED: OVERVIEW AND MISSION STATEMENT, <https://www2.ed.gov/about/landing.jhtml> (last visited on Aug. 1, 2019).

<sup>420</sup> U.S. DEP'T OF EDUC., BUDGET HISTORY TABLES: EDUCATION DEPARTMENT BUDGET HISTORY TABLE: FY 1980–FY 2019 PRESIDENT'S BUDGET, <https://www2.ed.gov/about/overview/budget/history/index.html> (last visited Aug. 1, 2019).

<sup>421</sup> Memorandum from Betsy De Vos, Sec'y of Educ., to the Office of Mgmt. and Budget 3 (Sept. 25, 2018), <https://www2.ed.gov/about/shutdown/contingency-plan-2018.pdf>.

<sup>422</sup> Education Letter.

<sup>423</sup> *Id.*

<sup>424</sup> *Id.*

<sup>425</sup> *Id.*

<sup>426</sup> *Id.*

<sup>427</sup> Memorandum from Betsy De Vos, Sec'y of Educ., to the Office of Mgmt. and Budget 4 (Sept. 25, 2018), <https://www2.ed.gov/about/shutdown/contingency-plan-2018.pdf>.

The Department did not provide the Subcommittee with any specific information regarding interest payments to contractors.

*Shutdown Preparation and Monitoring Activities.* For the FY 2018 shutdown, the Department estimated that costs associated with time spent preparing for the shutdown was approximately \$5,885.<sup>428</sup> This estimate includes 75 staff hours dedicated to activities such as updating the list of excepted employees and preparing and delivering furlough notices.<sup>429</sup> The Department estimated that during the FY 2018 shutdown, costs associated with time spent monitoring the shutdown were approximately \$2,226.<sup>430</sup> This estimate includes 28 staff hours devoted to shutdown monitoring activities such as preparing and sending return-to-work notices.<sup>431</sup>

For the FY 2014 shutdown, the Department estimated that costs associated with time spent preparing for the shutdown was approximately \$5,079, noting that the time spent (75 hours) and preparation activities were the same as those done ahead of the FY 2018 shutdown.<sup>432</sup> The Department estimated that costs associated with monitoring the FY 2014 shutdown were approximately \$12,445—representing 184 hours of time spent monitoring the shutdown (which was longer in duration than the FY 2018 shutdown).<sup>433</sup>

### **Disruptions to Agency Operations**

In its response to the Subcommittee, the Department identified only one specific disruption to its operations caused by any of the three shutdowns at issue. The Department noted that it is required to produce an Annual Financial Report (“AFR”) by November 15, but due to the FY 2014 shutdown, the AFR was issued on December 11, 2013.<sup>434</sup> The Department stated that it “structures its operations to minimize the impact of a shutdown on the Department's distribution of student aid, grants, contracts and other unique responsibilities of the Department. Therefore, any costs in the [areas listed by the Subcommittee] is [sic] negligible.”<sup>435</sup>

However, the Department’s Contingency Plan for FY 2019 mentions several possible negative effects that could occur during a shutdown.<sup>436</sup> For example, the plan states that a “lapse in appropriations could fall at a critical point in the administration of the large student aid programs.”<sup>437</sup> The plan notes that as a

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<sup>428</sup> Education Letter.

<sup>429</sup> *Id.*

<sup>430</sup> *Id.*

<sup>431</sup> *Id.*

<sup>432</sup> *Id.*

<sup>433</sup> *Id.*

<sup>434</sup> *Id.*

<sup>435</sup> *Id.*

<sup>436</sup> See generally Memorandum from Betsy De Vos, Sec’y of Educ., to the Office of Mgmt. and Budget 3 (Sept. 25, 2018), <https://www2.ed.gov/about/shutdown/contingency-plan-2018.pdf>.

<sup>437</sup> *Id.* at 3.

result of permanent and multi-year appropriations, Pell Grants and student loans could “continue as normal for some time” with “skeletal program operations.”<sup>438</sup>

The plan also states that “[a] protracted delay in Department obligations and payments beyond one week would severely curtail the cash flow to school districts, colleges and universities and vocational rehabilitation agencies that depend on the Department’s funds to support their services.”<sup>439</sup> The plan does not provide specific details on the resulting effects of the curtailment of cash flow, but does note that “many school districts receive more than 20 percent of their funds from Department-funded programs....[c]olleges rely on Higher Education funds to pay ongoing expenses of staff running programs for disadvantaged students...[and] [v]ocational rehabilitation agencies receive 80 percent of the cost of providing services to adult individuals with disabilities from the Department’s program.”<sup>440</sup>

In sum, it seems that the Department has been able to efficiently minimize the impact of the three government shutdowns within the scope of this report, but it is possible a shutdown could occur at a “critical” time during a fiscal year under conditions that would cause adverse effects to the Department’s key operations.

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* The Department did not specifically break out costs incurred by activities related to reopening and resuming full agency operations. It did, however, as described above, include costs related to issuing return-to-work notices in its estimate of costs related to monitoring the shutdowns.<sup>441</sup>

*Expected Long-Term Effects.* The Department’s response to the Subcommittee did not contain any information about long-term effects that occurred or could be expected to occur as a result of the three relevant shutdowns. The Department’s Contingency Plan notes, though, that “[u]nder a shutdown, the likely disruption to the Department grant programs will be a potential delay in activities necessary to make competitive and formula grant awards later in the fiscal year. For the most part, employees associated with these programs will be furloughed.”<sup>442</sup> The Department did not include information about any grant funding delays in its response.

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<sup>438</sup> *Id.* at 5

<sup>439</sup> *Id.* at 4.

<sup>440</sup> *Id.*

<sup>441</sup> Education Letter.

<sup>442</sup> Memorandum from Betsy De Vos, Sec’y of Educ., to the Office of Mgmt. and Budget 4 (Sept. 25, 2018), <https://www2.ed.gov/about/shutdown/contingency-plan-2018.pdf>.

## H. National Transportation Safety Board

The National Transportation Safety Board (“NTSB”) is responsible for investigating all civil aviation accidents in the U.S. and significant accidents in other modes of transportation—railroad, highway, marine, and pipeline.<sup>443</sup> In addition to its investigative responsibilities, NTSB is responsible for coordinating resources to assist victims of major transportation disaster and their families.<sup>444</sup> In general, NTSB shuts down all of its activities during a shutdown, consistent with the Antideficiency Act and related guidance. A majority of NTSB employees are furloughed, with intermittent exceptions for employees investigating major fatal accidents.<sup>445</sup>

### Summary of Estimated Cost to Taxpayers<sup>446</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$2,715,254	\$436,004	Not provided	\$3,151,258
FY 2018	\$542,362	\$199,784	Not provided	\$742,146
FY 2019	\$4,974,582	\$669,818	Not provided	\$5,644,400
<b>TOTAL COST</b>				<b>\$9,537,804</b>

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<sup>443</sup> NAT'L TRANSP. SAFETY BD., FY 2018–2022 STRATEGIC PLAN 5–8 (Dec. 2017), <https://www.ntsb.gov/about/reports/Documents/FY2018-2022strategicPlan.pdf>

<sup>444</sup> *Id.* at 5.

<sup>445</sup> Letter from Robert L. Sumwalt, Chairman, Nat'l Transp. Safety Bd., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Mar. 22, 2019) (on file with the Subcomm.) [hereinafter referred to as “NTSB Letter”].

<sup>446</sup> NTSB Letter.

### Employee Furloughs<sup>447</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Lost Productivity of Furloughed Workers<sup>448</sup></b>
FY 2014	383	6,240	24 Years
FY 2018	376	1,504	5.8 Years
FY 2019	367	13,125	50.3 Years

### Selected Shutdown Impacts

- Almost all NTSB employees —over 90 percent—are furloughed during shutdowns.<sup>449</sup>
- The NTSB does not respond to all accidents that normally require investigative action; investigations are delayed until a shutdown ends.<sup>450</sup> Perishable evidence from these scenes may be lost, which affects identification of safety issues, determinations of probable cause, and conclusions and recommendations.<sup>451</sup>
- During the FY 2019 shutdown, the NTSB stopped working on six major and 339 fatal aviation accident investigations; 1,815 general (non-commercial) aviation investigations; and 12 foreign aviation investigations involving U.S. operators or products.<sup>452</sup>

### Overview of Agency Operations and Funding

NTSB conducts independent investigations into aircraft, highway, railroad and pipeline accidents, and major marine casualties and is required by law to determine probable cause of those accidents.<sup>453</sup> NTSB also issues safety

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<sup>447</sup> *Id.*

<sup>448</sup> On an annual basis, OMB calculates the number of employees' compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>449</sup> *Id.*

<sup>450</sup> *Id.*

<sup>451</sup> *Id.*; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 18 (Nov. 2013).

<sup>452</sup> NTSB Letter.

<sup>453</sup> E-mail from Nat'l Transp. Safety Bd. Staff to Subcomm. Staff (Sep. 5, 2019) (on file with the Subcomm.); *Accident investigation*, 3 AVIATION TORT AND REG. LAW § 26:10 (2017).

recommendations aimed at preventing future accidents involving both public and private transportation.<sup>454</sup> NTSB is comprised of a five-member board, five policy offices, and eight field offices that investigate and report on transportation accidents.<sup>455</sup> Investigators-in-charge (“ICCs”) are appointed to manage a clearly defined portion of the accident investigation.<sup>456</sup> ICCs are in charge of various specialized working groups, such as “Go Teams” who specialize in responding as quickly as possible to the scene of an accident.<sup>457</sup>

NTSB’s operations are mainly funded through an annual one-year appropriation.<sup>458</sup> Additionally, NTSB receives some fees for services it provides to state and local governments and other federal agencies.<sup>459</sup> NTSB also receives, to a lesser degree, multi-year appropriations and a no-year emergency fund appropriation for extraordinary accident investigation costs.<sup>460</sup> NTSB’s operational costs mostly consist of salary and employee benefits.<sup>461</sup> NTSB was affected by all three of the relevant government shutdowns, resulting in significant disruptions and delays to the agency’s operations.<sup>462</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, NTSB furloughed 383 out of 405 employees for a combined total of 6,240 furlough days.<sup>463</sup> NTSB paid its furloughed workers \$2,715,254 in back pay once the shutdown ended.<sup>464</sup>

During the FY 2018 shutdown, NTSB furloughed 376 out of 402 employees for a combined total of 1,504 days.<sup>465</sup> NTSB paid its furloughed workers \$524,362 in back pay once the shutdown ended.<sup>466</sup>

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<sup>454</sup> *Id.*

<sup>455</sup> NAT’L TRANSP. SAFETY BD., ABOUT THE NATIONAL TRANSPORTATION SAFETY BOARD ORGANIZATION, <https://www.ntsb.gov/about/organization/Pages/default.aspx> (last visited Aug. 1, 2019).

<sup>456</sup> NAT’L TRANSP. SAFETY BD., THE INVESTIGATIVE PROCESS,

<https://www.ntsb.gov/investigations/process/Pages/default.aspx> (last visited Aug. 1, 2019).

<sup>457</sup> *Id.*

<sup>458</sup> NAT’L TRANSP. SAFETY BD., FISCAL YEAR 2018 PERFORMANCE AND ACCOUNTABILITY REPORT 48 (Nov. 6, 2018), <https://www.ntsb.gov/about/reports/Documents/PARFY18.pdf>.

<sup>459</sup> *Id.* at 12.

<sup>460</sup> *Id.* at 48.

<sup>461</sup> *Id.* at 12.

<sup>462</sup> NTSB Letter.

<sup>463</sup> *Id.*

<sup>464</sup> The total number of excepted employees was calculated by taking the difference between 405 total employees and the 383 employees that were furloughed. See NTSB Letter.

<sup>465</sup> NTSB Letter.

<sup>466</sup> *Id.*

During the FY 2019 shutdown, NTSB furloughed 367 out of 397 employees for a combined total of 13,125 days.<sup>467</sup> NTSB paid its furloughed workers \$4,974,582 once the shutdown ended.<sup>468</sup>

*Federal Contractors.* NTSB told the Subcommittee that it did not have any information regarding the number of contractor employees that were laid off or required to use leave during the three relevant shutdown.<sup>469</sup>

*Shutdown Preparation Activities.* NTSB said the costs associated with developing and implementing its contingency plan and completing shutdown activities during the FY 2014 shutdown were \$115,794.<sup>470</sup>

NTSB said the costs associated with developing and implementing its contingency plan and completing shutdown activities during the FY 2018 and FY 2019 shutdowns were \$123,528 for each lapse period.<sup>471</sup>

*Monitoring the Shutdowns.* NTSB told the Subcommittee that costs associated with monitoring the shutdown were approximately \$160,105 for FY 2014; \$38,128 for FY 2018; and \$273,165 for FY 2019.<sup>472</sup>

### **Disruptions to Agency Operations**

During all three relevant shutdowns, the furloughs of almost all employees and the suspension of most routine operations affected all areas of NTSB's operations.<sup>473</sup>

During the FY 2014 shutdown, NTSB suspended approximately 1,500 accident investigations.<sup>474</sup> NTSB received 59 aviation accident notifications during the shutdown—nine of which required investigations that were postponed until the shutdown was over.<sup>475</sup> Several furloughed employees were recalled in order to respond to two accidents that occurred during the shutdown period; NTSB determined these accidents warranted immediate investigation.<sup>476</sup>

During the FY 2018 shutdown, NTSB suspended approximately 2,000 accident investigations.<sup>477</sup> Fourteen aviation accident investigations were impacted—six in the United States and eight international accidents that involved

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<sup>467</sup> *Id.*

<sup>468</sup> *Id.*

<sup>469</sup> *Id.*

<sup>470</sup> *Id.*

<sup>471</sup> *Id.*

<sup>472</sup> *Id.*

<sup>473</sup> *Id.*

<sup>474</sup> *Id.*

<sup>475</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 18 (Nov. 2013).

<sup>476</sup> NTSB Letter.

<sup>477</sup> *Id.*

aircraft or equipment made in the United States.<sup>478</sup> NTSB also suspended 30 investigations into railway, pipeline, or hazardous materials accidents, 37 investigations into marine accidents, and 29 investigations into highway accidents.<sup>479</sup> NTSB did not recall any employees to investigate accidents that occurred during the relatively short shutdown period, which took place over one workday and one weekend.<sup>480</sup>

During the FY 2019 shutdown, NTSB suspended approximately 1,900 accident investigations. These suspensions included 18 investigations into major aviation accidents (six that occurred in the U.S. and 12 that occurred internationally), 33 investigations into rail, pipeline, or hazardous materials accidents, 44 investigations into marine accidents, and 21 investigations into highway accidents.<sup>481</sup> Ninety-seven accidents occurred during the shutdown period; 22 of those required investigations, but NTSB was unable to deploy staff to the scenes until the funding lapse was resolved and the shutdown was over.<sup>482</sup> Several furloughed employees were recalled to respond to two accidents that occurred during the shutdown period; NTSB determined these accidents warranted immediate investigation.<sup>483</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* NTSB told the Subcommittee that it estimated costs associated with reopening and restarting normal operations after the shutdowns were approximately \$160,105 for FY 2014; \$38,128 for FY 2018; and \$273,165 for FY 2019.<sup>484</sup>

*Expected Long-Term Effects.* All three of the shutdowns put NTSB's investigative capabilities at risk. Because NTSB was unable to send investigators to the scene of accidents, NTSB potentially lost perishable evidence from those accidents.<sup>485</sup>

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<sup>478</sup> *Id.*

<sup>479</sup> *Id.*

<sup>480</sup> *Id.*

<sup>481</sup> *Id.*

<sup>482</sup> *Id.*

<sup>483</sup> *Id.*

<sup>484</sup> *Id.*

<sup>485</sup> *Id.*

## I. Department of Energy

The Department of Energy (“DOE”) is responsible for “long-term, high-risk research and development of energy technology; marketing federal power; the nuclear weapons program of the United States; [and] energy regulatory programs.”<sup>486</sup> The Department’s mission is to “ensure America’s security and prosperity by addressing its energy, environmental and nuclear challenges through transformative science and technology solutions.”<sup>487</sup> DOE plays a critical role in American prosperity and national security; the Department administers the nation’s energy policy, manages its nuclear infrastructure and ultimately works toward energy independence for the United States.<sup>488</sup> DOE “incurred minimal costs” during the FY 2018 and FY 2019 shutdowns, as it was fully funded through multi-year and no-year appropriations, and able to continue operations.<sup>489</sup> During the FY 2014 shutdown, DOE had funding for most of its operations, but a small number of programs did have to shut down and furlough workers.<sup>490</sup> Therefore, the information below is focused primarily on the FY 2014 shutdown.

### Summary of Estimated Cost to Taxpayers<sup>491</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc. <sup>492</sup>	Total
FY 2014	\$585,000	\$300,000	\$19,138	\$904,138
FY 2018	N/A	N/A	\$2,460	\$2,460
FY 2019	N/A	N/A	\$7,734	\$7,734
<b>TOTAL COST</b>				<b>\$914,332</b>

<sup>486</sup> 1 West's Fed. Admin. Prac. *Dep't of Energy* § 120 (2018).

<sup>487</sup> U.S. DEP'T OF ENERGY, ABOUT US, <https://www.energy.gov/about-us> (last visited Aug. 1, 2019).

<sup>488</sup> *Id.*

<sup>489</sup> Letter from Rayburn Hanzlik, Senior Legal Advisor & Director, Oversight Task Force, Dep't. of Energy, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Mar. 29, 2019) (on file with the Subcomm.) [hereinafter referred to as “DOE Letter”].

<sup>490</sup> *Id.*

<sup>491</sup> *Id.*

<sup>492</sup> Miscellaneous costs include those costs associated with canceled travel and, for FY 2014, with unexpected costs stemming from halted or delayed waste shipments and groundwater inspections. See *DOE Letter*.

### Employee Furloughs<sup>493</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>494</sup>
FY 2014	347	1,735	6.6 Years
FY 2018	0	0	0
FY 2019	0	0	0

### Selected Shutdown Impacts

- During the FY 2014 shutdown, DOE’s Energy Information Administration (“EIA”) was unable to release reports, analysis, and forecasts about petroleum, diesel prices, heating oil, and natural gas storage.<sup>495</sup> Businesses rely on these reports to set prices and to make investment decisions, which in turn may influence pricing and other market-related decisions.<sup>496</sup>
- During the FY 2014 shutdown, DOE’s Nevada National Security Site was unable to receive approximately 20 scheduled nuclear waste deliveries.<sup>497</sup> Groundwater testing activities at the Nevada site were also stopped four days into a planned multi-week test, resulting in additional costs to conduct the missed work and keep the necessary rental equipment for a longer period of time.<sup>498</sup>

### Overview of Agency Operations and Funding

DOE’s mission is to “ensure America’s security and prosperity by addressing its energy, environmental, and nuclear challenges” through science and technology.<sup>499</sup> “DOE is responsible for advancing the energy, environmental, and nuclear security of the United States; promoting scientific and technological

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<sup>493</sup> *Id.*

<sup>494</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB CIRCULAR NO. A-11 § 85 (June 2019); OMB CIRCULAR NO. A-11 § 85 (July 2017); OMB CIRCULAR NO. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>495</sup> U.S. DEPT OF ENERGY, WHAT IS EIA? AND WHAT DOES IT DO? (Jan. 1, 2011), <https://www.energy.gov/articles/what-eia-and-what-does-it-do>.

<sup>496</sup> *Id.*; Tom DiChristopher, *Oil Sinks 4 % to \$51.14 on rising US crude stockpiles, fear of faltering demand*, CNBC, Jun. 12, 2019, <https://www.cnbc.com/2019/06/12/oil-market-opec-supply-cuts-us-crude-inventories-in-focus.html> (discussing how certain reports and indexes, including EIA’s forecast for global oil demand growth, impacts market volatility).

<sup>497</sup> DOE Letter.

<sup>498</sup> *Id.*

<sup>499</sup> U.S. DEPT OF ENERGY, ABOUT US, <https://www.energy.gov/about-us> (last visited Aug. 1, 2019).

innovation in support of that mission; sponsoring basic research in the physical sciences; and ensuring the environmental cleanup of the nation's nuclear weapons complex.”<sup>500</sup>

“The DOE enterprise is comprised of approximately 14,000 federal employees and over 95,000 [contractor employees] at the Department’s headquarters in Washington, D.C. and 83 field locations.”<sup>501</sup> DOE also “operates a nationwide system of 17 national laboratories that provides...scientific, technological, and engineering capabilities, including the operation of national scientific user facilities used by thousands of researchers from academia, government, and industry.”<sup>502</sup>

DOE receives the majority of its funding through a no-year and multi-year appropriations process.<sup>503</sup> One benefit of no-year and multi-year funds, compared to annual funds, is that the receiving agency can use funds not yet obligated from prior fiscal years to continue agency activity during lapses in funding.<sup>504</sup> The flexibility of DOE’s funding structure contributed to the Department’s ability to remain fully funded and continue operations during the FY 2018 and FY 2019 government shutdowns.<sup>505</sup> However, the Department still incurred some preparation costs and lost productivity costs during those lapse periods.<sup>506</sup> During the FY 2014 shutdown, DOE had available funding to continue most operations, but had to shut down some programs and furlough workers.<sup>507</sup> DOE provided the Subcommittee with information about the effects of the FY 2014 shutdown, but noted that “because of the variance in reporting between program and field offices and the limited availability of records...the full extent to which DOE was impacted is unquantifiable.”<sup>508</sup>

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<sup>500</sup> U.S. DEPT OF ENERGY, FISCAL YEAR 2017 PERFORMANCE REPORT, FISCAL YEAR 2018 PERFORMANCE PLAN 4, <https://www.energy.gov/sites/prod/files/2018/11/f57/fy-2017-doe-annual-performance-report-fy-2019-annual-performance-plan.pdf> (Sept. 30, 2017).

<sup>501</sup> *Id.*

<sup>502</sup> *Id.*

<sup>503</sup> DOE Letter; U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS 11 (Oct. 2014).

<sup>504</sup> *Id.*

<sup>505</sup> DOE Letter; U.S. GOV’T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS 24 (Oct. 2014).

<sup>506</sup> Although DOE did not implement its shutdown procedures or furlough any employees during the FY 2018 or FY 2019 shutdown, the Department still incurred costs to prepare for the *potential* lapses in funding. These costs are admittedly minimal, when compared with the total cost that the FY 2014 shutdown amounted to for DOE. See DOE Letter.

<sup>507</sup> *Id.*

<sup>508</sup> DOE Letter.

## **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, DOE furloughed 347 of its 10,553 employees for a combined total of 1,735 days.<sup>509</sup> DOE paid those employees \$585,000 in back pay once the shutdown ended.<sup>510</sup>

*Federal Contractors.* DOE told the Subcommittee that at least 1,900 contractor employees were laid off or required to use leave during the FY 2014 shutdown.<sup>511</sup>

*Shutdown Preparation and Monitoring Activities.* Planning and preparing for the shutdown diverted resources from DOE's daily operations. While DOE found that reprioritizing the budget mitigated some budgetary uncertainty related to the shutdown, the Department said there was still concern about the length of the lapse, and monitored the shutdown accordingly.<sup>512</sup> DOE told the Subcommittee that "a minority of DOE program and field offices reported costs and resources associated with planning for and monitoring the shutdown."<sup>513</sup> Cumulatively, these offices reported over 10,700 hours were spent addressing the shutdown, with costs exceeding \$300,000.<sup>514</sup>

The FY 2014 shutdown resulted in steeper preparation and monitoring costs for DOE than the FY 2018 or FY 2019 shutdowns.<sup>515</sup> Although DOE told the Subcommittee that, leading up to and during the FY 2018 and FY 2019 shutdowns, DOE incurred minimal monetary costs, DOE's Office of Environmental Management ("EM") estimated that officials spent at least 50 percent of their work time during September 2018 preparing for the FY 2019 shutdown.<sup>516</sup> Similarly, DOE and its contractors devoted significant resources to placing labs and project sites into safe standby conditions prior to the lapse in funding.<sup>517</sup>

## **Disruptions to Agency Operations**

DOE experienced disruptions to agency operations as a result of the FY 2014 lapse in funding.<sup>518</sup> Though DOE only had to shut down some programs during the

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<sup>509</sup> *Id.*

<sup>510</sup> *Id.*

<sup>511</sup> *Id.*

<sup>512</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS 20 (Oct. 2014).

<sup>513</sup> DOE Letter.

<sup>514</sup> *Id.*

<sup>515</sup> *Id.*

<sup>516</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS 13 (Oct. 2014).

<sup>517</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN (Nov. 2013).

<sup>518</sup> DOE Letter.

FY 2014 shutdown, all three of the government shutdowns caused the Department to incur additional costs.<sup>519</sup>

*Costs associated with canceled travel.* During all three shutdowns, DOE incurred minimal costs due to canceled travel.<sup>520</sup> The Department told the Subcommittee that travel-related costs were \$3,138 during the FY 2014 shutdown, \$2,460 during the FY 2018 shutdown, and \$7,734 during the FY 2019 shutdown.<sup>521</sup>

*Energy Information Administration.* The Energy Information Administration (“EIA”) “provides statistics regarding petroleum, natural gas, coal, nuclear energy, electricity, renewables, alternate fuels, international programs, the environment, and energy forecasting.”<sup>522</sup> During the FY 2014 shutdown, EIA did not release any data—including scheduled reports on petroleum, diesel prices, heating oil, and natural gas storage.<sup>523</sup> Delayed reports included “the Principal Economic Indicator for natural gas storage, [which] sets diesel compensation rates for many commercial truckers, a report of heating oil and propane prices faced by many households, and a report assessing petroleum inventories.”<sup>524</sup> These types of delays affect the ability of businesses that depend on EIA data to make informed decisions on key metrics such as investment pricing.<sup>525</sup>

*Office of Environmental Management.* The Office of Environmental Management (“EM”) is a staff office that consists of nine field offices.<sup>526</sup> Because EM issued stop-work orders, contractors had to reduce their employee workforce at EM facilities.<sup>527</sup> According to GAO, EM was able to fund some of its contracting activities with available multi-year funds, but “EM officials were still limited in their ability to manage contracts and meet programmatic requirements.”<sup>528</sup>

*National Nuclear Security Administration.* During the FY 2014 shutdown, DOE’s National Nuclear Security Administration (“NNSA”) stopped receiving low level nuclear waste deliveries at its Nevada site.<sup>529</sup> As a result, DOE had to delay these shipments, which pushed back its research schedule and forced the agency to spend an additional \$16,000 to extend the rental period for certain equipment.<sup>530</sup>

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<sup>519</sup> *Id.*

<sup>520</sup> *Id.*

<sup>521</sup> *Id.*

<sup>522</sup> 1 West's Fed. Admin. Prac., *Dep't of Energy* § 124 (2018).

<sup>523</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 12 (Nov. 2013).

<sup>524</sup> *Id.*

<sup>525</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 4 (Nov. 2013).

<sup>526</sup> 1 West's Fed. Admin. Prac., *Dept. of Energy* § 124 (2018).

<sup>527</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS 29 (Oct. 2014).

<sup>528</sup> *Id.*

<sup>529</sup> DOE Letter.

<sup>530</sup> *Id.*

Additionally, NNSA's labs and plants lost "at least three weeks of mission work, or six percent of the year's productivity" as a result of the FY 2014 shutdown.<sup>531</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* Although the monetary costs associated with reopening and resuming full agency operations were minimal, DOE told the Subcommittee that the agency incurred indirect operational costs.<sup>532</sup> For example, NNSA reduced operations to "min-safe" operations—the minimal level required to preserve equipment and facilities—to ensure funding would be available throughout the shutdown period.<sup>533</sup> This, in turn, resulted in "careful restarts once funding resumed" and "the recovery process took upwards of six weeks to complete."<sup>534</sup> Contracting and operational activity within DOE returned to normal levels within a few months.<sup>535</sup>

*Expected Long-Term Effects.* DOE told the Subcommittee that it "continued most operations" and did not experience any long term effects for the following reasons: multi-year and no-year appropriations, the timing and duration of the lapses, and the flexibility to utilize prior year balances."<sup>536</sup> As a result of the shutdown, DOE missed cleanup milestones agreed to with various U.S. states where cleanup was already underway prior to the shutdown.<sup>537</sup> This could affect DOE's future opportunities to contract with the states and public opinion of DOE's competency to fulfill site cleanups.<sup>538</sup>

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<sup>531</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 23 (Nov. 2013).

<sup>532</sup> DOE Letter.

<sup>533</sup> *Id.*

<sup>534</sup> *Id.*

<sup>535</sup> U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS 30 (Oct. 2014).

<sup>536</sup> DOE Letter.

<sup>537</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 23 (Nov. 2013).

<sup>538</sup> *Id.*

## J. National Aeronautics and Space Administration

The National Aeronautics and Space Administration (“NASA”) is responsible for science and technology related to air and space, including planning, directing, and conducting aeronautical and space activities.<sup>539</sup> In general, shutdowns disrupt operations at all of NASA’s programs and projects and in turn affect agency programs and projects across all mission areas.<sup>540</sup> Some human spaceflight and science mission activities continue consistent with the Antideficiency Act and related guidance, but most of the agency’s work stops during a shutdown, including “virtually all aeronautics and technology work and the majority of human spaceflight and science work”—causing significant disruptions across all offices, mission directorates, centers, and facilities.<sup>541</sup>

### Summary of Estimated Cost to Taxpayers<sup>542</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$102,000,000	\$26,640,000	\$53,605,000	\$182,245,000
FY 2018	N/A	\$3,172,000	\$18,000	\$3,190,000
FY 2019	\$202,000,000	\$27,065,000	\$15,225,000 <sup>543</sup>	\$244,290,000
<b>TOTAL COST</b>				<b>\$429,725,000</b>

<sup>539</sup> 51 U.S.C. § 20112 (2019); NAT’L AERONAUTICS AND SPACE ADMIN., WHAT IS NASA? (Sept. 24, 2018), <https://www.nasa.gov/audience/forstudents/5-8/features/nasa-knows/what-is-nasa-58.html>; Letter from Suzanne M. Gillen, Assoc. Admin. For Leg. And Intergovernmental Affairs, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 5, 2019) (on file with the Subcomm.) [hereinafter referred to as “NASA Letter”].

<sup>540</sup> NASA Letter.

<sup>541</sup> *Id.*

<sup>542</sup> *Id.*

<sup>543</sup> At this time, NASA is unable to calculate all miscellaneous costs incurred as a result of the FY 2019 shutdown. Over time, NASA expects to get a more fulsome picture of the shutdown costs, which are expected to include arbitration regarding contractor claims; mission delay and rescheduling costs; and interest payments. This amount reflects the amount as of Sept. 5, 2019. See NASA Letter.

### Employee Furloughs<sup>544</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>545</sup>
FY 2014	17,701	230,113	881.7 Years
FY 2018	0	0	0 Years
FY 2019	17,152	402,296	1,541.4 Years

### Selected Shutdown Impacts

- The FY 2014 and FY 2019 shutdowns affected almost all of NASA’s climate science missions, including its Plankton, Aerosol, Cloud, Ocean Ecosystem mission (“PACE”), which will assess ocean health and air quality.<sup>546</sup> This mission is not only important because it will improve our understanding and ability to forecast weather and climate; it is also crucial to protecting the ocean economy, which is an essential part of the U.S. economy and includes businesses dependent on ocean and Great Lakes natural resources.<sup>547</sup>
- Shutdowns make it harder for NASA to retain critical employees with specialized skills. More than 95 percent of NASA employees were furloughed during the FY 2014 and FY 2019 shutdowns. Though overall human capital impacts were minor across the workforce in most locations, losses that did occur were in areas with specialized skills that are high in demand.<sup>548</sup>
- Shutdowns often have greater cost impacts on NASA when compared to other agencies, due to the complexity of the missions affected. The FY 2014 shutdown delayed the launch of NASA’s Magnetospheric Multiscale Mission, which assesses how magnetic fields in space affect and disrupt critical technological systems such as telecommunications networks, GPS, and

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<sup>544</sup> *Id.*

<sup>545</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A–11 § 85 (June 2019); OMB Circular No. A–11 § 85 (July 2017); OMB Circular No. A–11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>546</sup> NASA Letter; NAT’L AERONAUTICS AND SPACE ADMIN., GET TO KNOW PACE, <https://pace.oceansciences.org/about.htm> (last visited Aug. 1, 2019).

<sup>547</sup> NAT’L AERONAUTICS AND SPACE ADMIN., GET TO KNOW PACE, <https://pace.oceansciences.org/about.htm> (last visited Aug. 1, 2019); Nat’l Oceanic and Atmospheric Admin., New Report on U.S. Ocean and Great Lakes Economy Shows Growth (2019), <https://oceanservice.noaa.gov/news/apr17/ocean-economy.html>.

<sup>548</sup> NASA Letter.

electrical power grids.<sup>549</sup> While almost all missions are delayed when there is a funding lapse, this particular four-week delay cost NASA an additional \$35.4 million.<sup>550</sup>

### **Overview of Agency Operations and Funding**

NASA consists of five mission directorates: the Science Mission; the Aeronautics Research Mission; the Space Technology Mission; the Human Exploration and Operations Mission; and Mission Support.<sup>551</sup> Each of NASA's 18 centers and facilities focuses on research and implementation of the Administration's mission directorates.<sup>552</sup> As the head of NASA, the Administrator plans, directs, and conducts the agency's activities, and is also responsible for seeking and encouraging the fullest commercial use of space, including through public-private partnerships, as well as the use of commercial space services by the federal government.<sup>553</sup>

NASA's operations are funded through the annual appropriations process with carryover and transfer authority when funds remain unobligated.<sup>554</sup> NASA was impacted by all three shutdowns, but only had to initiate shutdown procedures and furlough employees during the FY 2014 and FY 2019 shutdowns.<sup>555</sup> NASA had sufficient carryover funds from FY 2017 to continue operations during the FY 2018 shutdown, but still incurred costs related to preparing for and monitoring that funding lapse.<sup>556</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, NASA furloughed 17,701 employees for a combined total of 230,113 furlough days.<sup>557</sup> NASA paid

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<sup>549</sup> *Id.*; NAT'L AERONAUTICS AND SPACE ADMIN., THE MAGNETOSPHERIC MULTISCALE MISSION, [https://mms.gsfc.nasa.gov/about\\_mms.html](https://mms.gsfc.nasa.gov/about_mms.html) (last visited Aug. 1, 2019).

<sup>550</sup> NASA Letter; E-Mail Correspondence between Subcomm. Staff and NASA Office of Leg. and Intergovernmental Affairs (Jun. 12, 2019) (on file with the Subcomm.).

<sup>551</sup> NAT'L AERONAUTICS AND SPACE ADMIN., ORGANIZATION CHART (Mar. 2019), [https://www.nasa.gov/sites/default/files/atoms/files/agency\\_org\\_chart\\_mar\\_2019.pdf](https://www.nasa.gov/sites/default/files/atoms/files/agency_org_chart_mar_2019.pdf).

<sup>552</sup> NAT'L AERONAUTICS AND SPACE ADMIN., NASA FACILITIES (May 2008), [https://www.nasa.gov/50th/50th\\_magazine/NASAfacilities.html](https://www.nasa.gov/50th/50th_magazine/NASAfacilities.html).

<sup>553</sup> 70C AM. JUR. 2D *Space Law* § 3 (2019).

<sup>554</sup> CONG. RESEARCH SERV., R44397, NASA: FY2017 BUDGET AND APPROPRIATIONS 1 (Dec. 13, 2016).

<sup>555</sup> NASA Letter.

<sup>556</sup> *Id.*

<sup>557</sup> Due to systems limitations and the last minute partial pay period before the FY 2014 shutdown, NASA was unable to use its systems for tracking the actual number of workers by day during the shutdown. This figure is an estimate based on the NASA's overall shutdown plan, which designated two percent (FTE) of its employees as excepted. NASA noted that the estimated number of furloughed employees may include employees that were only partially furloughed, and also said that a number of NASA's excepted employees only worked part-time. See NASA Letter.

approximately \$102 million to those furloughed employees once the shutdown ended.<sup>558</sup>

During the FY 2019 shutdown, NASA furloughed 17,152 employees for a combined total of 440,286 furlough days.<sup>559</sup> NASA paid approximately \$202 million to those furloughed employees—\$9 million to partially excepted employees and \$193 million to employees who did not work at all—once the shutdown ended.<sup>560</sup>

*Federal Contractors.* NASA told the Subcommittee that it does not have access to information regarding the employment of contractor personnel for the FY 2014 and FY 2019 shutdowns, and therefore cannot report with any specificity how many contractor personnel may have had to take unpaid leave or were laid off.<sup>561</sup>

NASA did note that it typically receives claims after shutdowns from contractors if the agency’s actions caused those contractors to incur additional costs beyond agreed funding.<sup>562</sup> NASA’s assessment of the FY 2019 shutdown is an ongoing process, and as of June 10, 2019, the agency had received 129 contractor claims.<sup>563</sup> The agency anticipates it will continue to receive similar claims from contractors affected by the shutdown.<sup>564</sup>

*Shutdown Preparation Activities.* NASA estimated that it spent approximately \$3,148,000 on planning and preparing for all three shutdowns—including the FY 2018 shutdown, during which the agency did not have to shut down because it had sufficient carryover funds from the previous fiscal year.<sup>565</sup>

*Monitoring the Shutdown.* NASA estimated that costs related to monitoring the FY 2014 and FY 2019 shutdowns were the same—\$492,000 for each year.<sup>566</sup> Though NASA did not end up shutting down in FY 2018, the agency estimates that it still spent \$24,000 during that period in order to monitor agency operations and adjust its contingency plan.<sup>567</sup>

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<sup>558</sup> NASA Letter.

<sup>559</sup> NASA told the Subcommittee that of the reported 17,152 employees furloughed, “4,240 employees did some part-time excepted activity” during the 24 workday shutdown period. *See* NASA Letter.

<sup>560</sup> E-Mail Correspondence between Subcomm. Staff and NASA Office of Leg. and Intergovernmental Affairs (May 16, 2019) (on file with the Subcomm.).

<sup>561</sup> NASA Letter.

<sup>562</sup> *Id.*

<sup>563</sup> E-Mail Correspondence between Subcomm. Staff and NASA Office of Leg. and Intergovernmental Affairs (Jun. 10, 2019) (on file with the Subcomm.).

<sup>564</sup> NASA Letter.

<sup>565</sup> NASA did not capture any such estimate of costs in FY 2014 or FY 2018, but said that given the “overall similarity in its processes” the agency estimates that the cost would be similar to that of FY 2019. *See* NASA Letter.

<sup>566</sup> NASA did not capture any such estimate of costs in FY 2014, but said that given the “overall similarity in its processes” the agency estimates that the cost would be similar to that of FY 2019. *See* NASA Letter.

<sup>567</sup> NASA Letter.

## **Disruptions to Agency Operations**

**FY2014.** The FY 2014 lapse in funding affected NASA projects throughout the Agency, and in turn impacted most programs as well as the activities of NASA's contractors and business partners.<sup>568</sup> NASA provided the Subcommittee with a detailed list of all projects and programs affected by the shutdown; the disruptions listed below represent only a portion of those items included on NASA's list.<sup>569</sup>

*Exploration Systems.* NASA delayed the plans for five vehicles within the Exploration Systems Development Program due to the FY 2014 shutdown.<sup>570</sup> For example, the powering on of the Orion Multi-Purpose Crew Vehicle was delayed for 22 days.<sup>571</sup> Late delivery of hardware due to issues caused by the shutdown at U.S. Customs and Border Protection also impacted Space Launch Missions in FY 2014.<sup>572</sup>

*Space Technology Mission Directorate.* NASA told the Subcommittee that during the FY 2014 shutdown, lost productivity and work hours caused significant disruptions to the agency's Space Network, which uses earth orbiting satellites and ground monitoring stations to provide global communications coverage and data transfer and analysis for NASA missions.<sup>573</sup> The Space Network offers its services to other U.S. government, international, and private industry customers who want to launch satellites into orbit and send information back to Earth, and provides support to a wide variety of projects including: GPS; wildfire observation and tracking; agriculture and crop health; weather forecasting; and maritime and aviation routing and tracking.<sup>574</sup> The shutdown resulted in lost productivity within the Space Network, delayed data reviews, and forced the rescheduling of spacecraft satellite launches for private companies, exposing NASA to potential claims.<sup>575</sup>

*Science Mission Directorate.* NASA's Science Mission Directorate ("SMD") conducts scientific exploration and research using a variety of space technology to research Earth's climate and environment.<sup>576</sup> NASA reported that 17 SMD

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<sup>568</sup> *Id.*

<sup>569</sup> *Id.*

<sup>570</sup> *Id.*

<sup>571</sup> *Id.*

<sup>572</sup> *Id.*

<sup>573</sup> *Id.*; NAT'L AERONAUTICS AND SPACE ADMIN., IMPACT: EXPLORATION & SPACE COMMUNICATIONS, <https://esc.gsfc.nasa.gov/impact> (last visited Aug. 1, 2019).

<sup>574</sup> NAT'L AERONAUTICS AND SPACE ADMIN., IMPACT: EXPLORATION & SPACE COMMUNICATIONS, <https://esc.gsfc.nasa.gov/impact> (last visited Aug. 1, 2019).

<sup>575</sup> For example, NASA reported the disruption of TDRS operations resulted in: (1) a *potential* claim from Boeing against NASA for the slip to Flight Operations Review, and (2) a *potential* claim from Boeing against NASA for lack of Goddard Space Flight Center support for contractor reviews. See NASA Letter.

<sup>576</sup> NAT'L AERONAUTICS AND SPACE ADMIN., SMD LEADERSHIP TEAM, <https://science.nasa.gov/about-us/leadership/bios> (last updated Aug. 31, 2019).

operations were affected by the FY 2014 shutdown.<sup>577</sup> These disruptions included delays in Launch Ready Dates, canceled deliveries of technology and equipment,<sup>578</sup> loss of data and measurements,<sup>579</sup> slips in observatory schedules and project start dates,<sup>580</sup> and the inability of NASA personnel to attend key international meetings.<sup>581</sup>

In some instances, the FY 2014 shutdown resulted in the cancellation of project components and a “permanent loss of science.”<sup>582</sup> NASA canceled nine flights that were scheduled for the Stratospheric Observatory for Infrared Astronomy (“SOFIA”) project.<sup>583</sup> SOFIA is an 80/20 partnership between NASA and the German Aerospace Center. The partnership was unable to use U.S. instruments as planned due to the shutdown, and “almost all the science lost was U.S. science, not German science.”<sup>584</sup> NASA also canceled three balloon flights scheduled as part of the Antarctic Balloon Campaign; the flights were not rescheduled.<sup>585</sup>

The FY 2014 shutdown had numerous impacts on the James Webb Space Telescope (“JWST”).<sup>586</sup> NASA delayed eight of the 36 milestones, resulting in a three-week critical path delay at an estimated cost of \$1 million to \$2 million.<sup>587</sup> The JWST mission also failed to accomplish Risk Reduction test goals, and was forced to push back contract agreements with private aerospace corporations.<sup>588</sup>

*Aeronautics Research Mission Directorate.* The Aeronautics Research Mission Directorate (“ARMD”) collaborates with the science community, other

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<sup>577</sup> NASA Letter.

<sup>578</sup> *Id.*

<sup>579</sup> For example, NASA did not have the capacity to track and record data from its Ice, Cloud, and Land Elevation Satellite 2 (ICEStat-2) during the FY2014 shutdown, which cost NASA \$9 million, one month loss of schedule, and had a major impact on Antarctic research. See NASA Letter. See also NAT’L AERONAUTICS AND SPACE ADMIN., EARTH OBSERVATORY NOTES FROM THE FIELD (May 30, 2019), <https://earthobservatory.nasa.gov/blogs/fromthefield/2019/05/>.

<sup>580</sup> NASA Letter.

<sup>581</sup> For example, the shutdown prevented NASA’s Goddard Space Flight Center (GSFC) personnel from attending key critical integration meetings with international partners, which in turn caused the Key Decision Point C (KDP-C)—an agency-level approval required before a project can begin—to slip with an associated cost of \$2.2 million. See NASA Letter. See also NAT’L AERONAUTICS AND SPACE ADMIN., PRECIPITATION MEASUREMENT MISSIONS (Dec. 2, 2009), <https://pmm.nasa.gov/mission-updates/gpm-news/successful-completion-kdp-c-review>.

<sup>582</sup> NASA Letter.

<sup>583</sup> *Id.*

<sup>584</sup> *Id.*

<sup>585</sup> The Antarctic Balloon Campaign is a joint effort between NASA and the National Research Foundation (NSF) to research space “phenomenon such as cosmic rays and the Big Bang.” See *Id.*

<sup>586</sup> *Id.*

<sup>587</sup> *Id.*

<sup>588</sup> NASA pushed back contract agreements with Northup Grumman Aerospace Systems until December 2013. *Id.*

agencies, and private industry to develop advanced technologies that change the way humans fly on Earth and in space.<sup>589</sup> ARMD operations were almost entirely disrupted by the lapse, at a cost of \$10 million for furloughed civil servants and work disruptions for other government agencies and industry partners.<sup>590</sup>

**FY2019.** The FY 2019 shutdown impacted all of NASA's programs and projects to varying degrees.<sup>591</sup> The magnitude of impact depended on the level of government involvement on project work, contract status at the end of the shutdown, the development phase of each mission, and the extent to which work continued during the shutdown to mitigate impacts.<sup>592</sup>

*Human Exploration & Operations Mission Directorate.* The FY 2019 shutdown impacted several components of the Human Exploration & Operations Mission Directorate ("HEOMD").<sup>593</sup> Astronauts on the first flight aboard NASA's Orion spacecraft with travel farther into the solar system than humanity has ever traveled before, and components of that Mission were delayed due to the lapse.<sup>594</sup> An Altitude Abort test for Orion was delayed, and the delivery date for the Crew Service Module was pushed back.<sup>595</sup>

Though the shutdown did not affect International Space Station operations, commercial Low-Earth Orbit planning was delayed.<sup>596</sup> Additionally, NASA told the Subcommittee that research delays affected several payloads that were scheduled to be sent to the International Space Station.<sup>597</sup>

*Science Mission Directorate.* NASA reported that the FY 2019 shutdown affected about 26 SMD missions.<sup>598</sup> The types of disruptions were similar to those experienced during the FY 2014 shutdown, but more numerous, and will likely incur more costs than those FY 2014 disruptions.<sup>599</sup>

The FY 2019 shutdown also impacted the JWST mission.<sup>600</sup> Although contractors had sufficient funding for a few months, some contractor activity could

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<sup>589</sup> NAT'L AERONAUTICS AND SPACE ADMIN., ABOUT AERONAUTICS RESEARCH MISSION DIRECTORATE (ARMD), <https://www.nasa.gov/aeroresearch> (last visited Aug. 1, 2019).

<sup>590</sup> NASA Letter.

<sup>591</sup> *Id.*

<sup>592</sup> *Id.*

<sup>593</sup> *Id.*

<sup>594</sup> *Id.*; NAT'L AERONAUTICS AND SPACE ADMIN., NASA'S FIRST FLIGHT WITH CREW IMPORTANT STEP ON LONG-TERM RETURN TO THE MOON, MISSIONS TO MARS, Aug. 27, 2018, <https://www.nasa.gov/feature/nasa-s-first-flight-with-crew-important-step-on-long-term-return-to-the-moon-missions-to>.

<sup>595</sup> NASA Letter.

<sup>596</sup> *Id.*

<sup>597</sup> *Id.*

<sup>598</sup> *Id.*

<sup>599</sup> *Id.*

<sup>600</sup> *Id.*

not proceed without NASA oversight and approval.<sup>601</sup> Accordingly, NASA furloughed most employees, but excepted some to allow contractor activities involving risk reduction to continue during the shutdown.<sup>602</sup> Additionally, several critical engineering reviews were delayed for approximately 30 days.<sup>603</sup>

Impacts on NASA's SMD operations affected the activities of other government agencies, mainly due to the shutdown preventing NASA employees from conducting timely analyses and issuing responses to interagency requests.<sup>604</sup>

*Aeronautics Research Mission Directorate.* As in FY 2014, the FY 2019 lapse in appropriations disrupted NASA's Aeronautics Research Mission Directorate ("ARMD") operations. ARMD disruptions in turn affected the efficiency and operations of other government agencies, as well as industry partners—including Lockheed Martin and General Electric.<sup>605</sup> For example, NASA delayed deliveries of government equipment to private companies, delayed research schedules and ground tests, and delayed deliveries to the FAA.<sup>606</sup>

*Space Technology Mission Directorate.* "Within the Space Technology Mission Directorate ('STMD'), [NASA's] preliminary assessment indicat[ed] a 1–2 month schedule delay across all STMD programs."<sup>607</sup> The FY 2019 lapse affected research and development in space technology within NASA, as well as at small businesses, non-profits, and universities that work with NASA.<sup>608</sup> NASA placed all solicitations and award negotiations on hold during the shutdown.<sup>609</sup>

*Mission Support Directorate.* NASA's Mission Support Directorate ("MSD") "provide[s] resources and services that . . . empower employees and contractors to support the Agency's missions."<sup>610</sup> As a result of the FY 2019 shutdown, multiple contracts lapsed and NASA delayed IT projects such as non-excepted system patching.<sup>611</sup> MSD also stopped performing routine inspections and preventive maintenance, which resulted in \$1 million worth of damages to facilities.<sup>612</sup>

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<sup>601</sup> *Id.*

<sup>602</sup> *Id.*

<sup>603</sup> *Id.*

<sup>604</sup> *Id.*

<sup>605</sup> *Id.*

<sup>606</sup> *Id.*

<sup>607</sup> *Id.*

<sup>608</sup> *Id.*

<sup>609</sup> *Id.*

<sup>610</sup> NAT'L AERONAUTICS AND SPACE ADMIN., ABOUT MISSION SUPPORT DIRECTORATE (MSD), <https://www.nasa.gov/msd/aboutus> (last visited Aug. 1, 2019).

<sup>611</sup> NASA Letter.

<sup>612</sup> *Id.*

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* For both the FY 2014 and FY 2019 shutdowns, NASA estimated all of its full-time employees spent two full work days transitioning back to normal operations before they were able to resume their regular duties.<sup>613</sup> NASA estimated this lost productivity cost approximately \$23,425,000 for each of the two shutdowns.<sup>614</sup> NASA's reopening activities included, for example, bringing closed facilities and suspended systems to a fully operational state, notifying furloughed employees about their return to work, computer and badging updates, password resets, and project reprogramming.<sup>615</sup>

*Expected Long-Term Effects.* NASA told the Subcommittee that lapses in funding disrupt the operational schedules of critical test facilities, which in turn disrupt many of the agency's project schedules.<sup>616</sup> NASA also said that while overall human capital impacts to date from the FY 2019 shutdown appear to have been minor across the civil servant and support contractor workforce, the losses that did occur were in areas with specialized skills that are in high demand.<sup>617</sup> NASA said it will continue to monitor its workforce as there is a potential for additional losses in critical skill areas as a result of staff continuing to pursue opportunities found outside of the Agency during the shutdown.<sup>618</sup>

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<sup>613</sup> NASA did not capture a return to work cost in FY 2014, but told the Subcommittee that given the overall similarity in its processes, the Agency estimates the cost in FY 2014 would be "about the same or slightly less than that incurred in FY 2019." *Id.*

<sup>614</sup> *Id.*

<sup>615</sup> *Id.*

<sup>616</sup> *Id.*

<sup>617</sup> *Id.*

<sup>618</sup> *Id.*

## K. Office of National Drug Control Policy

The Office of National Drug Control Policy (“ONDCP” or “the Office”) is a component of the Executive Office of the President that works to reduce drug use and its effects by leading and coordinating the development, implementation, and assessment of U.S. drug policy.<sup>619</sup> “ONDCP coordinates the drug control activities and related funding of 16 Federal Departments and Agencies.”<sup>620</sup> ONDCP also provides administrative and financial support to the President’s Commission on Combating Drug Addiction and the Opioid Crisis, which was established by Executive Order in 2017 by President Trump.<sup>621</sup> ONDCP was affected by all three relevant shutdowns.<sup>622</sup>

### Summary of Estimated Cost to Taxpayers<sup>623</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$583,968	\$15,326	Not provided	\$599,294
FY 2018	\$83,936	\$2,064	Not provided	\$86,000
FY 2019	\$1,038,400	\$13,552	\$99.72	\$1,052,051.72
<b>TOTAL COST</b>				<b>\$1,737,345.72</b>

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<sup>619</sup> OFFICE OF NAT’L DRUG CONTROL POLICY, EXEC. OFFICE OF THE PRESIDENT, <https://www.whitehouse.gov/ondcp/> (last visited Aug. 1, 2019).

<sup>620</sup> *Id.*

<sup>621</sup> *Id.*

<sup>622</sup> Letter from James Carroll, Director, Office of Nat’l Drug Control Policy, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 15, 2019) (on file with the Subcomm.) [hereinafter referred to as “ONDCP Letter”].

<sup>623</sup> In its response, ONDCP stated that the data provided to the Subcommittee represent the Office’s good-faith estimates. ONDCP Letter.

### Employee Furloughs<sup>624</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>625</sup>
FY 2014	77	1,232	4.7 Years
FY 2018	61	244	0.9 Years
FY 2019	59	2,065	7.9 Years

### Selected Shutdown Impacts

- ONDCP had to cancel its annual National High Intensity Drug Trafficking Area (“HIDTA”) Conference, which was scheduled to take place in February 2019. The canceled conference was supposed to include Federal law enforcement training for about 350 law enforcement officers.<sup>626</sup>
- Several key ONDCP reports were delayed, including the National Drug Control Strategy, an update on the President’s Commission on Combating Drug Addiction and the Opioid Crisis, and annual reports on budget, accounting, and performance.<sup>627</sup>
- The announcement of grant funding opportunities available through the FY 2019 Drug-Free Communities Support Program was delayed.<sup>628</sup>

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<sup>624</sup> In its response, ONDCP stated that the data provided to the Subcommittee represent the Office’s good-faith estimates. ONDCP Letter.

<sup>625</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>626</sup> Email Correspondence between Subcomm. Staff and ONDCP Leg. Affairs Staff (May 16, 2019) (on file with the Subcommittee).

<sup>627</sup> *Id.*

<sup>628</sup> *Id.*

## **Overview of Agency Operations and Funding**

ONDCP is a component of the Executive Office of the President (“EOP”) with a relatively small staff—about 67 employees.<sup>629</sup> The Director of ONDCP is the principal advisor to the President on drug control issues.<sup>630</sup>

Multiple federal agencies are responsible for drug control efforts, and ONDCP is responsible for, among other things, overseeing and coordinating the implementation of national drug control policy across the federal government.<sup>631</sup> These responsibilities include leading the development of the consolidated Federal drug control budget, which is published annually in the Office’s *Budget and Performance Summary*.<sup>632</sup>

ONDCP is also responsible for producing several other key publications, including the *National Drug Control Strategy*, which outlines Administration efforts to reduce illicit drug use, manufacturing and trafficking; drug-related crime and violence; and drug-related health consequences.<sup>633</sup>

ONDCP is responsible for administering two drug-related grant programs: the High Intensity Drug Trafficking Areas (“HIDTA”) and Drug-Free Communities (“DFC”).<sup>634</sup> The HIDTA program assists law enforcement efforts in areas that have been designated as critical drug trafficking regions, and the DFC program provides grants to community coalitions in order to strengthen local partnerships focused on reducing youth substance abuse.<sup>635</sup>

## **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* ONDCP furloughed 77 employees during the FY 2014 shutdown for a total of 1,232 combined days, and paid them about \$583,968 in back pay once the shutdown ended.<sup>636</sup> ONDCP furloughed 61 employees during the FY 2018 shutdown for a total of 244 combined days, and paid them about \$83,936 in back pay once the shutdown ended.<sup>637</sup> ONDCP furloughed 59 employees during the

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<sup>629</sup> Memorandum from Monica J. Block, Dep’y Ass’t to the President, Dir. Of Mgmt. and Admin., Acting Dir. of Office of Admin., to Mick Mulvaney, Director, Office of Mgmt. & Budget, *Contingency Plan for Shutdown Furlough 3* (Dec. 21, 2018), <https://www.whitehouse.gov/wp-content/uploads/2018/12/Memo-to-OMB-EOP-Shutdown-Plan-Lapse-of-Appropriations.pdf>.

<sup>630</sup> OFFICE OF NAT’L DRUG CONTROL POLICY, EXEC. OFFICE OF THE PRESIDENT, <https://www.whitehouse.gov/ondcp/> (last visited Aug. 1, 2019).

<sup>631</sup> 21 U.S.C. § 1702(a)(2). See also generally GOV’T ACCOUNTABILITY OFFICE, GAO-19-370T, DRUG POLICY: PRELIMINARY OBSERVATIONS ON THE 2019 NATIONAL DRUG CONTROL STRATEGY 2 (Mar. 7, 2019), <https://www.gao.gov/assets/700/697306.pdf>.

<sup>632</sup> OFFICE OF NAT’L DRUG CONTROL POLICY, EXEC. OFFICE OF THE PRESIDENT, <https://www.whitehouse.gov/ondcp/> (last visited Aug. 1, 2019).

<sup>633</sup> *Id.*

<sup>634</sup> *Id.*

<sup>635</sup> *Id.*

<sup>636</sup> ONDCP Letter.

<sup>637</sup> *Id.*

FY 2019 shutdown for a total of 2,065 combined days, and paid them about \$1,038,400 in back pay once the shutdown ended.<sup>638</sup>

*Federal Contractors.* During the FY 2014 shutdown, ONDCP issued stop-work orders to an estimated 11 contractors on two separate contracts—the first contract had five contractors and none of those were laid off or required to take leave, and the second contract had six contractors and was a fixed-firm price contract, so ONDCP believes that none of those contractors were laid off or required to take leave.<sup>639</sup> During the FY 2019 shutdown, ONDCP issued one stop-work order, but told the Subcommittee that the contractor was not laid off or required to use leave.<sup>640</sup>

*Shutdown Preparation Activities.* In preparation for the FY 2014 shutdown, ONDCP held an “all hands staff meeting” for 85 employees, at a cost of about \$14,062.<sup>641</sup> In preparation for the FY 2018 shutdown, ONDCP did not hold a staff meeting, so costs were minimal—about \$688.<sup>642</sup> In preparation for the FY 2019 shutdown, ONDCP held a staff meeting for 65 employees, at a cost of about \$12,144.<sup>643</sup>

*Monitoring the Shutdowns.* ONDCP did not provide the Subcommittee with any data regarding costs incurred monitoring the three shutdowns.<sup>644</sup> ONDCP’s response stated that monitoring was not necessary because furlough adjustments were not necessary due to the minimum number of excepted employees.<sup>645</sup>

### **Disruptions to Agency Operations**

ONDCP provided several examples of disruptions to its operations during the FY 2019 shutdown.

*Inter-Agency Coordination.* ONDCP works with other federal agencies to coordinate drug control efforts, and also collaborates with stakeholders on the state, local, and tribal levels regarding strategic drug policy efforts.<sup>646</sup> Accordingly, ONDCP hosts several monthly meetings, video teleconferences, and webinars during which departments and agencies share information, actively collaborate and coordinate, and synchronize efforts and responses to broad strategic trends in drug

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<sup>638</sup> *Id.*

<sup>639</sup> *Id.*

<sup>640</sup> *Id.*

<sup>641</sup> *Id.*

<sup>642</sup> *Id.*

<sup>643</sup> *Id.*

<sup>644</sup> *Id.*

<sup>645</sup> *Id.*

<sup>646</sup> OFFICE OF NAT’L DRUG CONTROL POLICY, EXEC. OFFICE OF THE PRESIDENT, <https://www.whitehouse.gov/ondcp/> (last visited Aug. 1, 2019).

policy issues.<sup>647</sup> During the FY 2019 shutdown, at least ten of these meetings were canceled, resulting in disruptions to ONDCP’s interagency coordination activities.<sup>648</sup>

*High Intensity Drug Trafficking Area Program Activities.* While recipients of High Intensity Drug Trafficking Area (“HIDTA”) grant funds continued to be paid during all three shutdowns, some HIDTA events and training sessions were canceled as a result of the FY 2019 shutdown.<sup>649</sup> ONDCP had to cancel its annual National HIDTA Conference and Awards Ceremony, which was scheduled for February 2019.<sup>650</sup> The conference would have included new programming—federal law enforcement HIDTA training for about 350 officers.<sup>651</sup> At this time, this training component has not been rescheduled.<sup>652</sup>

*Drug-Free Communities Support Program Activities.* While recipients of Drug-Free Communities (“DFC”) grant funds continued to be paid during all three shutdowns, several DFC-related activities were disrupted during the FY 2019 shutdown.<sup>653</sup> The FY 2019 DFC Support Program’s Funding Opportunity Announcement was delayed.<sup>654</sup> Additionally, ONDCP staff had to delay four training workshops for grant applicants about these grant announcements.<sup>655</sup> Generally, these types of delays in grant opportunity announcements directly affect potential grant applicants’ ability to plan for the upcoming fiscal year and assess expected budget and cash flow issues.

*Delayed Publication of Key Plans and Budget Documents.* ONDCP told the Subcommittee that the releases of several key publications, including budget strategies and performance reports, were delayed as a result of the FY 2019 shutdown.<sup>656</sup> Examples include:

- Delayed release of the *National Drug Control Strategy* and its companion documents;
- Delayed release of the *FY 2018 Annual Accounting and Performance Report*, which was supposed to be submitted to Congress by April 1, 2019;
- Delayed release of the *FY 2020 Budget and Performance Summary*; and

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<sup>647</sup> Email Correspondence between Subcomm. Staff and ONDCP Leg. Affairs Staff (May 16, 2019) (on file with the Subcommittee).

<sup>648</sup> *Id.*

<sup>649</sup> *Id.*; ONDCP Letter.

<sup>650</sup> Email Correspondence between Subcomm. Staff and ONDCP Leg. Affairs Staff (May 16, 2019) (on file with the Subcommittee).

<sup>651</sup> *Id.*

<sup>652</sup> *Id.*

<sup>653</sup> *Id.*; ONDCP Letter.

<sup>654</sup> Email Correspondence between Subcomm. Staff and ONDCP Leg. Affairs Staff (May 16, 2019) (on file with the Subcommittee).

<sup>655</sup> *Id.*

<sup>656</sup> *Id.*

- Delayed release of the *Update on the President's Commission on Combating Drug Addiction and the Opioid Crisis: One Year Later*.

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* ONDCP told the Subcommittee that it incurred minimal costs associated with reopening the Office and resuming normal operations.<sup>657</sup> ONDCP estimated that for all three shutdowns, about 16 staff hours were spent on these activities, resulting in less than \$1,500 in costs for each lapse.<sup>658</sup>

*Expected Long-Term Effects.* ONDCP told the Subcommittee that there were no long-term effects of the FY 2014 and FY 2018 shutdowns, and that it does not expect any long-term effects as a result of the FY 2019 shutdown.

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<sup>657</sup> ONDCP Letter.

<sup>658</sup> *Id.*

## L. Office of Personnel Management

The U.S. Office of Personnel Management (“OPM”) is the chief human resources agency and personnel policy manager for the federal government’s civilian workforce.<sup>659</sup> OPM provides human resources services and support to federal agencies, directs human resources and employee management services, administers retirement benefits, and manages employee healthcare and insurance programs.<sup>660</sup> OPM plays an important role during government shutdowns; the agency releases guidance for agencies and information for employers regarding important concerns such as leave policies, back pay, and benefits.<sup>661</sup> The majority of OPM’s functions are funded by sources other than annual appropriations, but the agency still furloughs employees and implements shutdown procedures across certain areas.<sup>662</sup>

### Summary of Estimated Cost to Taxpayers<sup>663</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$1,323,963	\$52,222	\$75,370	\$1,451,555
FY 2018	\$0	\$13,757	\$5,619	\$19,376
FY 2019	\$6,835,196	\$54,571	\$170,246	\$7,060,013
<b>TOTAL COST</b>				<b>\$8,540,944</b>

<sup>659</sup> OFFICE OF PERS. MGMT., OUR AGENCY, <https://www.opm.gov/about-us/> (last visited Aug. 1, 2019).

<sup>660</sup> *Id.*

<sup>661</sup> OFFICE OF PERS. MGMT., PAY & LEAVE: FURLOUGH GUIDANCE, <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/> (last visited Aug. 1, 2019).

<sup>662</sup> OFFICE OF PERS. MGMT., CONTINGENCY PLAN FOR THE SUSPENSION OF OPERATIONS IN THE ABSENCE OF APPROPRIATIONS (Sept. 25, 2018), <https://www.opm.gov/about-us/open-government/about-open-gov/opm-plan-for-the-suspension-of-operations-in-the-absence-of-appropriations.pdf>.

<sup>663</sup> Letter from Margaret M. Weichert, Acting Director, Office of Pers. Mgmt., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (May 3, 2019) (on file with the Subcomm.) [hereinafter referred to as “OPM Letter”].

### Employee Furloughs<sup>664</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>665</sup>
FY 2014	874	13,110	50.2 Years
FY 2018	0	0	0 Years
FY 2019	767	26,845	102.9 Years

### Selected Shutdown Impacts

- During shutdowns, OPM employees divert their work hours away from regular day-to-day responsibilities, and instead focus on developing and providing information, guidance, and extensive support to government agencies regarding administration of shutdown activities.<sup>666</sup>
- Suitability Executive Agent inspections were delayed; some of the affected inspections may be postponed until FY 2020.<sup>667</sup>

### Overview of Agency Operations and Funding

OPM has seven program divisions and a number of departmental offices that enable the agency to meet its strategic goals in three broad areas: human capital management leadership, benefits, and vetting.<sup>668</sup> OPM is organized into a number of departmental offices and seven program divisions: Employee Services; Retirement Services; Healthcare & Insurance; Merit System Accountability & Compliance, Suitability Executive Agent, National Background Investigations Bureau, and Human Resources Solutions.<sup>669</sup>

OPM receives both discretionary and mandatory funding through the annual appropriations process.<sup>670</sup> OPM incurred costs associated with all three relevant

<sup>664</sup> *Id.*

<sup>665</sup> On an annual basis, OMB calculates the number of employees' compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>666</sup> OPM Letter.

<sup>667</sup> *Id.*

<sup>668</sup> OFFICE OF PERS. MGMT., OUR AGENCY, <https://www.opm.gov/about-us/> (last visited Aug. 1, 2019).

<sup>669</sup> *Id.*

<sup>670</sup> CONG. RESEARCH SERV., R42730, FINANCIAL SERVICES AND GENERAL GOVERNMENT: FY2013 APPROPRIATIONS 61 (Jun. 28, 2013), <https://crsreports.congress.gov/product/pdf/R/R42730>.

shutdowns, but only had to furlough employees during the FY 2014 and FY 2019 shutdowns.<sup>671</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, OPM furloughed 874 employees for a combined total of 13,110 furlough days, and paid those workers \$1,323,963 in back pay once the shutdown ended.<sup>672</sup> During the FY 2019 shutdown, OPM furloughed 767 employees for a combined total of 26,845 furlough days and paid those workers \$6,835,196 in back pay once the shutdown ended.<sup>673</sup>

*Federal Contractors.* OPM told the Subcommittee it was unable to provide information on the number of contractors who were laid off or required to use leave time because the agency does not receive this information from its contractor companies.<sup>674</sup> However, OPM did state that during the FY 2019 shutdown, it issued a stop-work order for one contract and “had a lapse of service in three contracts.”<sup>675</sup> The agency said it does not have any data on stop-work orders or lapses in service for the FY 2014 and FY 2018 shutdowns.<sup>676</sup>

*Shutdown Preparation Activities.* OPM estimated that its costs related to preparation activities in FY 2014 were \$33,246.<sup>677</sup> Although OPM did not furlough any employees during the FY 2018 shutdown, employees still engaged in shutdown preparations that cost the agency approximately \$12,381.<sup>678</sup> For the FY 2018 shutdown, OPM estimated that costs related to shutdown preparation activities were \$18,311.<sup>679</sup>

*Monitoring the Shutdowns.* OPM told the Subcommittee that its estimated costs associated with monitoring the shutdowns were \$18,976 for FY 2014; \$1,376 for FY 2018; and \$36,260 for FY 2019.<sup>680</sup>

### **Disruptions to Agency Operations**

During each of the three relevant government shutdowns, OPM experienced disruptions—which sometimes came at additional cost—within several areas across the agency.<sup>681</sup>

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<sup>671</sup> OPM Letter.

<sup>672</sup> *Id.*

<sup>673</sup> *Id.*

<sup>674</sup> *Id.*

<sup>675</sup> *Id.*

<sup>676</sup> *Id.*

<sup>677</sup> *Id.*

<sup>678</sup> *Id.*

<sup>679</sup> *Id.*

<sup>680</sup> *Id.*

<sup>681</sup> *Id.*

*Diversion of Agency Resources.* OPM explained that when a shutdown occurs, the agency has to discontinue regular operations to develop and provide information, guidance, and support to all federal agencies in order to assist with shutdown activities across the government.<sup>682</sup> These activities include developing extensive written materials, responding to “hundreds of inquiries” from agency officials related to the technical aspects of furloughing employees, and providing ongoing support and information through frequent conference calls with government human capital officers and human resource staff.<sup>683</sup> While this is done with a “skeleton staff,” these activities prevent HR policy specialists from performing their normal work, which includes providing policy direction and leadership in designing and developing government-wide human capital strategy, systems, and programs.<sup>684</sup> Additionally, these employees are unable to provide support to federal agencies regarding recruitment, hiring policy, veterans’ employment, strategic workforce planning, performance management, diversity, and labor and employee relations.<sup>685</sup>

*Inspection Activities.* OPM is responsible for conducting some government background check activities, including assessing the “suitability” of applicants, appointees and existing federal employees whose job positions and core duties meet certain regulatory criteria and are designated as “covered positions”.<sup>686</sup> Suitability inspections focus on the character and conduct of each individual and determine whether those attributes are consistent with the duties of the relevant position, and whether the person’s employment or continued employment would protect the integrity or promote the efficiency of government service.<sup>687</sup> Covered positions subject to suitability review often include those that involve policymaking, major program responsibility, public safety, law enforcement, fiduciary duty, or other duties demanding a significant degree of public trust.<sup>688</sup> These positions include most political appointments as well as Senior Executive Service jobs in the Executive Branch.<sup>689</sup>

OPM told the Subcommittee that during the FY 2019 shutdown, 20 full and follow-up Suitability Executive Agent inspections were delayed, and said that depending on agency availability, some of those inspections may be postponed until FY 2020.<sup>690</sup> These inspections are critical to federal government operations, and

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<sup>682</sup> *Id.*

<sup>683</sup> *Id.*

<sup>684</sup> *Id.*

<sup>685</sup> *Id.*

<sup>686</sup> 5 C.F.R. pt. 731 (2019).

<sup>687</sup> *Id.*; 5 C.F.R. pt. 736 (2019); NAT’L COUNTERINTELLIGENCE AND SEC. CTR., SECURITY VS. SUITABILITY, <https://www.dni.gov/index.php/nesc-how-we-work/ncsc-security-executive-agent/nesc-reform/ncsc-security-clearance-reform> (last visited Aug. 1, 2019).

<sup>688</sup> 5 C.F.R. pt. 731 (2019).

<sup>689</sup> 5 C.F.R. pt. 736 (2019).

<sup>690</sup> OPM Letter.

any delays presumably exacerbated the existing inspection backlog in the midst of the Administration’s attempt to implement new procedures to improve the speed and efficiency of the suitability, credentialing, and security clearance processes.<sup>691</sup>

OPM did not experience any substantial delays to its suitability inspection activities during the FY 2018 shutdown, and the agency stated that it did not have any historical data from the FY 2014 shutdown period regarding inspection delays.<sup>692</sup>

*Travel Activities.* OPM incurred costs associated with canceled travel during all three shutdowns.<sup>693</sup> OPM estimates that the costs associated with canceled travel during each shutdown were \$75,370 for FY 2014, \$5,619 for FY 2018, and \$170,426 for FY 2019.<sup>694</sup>

*Contracts and Acquisitions.* OPM told the Subcommittee that the FY 2019 shutdown impacted the agency’s contracting and acquisition activities.<sup>695</sup> Three contracts lapsed during the shutdown, and “over a dozen acquisition requirements” were delayed, which in turn has increased the risk of completing those requirements in FY 2019.<sup>696</sup> OPM renewed the lapsed contracts once the funding gap was resolved, and has been engaging in efforts to mitigate the increased acquisition execution risk.<sup>697</sup> OPM said it does not have access to data regarding the FY 2014 shutdown, and therefore did not provide any relevant information.<sup>698</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* OPM did not provide any information regarding the costs associated with reopening and resuming full agency operations following the shutdowns.<sup>699</sup>

*Expected Long-Term Effects.* OPM told the Subcommittee that the suitability inspections delayed during the FY 2019 shutdown may affect the total amount of inspections completed by the end of the fiscal year.<sup>700</sup> Additionally, OPM noted that the FY 2019 shutdown elevated the agency’s acquisition execution risk, but told the Subcommittee that it was attempting to mitigate that risk.<sup>701</sup>

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<sup>691</sup> Nicole Ogrysko, *ODNI, OPM planning series of sweeping updates to federal personnel vetting system*, FED. NEWS NETWORK, Feb. 28, 2019, <https://federalnewsnetwork.com/workforce/2019/02/odni-opm-planning-series-of-sweeping-updates-to-federal-personnel-vetting-system/>.

<sup>692</sup> OPM Letter.

<sup>693</sup> *Id.*

<sup>694</sup> *Id.*

<sup>695</sup> *Id.*

<sup>696</sup> *Id.*

<sup>697</sup> *Id.*

<sup>698</sup> *Id.*

<sup>699</sup> *Id.*

<sup>700</sup> *Id.*

<sup>701</sup> *Id.*

## M. Small Business Administration

The U.S. Small Business Administration (“SBA”) is responsible for aiding, assisting, and protecting the interests of small businesses in order to preserve free competitive free enterprise and to maintain and strengthen the overall economy.<sup>702</sup> SBA also administers several types of programs to support small businesses, including loan guaranty and venture capital programs to enhance access to capital; programs to increase opportunities in federal contracting; direct loan programs; and management and technical assistance training to assist business formation and expansion.<sup>703</sup>

Government shutdowns disrupt operations throughout SBA, and in turn affect the agency’s programs and services.<sup>704</sup> The SBA was affected by all three relevant shutdowns. However, SBA told the Subcommittee that “[o]ther than our documented Lapse Plan for 2013...agency records for the [FY 2014] furlough were incomplete.”<sup>705</sup> Therefore, the information below does not include information about the FY 2014 shutdown.

### Summary of Estimated Cost to Taxpayers<sup>706</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	Not provided <sup>707</sup>	Not provided	Not provided	Unknown
FY 2018	Not provided <sup>708</sup>	\$230,184	Not provided	\$230,184
FY 2019	\$19,562,698	\$6,045,100	\$4,494	\$25,612,292
<b>TOTAL COST</b>				<b>\$25,842,476</b>

<sup>702</sup> SMALL BUS. ADMIN., ORGANIZATION, <https://www.sba.gov/about-sba/organization> (last visited Aug. 1, 2019).

<sup>703</sup> CONG. RESEARCH. SERV., RL33243, SMALL BUSINESS ADMINISTRATION: A PRIMER ON PROGRAMS AND FUNDING 1–2 (Mar. 26, 2019), <https://crsreports.congress.gov/product/pdf/RL/RL33243>.

<sup>704</sup> Letter from Linda McMahon, Adm’r, Small Bus. Admin., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 12, 2019) (on file with the Subcomm.) [hereinafter referred to as “SBA Letter”].

<sup>705</sup> SBA Letter.

<sup>706</sup> *Id.*

<sup>707</sup> Agency records for the FY 2014 furlough period were incomplete. *See* SBA Letter.

<sup>708</sup> No paychecks were missed during the FY 2018 shutdown, so there is no way to determine back pay paid to furloughed employees. *See* SBA Letter.

### Employee Furloughs<sup>709</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>710</sup>
FY 2014	2,187 <sup>711</sup>	24,000 <sup>712</sup>	92 Years
FY 2018	1,954	3,098	11.9 Years
FY 2019	1,878	65,370	250.5 Years

### Selected Shutdown Impacts

- Small business owners across the country are left without a crucial source of capital during shutdowns because SBA halts almost all of its loan programs, including those for working capital and for commercial properties.<sup>713</sup>

### Overview of Agency Operations and Funding

SBA has three main spending categories: (1) disaster assistance; (2) business loan credit subsidies; and (3) “other programs,” a category that includes salaries and expenses, business loan administration, and entrepreneurial development programs.<sup>714</sup> The SBA operates two Disaster Field Operations Centers, six Loan and Guaranty Centers, and numerous other department offices.<sup>715</sup>

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<sup>709</sup> *Id.*

<sup>710</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB CIRCULAR NO. A-11 § 85 (June 2019); OMB CIRCULAR NO. A-11 § 85 (July 2017); OMB CIRCULAR NO. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>711</sup> This number is an estimate provided by the SBA based on its FY 2014 Lapse Plan. See SBA Letter.

<sup>712</sup> The SBA told the Subcommittee that agency records from the FY 2014 furlough period were incomplete, and did not include the estimated number of combined furlough days in its response. The Subcommittee identified this number in a report issued by OMB in November 2013 summarizing the impacts and costs of the FY 2014 shutdown. See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 26 (Nov. 2013).

<sup>713</sup> SBA Letter; Guadalupe Gonzalez, *Need a Small-Business Loan? Why the Small Business Administration Can’t Help*, INC., Jan. 14, 2019, <https://www.inc.com/guadalupe-gonzalez/government-shutdown-small-business-administration-loans-sba.html>.

<sup>714</sup> CONG. RESEARCH. SERV., RL43846, SMALL BUSINESS ADMINISTRATION (SBA) FUNDING: OVERVIEW AND RECENT TRENDS 1 (Apr. 3, 2019), <https://crsreports.congress.gov/product/pdf/R/R43846>.

<sup>715</sup> SMALL BUS. ADMIN., SBA LOCATIONS, <https://www.sba.gov/about-sba/sba-locations>, (last visited Aug. 1, 2019).

SBA's operations are funded through the annual appropriations process.<sup>716</sup> SBA appropriation language permits the agency to use funds until they are expended; there is no year-end deadline.<sup>717</sup> Overall, SBA's appropriations change significantly from year to year due to a variation in need for disaster assistance funds arising from the impact of major hurricanes.<sup>718</sup> SBA's appropriations for business credit subsidies and its other programs have also varied from year to year due to changing economic conditions.<sup>719</sup> Congress has typically appropriated more money for such programs during and immediately following recessions, due to increased need among the small business community.<sup>720</sup>

All three relevant shutdowns impacted the SBA and required the agency to furlough employees, causing disruption to important support programs for small businesses.<sup>721</sup>

#### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, SBA furloughed an estimated 2,187 employees.<sup>722</sup> SBA told the Subcommittee that agency records for the FY 2014 furlough period were incomplete, and therefore was unable to provide information about the number of combined furlough days or the amount of back pay for those furloughed workers.<sup>723</sup> During the FY 2018 shutdown, SBA furloughed 1,954 employees for a combined total of 3,098 days.<sup>724</sup> SBA was unable to provide any information on back pay for those furloughed workers, because no paychecks were missed during the short funding lapse.<sup>725</sup> During the FY 2019 shutdown, SBA furloughed 1,878 employees for a combined total of 65,730 days.<sup>726</sup> SBA paid those furloughed workers approximately \$19,562,698 in back pay once the shutdown ended.<sup>727</sup>

*Federal Contractors.* SBA did not issue any stop-work orders to contractors during the FY 2018 shutdown because the funding lapse lasted only three days.<sup>728</sup> During the FY 2019 shutdown, SBA issued stop-work orders to 138 contractors,

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<sup>716</sup> CONG. RESEARCH. SERV., RL43846, SMALL BUSINESS ADMINISTRATION (SBA) FUNDING: OVERVIEW AND RECENT TRENDS 1 (Apr. 3, 2019), <https://crsreports.congress.gov/product/pdf/R/R43846>.

<sup>717</sup> *Id.*

<sup>718</sup> *Id.*

<sup>719</sup> *Id.*

<sup>720</sup> *Id.*

<sup>721</sup> SBA Letter.

<sup>722</sup> *Id.*

<sup>723</sup> *Id.*

<sup>724</sup> *Id.*

<sup>725</sup> *Id.*

<sup>726</sup> *Id.*

<sup>727</sup> *Id.*

<sup>728</sup> *Id.*

affecting 253 contractor personnel.<sup>729</sup> SBA did not provide any additional information about how the shutdown impacted contract employees.<sup>730</sup>

*Shutdown Preparation Activities.* SBA estimated that the costs associated with activities related to preparing and planning for the shutdowns were \$205,184 for FY 2018, and \$925,000 for FY 2019.<sup>731</sup>

*Monitoring the Shutdowns.* SBA estimated that the costs associated with activities related to monitoring the shutdown were \$25,184 for FY 2018 and \$1,520,000 for FY 2019.<sup>732</sup>

### **Disruptions to Agency Operations**

Shutdowns generally affect the majority of SBA's programs and services.<sup>733</sup> SBA only provided the Subcommittee with information specific to the FY 2019 shutdown, but the Subcommittee was able to identify additional information about the impacts of the FY 2014 shutdown in various congressional and executive branch publications.

*Loan Programs.* SBA suspended most of its loan programs—except those related to disaster assistance—during the FY 2014 and FY 2019 shutdowns.<sup>734</sup> During the FY 2014 shutdown, about 700 small businesses applied for roughly \$140 million in new loans; none of these loans could be approved until the shutdown ended.<sup>735</sup> SBA told the Subcommittee that during the FY 2019 shutdown, it was unable to approve loans or accept new loan applications for a total of 20 full business lending days.<sup>736</sup> Once federal funding was restored and the SBA reopened, agency staff resumed loan review and processing, and were able to get “back to pre-lapse levels” after four weeks.<sup>737</sup> During those four weeks after the shutdown, SBA was able to approve over 7,900 loans for a total of \$3.7 billion.<sup>738</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* SBA told the Subcommittee that the costs associated with reopening and restarting normal agency activities were “negligible” for the FY 2018 shutdown due to the short duration of the funding lapse, and estimates that those costs for the FY 2019

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<sup>729</sup> *Id.*

<sup>730</sup> *Id.*

<sup>731</sup> *Id.*

<sup>732</sup> *Id.*

<sup>733</sup> *Id.*

<sup>734</sup> SBA Letter; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 3 (Nov. 2013).

<sup>735</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 10 (Nov. 2013).

<sup>736</sup> SBA Letter.

<sup>737</sup> *Id.*

<sup>738</sup> *Id.*

shutdown were \$3,600,000.<sup>739</sup> As noted above, once the SBA resumed operations after the FY 2019 shutdown, the agency’s loan review and processing queue was back to pre-lapse levels after four weeks.<sup>740</sup>

*Expected Long-Term Effects.* The agency told the Subcommittee it did not experience any long-term effects as a result of the FY 2019 shutdown, but noted that its Human Capital office continues to “closely review any potential long-term effects on recruitment and the ability to attract top talent to the agency.”<sup>741</sup>

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<sup>739</sup> SBA calculated this cost by using “the number of employees involved, the hours involved, and . . . an hourly rate for their time spent working on” activities to reopen and resume operations. *Id.*

<sup>740</sup> In the four week timeframe it took the SBA to restore normal loan review and processing levels, SBA approved 7,900 loans for a total of \$3.7 billion. *Id.*

<sup>741</sup> *Id.*

## N. Department of Labor

The Department of Labor (“DOL”) is responsible for enforcing more than 180 federal labor laws that apply to businesses, job applicants, workers, retirees, contractors, and grantees.<sup>742</sup> DOL’s operations were affected by the FY 2014 and FY 2018 shutdowns. The agency was fully funded during the FY 2019 partial government shutdown, and therefore did not have to implement its contingency plan or furlough employees.<sup>743</sup> However, DOL did incur some administrative costs as a result of the FY 2019 shutdown related to planning for and monitoring the shutdown.<sup>744</sup>

### Summary of Estimated Cost to Taxpayers<sup>745</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$79,622,000	\$11,378,000	Not provided	\$91,000,000
FY 2018	\$7,238,000	\$1,780,000	Not provided	\$9,018,000
FY 2019	N/A	\$647,000	Not provided	\$647,000
<b>TOTAL COST</b>				<b>\$100,665,000</b>

### Employee Furloughs<sup>746</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>747</sup>
FY 2014	15,865	174,515	668.6 Years
FY 2018	14,465	14,465	55.6 Years
FY 2019	0	0	0 Years

<sup>742</sup> DEP’T OF LABOR, ABOUT US, SUMMARY OF THE MAJOR LAWS OF THE DEP’T OF LABOR, <https://www.dol.gov/general/aboutdol/majorlaws> (last visited Aug. 1, 2019).

<sup>743</sup> Letter from Joe Wheeler, Acting Assistant Sec’y, Dep’t of Labor, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (May 2, 2019) (on file with the Subcomm.) [hereinafter referred to as “DOL Letter”].

<sup>744</sup> DOL Letter.

<sup>745</sup> *Id.*

<sup>746</sup> *Id.*

<sup>747</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB CIRCULAR NO. A-11 § 85 (June 2019); OMB CIRCULAR NO. A-11 § 85 (July 2017); OMB CIRCULAR NO. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

### **Selected Shutdown Impacts**

- Inspections to ensure safe working conditions and prevent workplace fatalities and injuries are suspended. During shutdowns, DOL’s Occupational Safety and Health Administration (“OSHA”) is only able to respond to workplace fatalities and other emergencies, and is unable to conduct its regular inspection activities.<sup>748</sup>
- Some small businesses are unable to seek guidance on how to keep their workplaces safe. OSHA’s Consultation Program—through which states provide free on-site safety and health assistance to small businesses—is impacted by shutdowns. During the FY 2014 shutdown, one third of state consultation programs stopped conducting employer visits, impacting almost 500 small businesses.<sup>749</sup>
- Businesses were deprived of important information about the state of the economy.<sup>750</sup> Depending on the timing and duration of a government shutdown, the Bureau of Labor Statistics may be unable to release important reports, including the monthly jobs report and reports on the Producer Price Index, the Consumer Price Index, Real Earnings, and the U.S. Import and Export Price Indexes.<sup>751</sup>

### **Overview of Agency Operations and Funding**

DOL is comprised of a number of offices and agencies.<sup>752</sup> DOL’s 26 agencies are organized into major program areas, including labor statistics, workplace safety and health, employment training, disability resources, equal employment opportunity, and workers’ compensation.<sup>753</sup>

Most of DOL’s operations are generally funded through an annual fiscal year appropriation.<sup>754</sup> All three of the relevant shutdowns caused DOL to incur some

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<sup>748</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN (Nov. 2013).

<sup>749</sup> *Id.*

<sup>750</sup> *Id.* at 12; BUREAU OF LABOR STATISTICS, DOES THE LAPSE OF APPROPRIATION FOR SOME FEDERAL AGENCIES IMPACT BLS DATA OR RELEASE DATES? (last updated Feb. 4, 2019), <https://www.bls.gov/bls/does-the-lapse-of-appropriation-for-some-federal-agencies-impact-bls-data-or-release-dates.htm>.

<sup>751</sup> *Id.*

<sup>752</sup> DEP’T OF LABOR, Agencies and Programs, <https://www.dol.gov/general/dol-agencies> (last visited Aug. 1, 2019); 1 West’s Fed. Admin. Prac. U.S. Dep’t of Labor § 310, Westlaw (database updated July 2018).

<sup>753</sup> DEP’T OF LABOR, ORGANIZATIONAL CHART, <https://www.dol.gov/general/aboutdol/orgchart> (last visited Aug. 1, 2019).

<sup>754</sup> See generally DEP’T OF LABOR, FY 2019 BUDGET IN BRIEF (2018), <https://www.dol.gov/sites/dolgov/files/general/budget/2019/FY2019BIB.pdf>.

expenses related to planning for a potential lapse in funding.<sup>755</sup> During the FY 2014 and FY 2018 shutdowns, DOL had to implement shutdown procedures and furlough employees.<sup>756</sup> Although DOL incurred some planning expenses in response to the FY 2019 shutdown, the agency did not have to shut down because its operations were already funded.<sup>757</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, DOL furloughed 15,865 employees for a combined total of 174,515 days.<sup>758</sup> DOL paid a total of \$79,622,000 in back pay to those furloughed employees once the shutdown ended.<sup>759</sup>

During the FY 2018 shutdown, DOL furloughed 14,465 employees for a combined total of 14,465 days.<sup>760</sup> DOL paid a total of \$7,238,000 in back pay to those furloughed employees once the shutdown ended.<sup>761</sup>

*Federal Contractors.* DOL told the Subcommittee that it was unable to estimate the number of contractor employees affected by the FY 2014 and FY 2018 shutdowns because the Department “does not have a direct relationship with staff employees by firms that have been awarded contracts.”<sup>762</sup>

*Shutdown Preparation Activities.* DOL said that the total cost of preparing for the shutdowns was \$8.534 million in FY 2014; \$1.618 million in FY 2018; and \$647,000 in FY 2019.<sup>763</sup>

*Monitoring the Shutdowns.* DOL said that the total cost associated with monitoring the relevant shutdowns was \$1.564 million in FY 2014 and \$162,000 in FY 2018.<sup>764</sup>

### **Disruptions to Agency Operations**

DOL told the Subcommittee that it did not “conduct any comprehensive assessment of the possible unique disruptions to component agency operations or similar effects resulting” from the relevant shutdowns.<sup>765</sup> Subcommittee staff were

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<sup>755</sup> DOL Letter.

<sup>756</sup> *Id.*

<sup>757</sup> DOL had begun preparing for a potential lapse in funding for FY2019 and incurred some expenses because the Department’s full-year appropriation for FY2019 was not enacted until September 28, 2019. *Id.*

<sup>758</sup> *Id.*

<sup>759</sup> *Id.*

<sup>760</sup> *Id.*

<sup>761</sup> *Id.*

<sup>762</sup> *Id.*

<sup>763</sup> *Id.*

<sup>764</sup> *Id.*

<sup>765</sup> *Id.*

able to identify OMB materials about the FY 2014 shutdown that provide some specific impacts and costs related to DOL operations.<sup>766</sup>

DOL did tell the Subcommittee that the FY 2014 shutdown resulted in “some one-off administrative burdens”; delayed inspections, investigations and departmental certifications; canceled training opportunities; and postponed or canceled releases of various economic data.<sup>767</sup> For example, officials from DOL’s Office of Occupational Safety and Health Administration “said that all inspections (of workplace environments in the private and public sectors) decreased in 2013 partly due to the federal government shutdown that year.”<sup>768</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* DOL estimated that reopening and restarting normal operations after the FY 2014 shutdown cost the Department a total of \$1,280,000.<sup>769</sup> DOL told the Subcommittee that it did not incur any expenses in reopening and restarting full agency operations after the FY 2018 shutdown.<sup>770</sup>

*Expected Long-Term Effects.* The Department told the Subcommittee that it does not expect to experience any long-term effects as a result of the lapses in funding.<sup>771</sup>

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<sup>766</sup> See, e.g., OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN (Nov. 2013).

<sup>767</sup> DOL Letter.

<sup>768</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-18-12, WORKPLACE SAFETY AND HEALTH: BETTER OUTREACH, COLLABORATION, AND INFORMATION NEEDED TO HELP PROTECT WORKERS AT MEAT AND POULTRY PLANTS 13 (Nov. 2017), <https://www.gao.gov/assets/690/688294.pdf>.

<sup>769</sup> DOL Letter.

<sup>770</sup> *Id.*

<sup>771</sup> *Id.*

## O. Department of Housing and Urban Development

The U.S. Department of Housing and Urban Development (“HUD”) is responsible for overseeing federal programs involving housing needs, fair housing opportunities, and efforts to improve communities around the country.<sup>772</sup> HUD operates mortgage-support programs, makes direct loans for housing projects, and distributes federal grants to state and local communities for community development activities.<sup>773</sup> HUD generally experiences significant disruptions to its operations during shutdowns, which impede several key HUD activities, including the financing of mortgage insurance programs, certain oversight and investigation programs, and grant programs for community development.<sup>774</sup>

### Summary of Estimated Cost to Taxpayers<sup>775</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$45,632,985	Not provided	Not provided	\$45,632,985
FY 2018	\$7,597,471	Not provided	Not provided	\$7,597,471
FY 2019	\$93,573,164	Not provided	\$ 80,715	\$93,653,879
<b>TOTAL COST</b>				<b>\$146,884,335</b>

<sup>772</sup> See generally DEPT OF HOUSING AND URBAN DEV., HUD STRATEGIC PLAN 2018–2022 (May 2019), <https://www.hud.gov/sites/dfiles/SPM/documents/HUDSTRATEGICPLAN2018-2022.pdf>.

<sup>773</sup> 1 West's Fed. Admin. Prac. § 190, *Dep't of Housing and Urban Development* (updated July 2018).

<sup>774</sup> Letter from Len Wolfson, Assistant Sec'y for Cong. and Intergovernmental Relations, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 3, 2019) (on file with the Subcomm.) [hereinafter referred to as “HUD Letter”].

<sup>775</sup> HUD Letter; E-mail correspondence between Subcomm. Staff and HUD Cong. and Intergovernmental Affairs Staff (May 9, 2019) (on file with the Subcomm.).

### Employee Furloughs<sup>776</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>777</sup>
FY 2014	7,564	83,204	318.8 Years
FY 2018	6,472	12,944	49.8 Years
FY 2019	5,829	122,409	469 Years

### Selected Shutdown Impacts

- During shutdowns, HUD is unable to distribute grant award money to nonprofits, states, and local governments. Grant programs affected include programs for homeless individuals, veterans whose homes need modification, and programs providing mortgage products specifically for American Indian and Alaska Native families.<sup>778</sup>
- HUD was unable to perform many incident response and inspection activities, including those related to reports of lead safety violations.<sup>779</sup>
- During shutdowns, contracts are often delayed, resulting in uncertainty within communities. For example, FHA had to delay the ongoing daily renewal of Multifamily Housing rental contracts, which ensure the consistent availability of rental housing and counseling for communities.<sup>780</sup>

### Overview of Agency Operations and Funding

HUD is the primary federal agency responsible for administering programs involving the housing needs throughout the United States.<sup>781</sup> HUD's seven program areas include: (1) Federal Housing Administration; (2) Community Planning and Development; (3) Policy Development and Research; (4) Lead Hazard Control and Healthy Homes; (5) Fair Housing and Equal Opportunity; (6) Public

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<sup>776</sup> *Id.*

<sup>777</sup> On an annual basis, OMB calculates the number of employees' compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>778</sup> HUD Letter.

<sup>779</sup> *Id.*

<sup>780</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 3, 10 (Nov. 2013).

<sup>781</sup> 1 West's Fed. Admin. Prac. § 190, *Dep't of Housing and Urban Development* (updated July 2018).

and Indian Housing; and (7) the Government National Mortgage Association (“Ginnie Mae”).<sup>782</sup>

HUD’s regular operations are funded through discretionary regular annual appropriations, offset by rescissions and fees.<sup>783</sup> In addition, Congress may provide emergency appropriations to HUD in response to national emergencies.<sup>784</sup> In 2013, for example, HUD received \$16 billion under an emergency appropriations act to assist in the Hurricane Sandy recovery.<sup>785</sup> During all three of the government shutdowns, HUD experienced a lapse in appropriations and initiated shutdown procedures with only “excepted” and “intermittent” federal employees continuing operations.<sup>786</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, HUD furloughed 7,564 employees for a combined total of 83,204 days.<sup>787</sup> HUD paid approximately \$45,632,985 in back pay to those employees once the shutdown ended.<sup>788</sup>

During the FY 2018 shutdown, HUD furloughed 6,472 employees for a combined total of 12,944 days.<sup>789</sup> HUD paid approximately \$7,597,471 in back pay to those employees once the shutdown ended.<sup>790</sup>

During the FY 2019 shutdown, HUD furloughed 5,829 employees for a combined total of 122,409 days.<sup>791</sup> HUD paid approximately \$93,573,164 in back pay to those employees once the shutdown ended.<sup>792</sup>

*Federal Contractors.* HUD told the Subcommittee that it does not have information about the impact of shutdowns on its contractors.<sup>793</sup> HUD stated

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<sup>782</sup> DEP’T OF HOUSING AND URBAN DEV., PROGRAMS OF HUD: MAJOR MORTGAGE, GRANT, ASSISTANCE, AND REGULATORY PROGRAMS (2018), <https://www.hud.gov/sites/dfiles/Main/documents/HUDPrograms2018.pdf>.

<sup>783</sup> In most years, rescissions of unspent prior-year funding and certain fees paid by HUD partners or clients are available to offset the cost of HUD’s regular annual appropriation budget. See Cong. Research Serv., R42542, DEP’T OF HOUSING AND URBAN DEV. (HUD): FUNDING TRENDS SINCE FY 2002 2 (2016).

<sup>784</sup> *Id.*, at 4.

<sup>785</sup> DEP’T OF HOUSING AND URBAN DEV., SUMMARY OF PERFORMANCE AND FINANCIAL INFORMATION FISCAL YEAR 2013 9 (2013), <https://www.hud.gov/sites/documents/SR2013.PDF>.

<sup>786</sup> *Id.* at 1–3.

<sup>787</sup> HUD Letter.

<sup>788</sup> Email correspondence between Subcomm. Staff and HUD Cong. and Intergovernmental Affairs Staff (May 9, 2019) (on file with the Subcomm.).

<sup>789</sup> HUD Letter.

<sup>790</sup> Email correspondence between Subcomm. Staff and HUD Cong. and Intergovernmental Affairs Staff (May 9, 2019) (on file with the Subcomm.).

<sup>791</sup> HUD Letter.

<sup>792</sup> Email correspondence between Subcomm. Staff and HUD Cong. and Intergovernmental Affairs Staff (May 9, 2019) (on file with the Subcomm.).

<sup>793</sup> HUD Letter.

unless a contract was deemed to support excepted activities, the agency generally issues stop-work orders.<sup>794</sup> For example, during the FY 2019 shutdown, HUD issued a stop-work order for 49 of its contracts and a partial stop-work order for eight contracts.<sup>795</sup>

*Shutdown Preparation Activities.* HUD told the Subcommittee that while the agency may have incurred costs in preparing a contingency plan for the FY 2014 shutdown, it did not have information about the costs, and noted that such preparation activities subsequently became part of HUD's normal operations and did not result in additional costs for the FY 2018 or FY 2019 shutdowns.<sup>796</sup>

*Monitoring the Shutdowns.* During all three of the shutdowns, certain employees had to monitor activities and impacts throughout all of HUD's offices, resulting in associated personnel costs.<sup>797</sup> However, HUD did not provide any cost estimates associated with these activities.<sup>798</sup> HUD did note that it believed personnel costs associated with shutdown monitoring activities were likely the highest during the FY 2019 shutdown and the lowest during the FY 2018 shutdown.<sup>799</sup>

### **Disruptions to Agency Operations**

*Grant Programs.* All three shutdowns delayed the announcement and issuance of federal grant awards to nonprofits, States, and local governments.<sup>800</sup> Specifically, HUD stated that it experienced significant disruptions within the following programs: the Continuum of Care Program (which provides funds to address homelessness issues in communities); the Veterans Housing Rehabilitation Program (which provides funds to modify or rehabilitate the homes of veterans); the Jobs Plus Initiative Program (which provides funds to grant recipients that offer employment-related services); and the Section 184 Indian Home Loan Guarantee Program (which provides mortgage products specifically for American Indian and Alaska Native families).<sup>801</sup>

In addition, where funds had already been granted, the shutdowns disrupted HUD's ability to properly oversee grantee performance.<sup>802</sup>

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<sup>794</sup> *Id.*

<sup>795</sup> *Id.*

<sup>796</sup> *Id.*

<sup>797</sup> *Id.*

<sup>798</sup> *Id.*

<sup>799</sup> *Id.*

<sup>800</sup> *Id.*

<sup>801</sup> *Id.*; DEP'T OF HOUSING AND URBAN DEV., SECTION 184 INDIAN HOME LOAN GUARANTEE PROGRAM, [https://www.hud.gov/program\\_offices/public\\_indian\\_housing/ih/homeownership/184](https://www.hud.gov/program_offices/public_indian_housing/ih/homeownership/184) (last visited Aug. 1, 2019).

<sup>802</sup> HUD Letter.

*Inspection and Reporting Activities.* Many of HUD’s inspection activities—including public housing inspections to and internal HUD OIG inspections regarding fraud and abuse—were delayed due to the government shutdowns, including HUD’s response to reports of lead safety violations.<sup>803</sup>

*Delayed Contract Renewals and Assistance Funds.* The shutdowns delayed renewal of agency contracts.<sup>804</sup> For example, FHA had to delay the ongoing daily renewal of Multifamily Housing rental contracts, which ensure rental housing and counseling for communities.<sup>805</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* HUD incurred minimal costs to resume agency operations following all three of the shutdowns, as HUD leadership involved in restarting agency operations were already excepted.<sup>806</sup> Delayed payments to HUD contractors accrued interest and resulted in additional expenses following the shutdowns. Following the FY 2019 shutdown, HUD paid an estimated \$80,715 in prompt payment interests to its contractors for late payments.<sup>807</sup>

*Expected Long-Term Effects.* HUD’s ability to operate effectively and meet its mission depends largely on its relationships with industry partners and grantee communities.<sup>808</sup> HUD told the Subcommittee that the FY 2019 shutdown specifically highlighted the importance of these relationships to the Department’s operations.<sup>809</sup>

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<sup>803</sup> *Id.*

<sup>804</sup> *Id.*

<sup>805</sup> *Id.*

<sup>806</sup> *Id.*

<sup>807</sup> *Id.*

<sup>808</sup> *Id.*

<sup>809</sup> *Id.*

## P. Smithsonian Institution

The Smithsonian Institution (“SI” or the “Smithsonian”) is a complex of museums, education, research, and revenue-generating entities primarily located in and around the District of Columbia, with additional facilities and operating programs across the United States and world.<sup>810</sup> SI is considered a government “establishment,” but is organizationally separate and distinct from the legislative, executive, and judicial branches.<sup>811</sup> Government shutdowns have widespread negative impacts on SI, and not only result in museum closings and lost revenue, but also cause significant delays to critical research activities and other programs that are key to furthering SI’s missions.<sup>812</sup>

### Summary of Estimated Cost to Taxpayers<sup>813</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$15,677,000	\$1,916,100	\$3,480,600	\$21,073,700
FY 2018	\$0	\$123,800	\$0	\$123,800
FY 2019	\$25,745,000	\$2,300,300	\$4,590,950	\$32,636,250
<b>TOTAL COST</b>				<b>\$53,833,750</b>

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<sup>810</sup> CONG. RESEARCH SERV., R44370, SMITHSONIAN INSTITUTION: BACKGROUND AND ISSUES FOR CONGRESS 1–2 (Jan. 4, 2017), <https://crsreports.congress.gov/product/pdf/R/R44370>.

<sup>811</sup> *Id.*

<sup>812</sup> See generally, Letter from David Skorton, Sec’y, Smithsonian Inst., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Mar. 22, 2019) (on file with the Subcomm.) [hereinafter referred to as “SI Letter”].

<sup>813</sup> SI Letter.

### Employee Furloughs<sup>814</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>815</sup>
FY 2014	3,514	42,168	161.6 Years
FY 2018	0	0	0 Years
FY 2019	3,431	61,758	236.6 Years

### Selected Shutdown Impacts

- Millions of visitors were unable to enter Smithsonian museums, resulting in the cancellation of numerous planned public events and in lost revenues in museum stores, cafes, theaters, and the cancellation of special private events.<sup>816</sup>
- Research trips, expeditions, and conferences were canceled. Fellows, associates, and external researchers were unable to access research facilities or continue to work on their projects.<sup>817</sup>
- Delays in completing preventive maintenance projects significantly impacted the maintenance backlog, causing infrastructure issues to worsen.<sup>818</sup>
- Critical periods of animal breeding were missed, as were funding opportunities, seasonally based and cyclic studies, and field sessions. In some cases, these missed windows can cause delays in basic research of more than a year.<sup>819</sup>
- Invasive species program activities are negatively affected. The National Ballast Information Clearinghouse, which collects, analyzes, and interprets

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<sup>814</sup> *Id.*

<sup>815</sup> On an annual basis, OMB calculates the number of employees' compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>816</sup> SI Letter.

<sup>817</sup> *Id.*

<sup>818</sup> *Id.*

<sup>819</sup> *Id.*

data on ballast water management practices of commercial ships operating in U.S. waters, operates in a limited capacity during shutdowns, as staff do not have access to the Smithsonian Environmental Research Center and have to monitor data from home.<sup>820</sup>

### **Overview of Department Operations and Funding**

The Smithsonian's activities are overseen by a Board of Regents, which is composed of the Vice President of the United States, Chief Justice of the United States, three Members of the Senate, three Members of the House of Representatives, and nine other citizen Regents who are not members of Congress.<sup>821</sup> The Board of Regents is authorized by Congress to carry out a number of activities, and to oversee certain SI entities established or authorized by Congress.<sup>822</sup> The Board of Regents appoints the Secretary of the Smithsonian, who, along with his staff, oversees the day-to-day operations of SI and some related entities.<sup>823</sup>

The Smithsonian has multiple funding streams—congressional appropriations, and proceeds received through grants, gifts, bequests, commercial revenue-generating activities, and investments—which SI refers to as “trust funds.”<sup>824</sup> Congress provides SI with an annual appropriation which typically comprises approximately 60 percent of SI’s annual expenditures from year to year, and also oversees SI activities.<sup>825</sup> In addition to carrying out authorities granted by Congress, SI acts pursuant to its role as a trustee of bequests and gifts given by outside groups to create additional entities that further SI missions.<sup>826</sup>

The FY 2014 and FY 2019 shutdowns had a negative impact across all of the Smithsonian’s museums and operations, with “disappointed visitors, furloughed staff, disrupted programs..., and lost revenue that can never be recovered.”<sup>827</sup> During the FY 2018 shutdown, which occurred over a weekend, SI was able to remain fully operational and did not have to furlough any employees due to the availability of prior-year funding balances.<sup>828</sup>

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<sup>820</sup> *Id.*; SMITHSONIAN ENVIRONMENTAL RESEARCH CENTER, NATIONAL BALLAST INFORMATION CLEARINGHOUSE, <https://nbic.si.edu> (last visited Aug. 20, 2019).

<sup>821</sup> CONG. RESEARCH SERV., R44370, SMITHSONIAN INSTITUTION: BACKGROUND AND ISSUES FOR CONGRESS 3 (Jan. 4, 2017), <https://crsreports.congress.gov/product/pdf/R/R44370>.

<sup>822</sup> *Id.* at 2.

<sup>823</sup> *Id.* at 3.

<sup>824</sup> *Id.* at 2.

<sup>825</sup> *Id.*

<sup>826</sup> *Id.*

<sup>827</sup> Letter from David Skorton, Sec'y, Smithsonian Inst., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Mar. 22, 2019) (on file with the Subcomm.) [hereinafter referred to as “SI Letter”].

<sup>828</sup> SI Letter.

## **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, the Smithsonian closed all museums, shut down all operations, and furloughed all non-exempted employees from October 1 through October 16, 2013.<sup>829</sup> SI furloughed 3,514 employees during this period, and paid them \$15,677,000 in back pay once the funding gap was resolved and the shutdown ended.<sup>830</sup> During the FY 2019 shutdown, SI was able to continue operations and did not furlough any employees from December 22, 2018 through January 1, 2019 by using prior-year fund balances.<sup>831</sup> But, on January 2, 2019, SI closed all museums, shut down all operations, and furloughed all non-exempted employees.<sup>832</sup> SI furloughed 3,431 employees from January 2, 2019 through January 25, 2019, and paid them \$25,745,000 in back pay once the funding gap was resolved.<sup>833</sup> “To help affected employees make ends meet during the shutdown, Smithsonian Emergency Assistance Fund provided short term loans to over 160 employees.”

*Federal Contractors.* The Smithsonian told the Subcommittee that during the FY 2019 shutdown, a total of 385 contract security guards were laid off and offered employment under other (non-Smithsonian) contracts, and that “many” of those guards were also authorized to take leave during the shutdown.<sup>834</sup> SI noted that outside contractors, such as security guards and food service workers, were not reimbursed after the shutdown, and told the Subcommittee that “some accepted permanent employment outside of the Smithsonian.”<sup>835</sup> SI stated that no federal contractors were laid off or required to use leave during the FY 2014 shutdown.<sup>836</sup>

*Shutdown Preparation Activities.* The Smithsonian estimated that the total costs for staff time spent on activities associated with preparation for all three shutdowns (including the FY 2018 shutdown during which SI did not shut down) are: \$744,800 for FY 2014; \$123,800 for FY 2018; and \$793,100 for FY 2019.<sup>837</sup>

## **Disruptions to Operations**

*Museum Visitors and Revenue.* During the FY 2014 closure period, SI estimated that one million visitors were not able to visit Smithsonian museums, resulting in the cancellation of numerous public events and in lost revenues of approximately \$3,000,000 in the museum stores, cafes, theaters, and other revenue-

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<sup>829</sup> *Id.*

<sup>830</sup> *Id.*

<sup>831</sup> *Id.*

<sup>832</sup> *Id.*

<sup>833</sup> *Id.*

<sup>834</sup> *Id.*

<sup>835</sup> *Id.*

<sup>836</sup> *Id.*

<sup>837</sup> *Id.*

producing activities. Additionally, there was \$300,000 in lost revenue from the cancellation of special events.<sup>838</sup>

During the FY 2019 shutdown period, Smithsonian museums were closed from January 2 through January 28, 2019.<sup>839</sup> Though the shutdown ended on January 25, SI was unable to reopen the museums right away; staff had to perform de-installation and installation activities as well as take down a substantial amount of holiday decorations.<sup>840</sup> SI estimated that during the closure period, 1.1 million visitors were unable to visit its museums, resulting in the cancellation of numerous public events and in lost revenues of approximately \$3,600,000 in the museum stores, cafes, theaters, and other revenue-producing activities. Additionally, SI lost \$700,000 in revenue from the cancellation of special events.<sup>841</sup>

*Museum Programming, Exhibitions, and Collections.* The FY 2019 lapse caused a number of delays to program and exhibit launches across SI, creating a domino effect of impacts and delays.<sup>842</sup> Some temporary pop-up exhibits were canceled entirely.<sup>843</sup> SI museum staff were unable to de-install exhibits or install replacement exhibits, disrupting exhibition schedules that are often planned years in advance.<sup>844</sup> SI told the Subcommittee that there were delays in object conservation, receipt of incoming loaned items, and shipping for new collections.<sup>845</sup> The shutdown also led to compressed schedules for temporary exhibitions, meaning they were open to the public for a shorter time than previously planned.<sup>846</sup>

*Maintenance.* Preventive maintenance was deferred during the FY 2014 and FY 2019 shutdowns. From a building maintenance perspective, the Smithsonian told the Subcommittee that delays in completing preventive maintenance impact buildings and equipment.<sup>847</sup> During the FY 2014 shutdown, scheduled preventive maintenance was not completed, resulting in an estimated \$180,000 in deferred maintenance costs.<sup>848</sup> During the FY 2019 shutdown, scheduled preventive maintenance was not completed in January 2019, resulting in an estimated cost of \$290,000 in deferred maintenance costs.<sup>849</sup> For example, the Smithsonian Astrophysical Observatory was unable to fix antennae and receiver cryocoolers,<sup>850</sup>

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<sup>838</sup> *Id.*

<sup>839</sup> *Id.*

<sup>840</sup> *Id.*

<sup>841</sup> *Id.*

<sup>842</sup> *Id.*

<sup>843</sup> *Id.*

<sup>844</sup> *Id.*

<sup>845</sup> *Id.*

<sup>846</sup> *Id.*

<sup>847</sup> *Id.*

<sup>848</sup> *Id.*

<sup>849</sup> *Id.*

<sup>850</sup> Cryocoolers are thermal insulators designed to maintain cryogenic temperatures by thermally isolating them from room temperature. The study and use of cryocooler technology by the U.S.

which resulted in further delays and difficulties following the resumption of normal operations.<sup>851</sup> Additionally, the Smithsonian was unable to award any new contracts for maintenance projects in January 2019, which may affect the execution of future projects.<sup>852</sup> SI told the Subcommittee that these delays “could have a long-term impact on the functioning and operation of many building systems.”<sup>853</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Operations.* The Smithsonian told the Subcommittee that the estimated total costs associated with reopening the Institution and restarting normal operations after each shutdown were \$781,100 for FY 2014, and \$876,000 for FY 2019.<sup>854</sup>

*Long-Term Effects.* Many of the impacts described above clearly have long-term implications for the Smithsonian Institution. In its response to the Subcommittee, SI highlighted several effects that it believes are likely to have the largest long-term impact on the overall mission of the Institution.

*Employee Morale.* SI told the Subcommittee that employee morale is “greatly impacted” by shutdowns—particularly the long-term shutdowns such as those in FY 2018 and FY 2019—because of the anxiety and uncertainty associated with employees not knowing when they will get paid, and concerns about the security of their jobs.<sup>855</sup>

*Contractors.* In its response to the Subcommittee, SI highlighted the fact that its outside contractors, such as security guards and food service workers, were not reimbursed during the shutdown.<sup>856</sup> During discussions with Subcommittee staff, SI staff explained that long-term shutdowns affect the Institution’s ability to minimize contractor staff turnover. For example, during the FY 2019 shutdown, some contractors accepted permanent employment outside of the Smithsonian.<sup>857</sup>

*Recruiting and Hiring.* The Smithsonian told the Subcommittee that shutdowns have had negative impacts on its recruiting and hiring efforts as a result

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government has many important applications, including atmospheric studies of pollution; military missile guidance and tactical operations; satellite-based surveillance; as well as various medical, energy, and agricultural uses. *Cryocoolers*, CRYOGENIC SOC’Y OF AMERICA, Apr. 13, 2010, [https://cryogenicsociety.org/resources/cryo\\_central/cryocoolers/](https://cryogenicsociety.org/resources/cryo_central/cryocoolers/).

<sup>851</sup> SI Letter.

<sup>852</sup> *Id.*

<sup>853</sup> *Id.*

<sup>854</sup> *Id.*

<sup>855</sup> *Id.*

<sup>856</sup> *Id.*

<sup>857</sup> *Id.* The Smithsonian is still assessing how many contractors left for other positions, but one museum, the National Museum of Natural History, estimates that they may have lost as many as 50 people. *See id.*

of delayed hiring as well as lack of morale and uncertainty about job security.<sup>858</sup> Additionally, SI had to cancel internships.

*Museum Visitors.* SI noted that from a visitor's perspective, the lost opportunity to visit some of the nation's most iconic museums and see the priceless collections should not be underestimated.<sup>859</sup>

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<sup>858</sup> *Id.*

<sup>859</sup> *Id.*

## **Q. Department of Justice**

The U.S. Department of Justice (“DOJ”) enforces federal criminal and civil laws, including antitrust, civil rights, environmental, and tax laws. DOJ, along with the judicial branch, operates the federal criminal justice system.<sup>860</sup> The Department works with its internal components such as the FBI, DEA, and ATF to investigate terrorism, organized and violent crime, illegal drugs, and gun and explosives violations.<sup>861</sup>

The Department’s response to the Subcommittee stated that the Department does not capture most of the information that the Subcommittee requested.<sup>862</sup> For example, the Department was unable to provide, for all three relevant shutdowns, information regarding the number of employees furloughed, the amount of combined furlough days, or the amount of back pay paid to furloughed employees.<sup>863</sup> A significant amount of the Department’s mission concerns activities which are excepted from any shutdown, and nearly 85% of the Department’s employees continued to perform their duties.<sup>864</sup> The Department told the Subcommittee that this makes it difficult to quantify the costs associated with shutdowns.<sup>865</sup> To the extent possible, the Subcommittee has used DOJ’s Contingency Plans from the relevant years to provide estimates for the below information.

### **Summary of Estimated Cost to Taxpayers<sup>866</sup>**

<b>Shutdown Period</b>	<b>Back Pay for Furloughed Employees</b>	<b>Administrative Costs</b>	<b>Misc.</b>	<b>Total</b>
FY 2014	Not provided	Not provided	Not provided	Unknown
FY 2018	Not provided	Not provided	Not provided	Unknown
FY 2019	Not provided	Not provided	Not provided	Unknown
<b>TOTAL COST</b>				<b>Unknown</b>

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<sup>860</sup> CONG. RESEARCH SERV., R44424, FY2017 APPROPRIATIONS FOR THE DEP’T OF JUSTICE 1–2 (May 30, 2017), <https://crsreports.congress.gov/product/pdf/R/R44424>.

<sup>861</sup> *Id.*

<sup>862</sup> Letter from Stephen Boyd, Assistant Att’y Gen., Dep’t of Justice, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 11, 2019) (on file with the Subcomm.) [hereinafter referred to as “DOJ Letter”].

<sup>863</sup> *Id.*

<sup>864</sup> E-mail from Dep’t of Justice Office of Leg. Affairs to Subcomm. Staff (Sept. 5, 2019) (on file with the Subcomm.)

<sup>865</sup> *Id.*

<sup>866</sup> DOJ Letter.

### Employee Furloughs<sup>867</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>868</sup>
FY 2014	Not provided	200,000 <sup>869</sup>	766.3 Years
FY 2018	Not provided	Not provided	Unknown
FY 2019	Not provided	Not provided	Unknown

### Selected Shutdown Impacts

- Approximately 60,000 hearings for non-detained aliens administered by the Executive Office for Immigration Review scheduled to take place during the FY 2019 lapse were canceled.<sup>870</sup>
- U.S. Attorneys' Offices around the country experienced delays or disruptions of important investigative activities.<sup>871</sup>

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<sup>867</sup> *Id.*

<sup>868</sup> On an annual basis, OMB calculates the number of employees' compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>869</sup> DOJ did not provide any information related to employee furloughs. The Subcommittee identified this number in a report issued by OMB in November 2013 summarizing the impacts and costs of the FY 2014 shutdown. See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 26 (Nov. 2013).

<sup>870</sup>E-Mail Correspondence between Subcomm. Staff and DOJ Office of Leg. Affairs (Apr. 29, 2019) (on file with the Subcomm.).

<sup>871</sup> *Federal cases in northern Ohio put on hold during shutdown*, ASSOCIATED PRESS, Jan. 5, 2019, <https://www.wkyc.com/article/news/local/federal-cases-in-northern-ohio-put-on-hold-during-shutdown/95-db6c49fa-bb7c-4d06-b9b0-5b0e7fdecae7> (stating that roughly 24 civil attorneys in the U.S. Attorney's office in Cleveland were placed on furlough and that, because of the shutdown, the chief judge for the Northern District of Ohio issued an order to stay all civil cases involving the federal government); *Priscilla DeGregory, Manhattan federal court suspends civil cases until shutdown ends*, N.Y. POST, Dec. 27, 2018, <https://nypost.com/2018/12/27/manhattan-federal-court-suspends-civil-cases-until-shutdown-ends/> (stating that a Manhattan federal judge, at the request of the Chief US Attorney of the Civil Division for S.D.N.Y, issued an order suspending all civil cases involving the Manhattan US Attorney's office—other than civil forfeiture cases—until the end of the FY 2019 shutdown); *Oregon US attorney's office seeks case delays in shutdown*, ASSOCIATED PRESS, Jan. 4, 2019, <https://www.apnews.com/86a6df95b6554f0d8641a6fe1b82eef6> (stating that DOJ has sought to delay some civil cases in Oregon due to the government shutdown); *U.S. attorney's civil cases stayed because of shutdown*, PITTSBURGH POST-GAZETTE, Dec. 26, 2018, <https://www.post-gazette.com/local/city/2018/12/26/Government-Shutdown-halt-federal-civil-cases-US-Attorney-Pittsburgh/stories/201812260104> (stating that a District Judge granted a motion by the Pittsburgh federal prosecutor's office to place a stay on civil cases because of the shutdown).

- Some law enforcement trainings were canceled or postponed.<sup>872</sup>

### **Overview of Department Operations and Funding**

DOJ represents the government in legal matters and acts as legal counsel for the people of the United States by enforcing the law in the public interest. DOJ plays a key role in “protecting the public from criminals and subversive elements, in ensuring healthy competition of business in the free enterprise system, in safeguarding consumers, and in enforcing drug and immigration and naturalization laws.” “On request, it renders legal advice and opinions to the President and to the heads of the executive departments of the federal government.” The Attorney General, as the head of the DOJ, supervises these activities.<sup>873</sup>

DOJ’s operations are primarily funded through annual appropriations, donations, and forfeitures of property.<sup>874</sup> Though DOJ told the Subcommittee that “a significant portion” of its programs are excepted and continue to operate, several important areas of the Department experienced significant challenges—such as the Department’s U.S. Attorney’s Offices (USAOs) and the Executive Office for Immigration Review (EOIR)—during the government lapses.<sup>875</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* DOJ stated that it “does not capture this level of information in its financial management or payroll systems of record.”<sup>876</sup> DOJ referred the Subcommittee to its Contingency Plans from FY 2019, FY 2018, and FY 2014, which contain information about the numbers and categories of employees that are considered to be excepted and may continue during shutdowns.<sup>877</sup>

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<sup>872</sup> DOJ Letter. DOJ told the Subcommittee that some law enforcement training “may have been” canceled or postponed, but Subcommittee staff identified sources reflecting that trainings were actually canceled during the FY 2014 and FY 2019 shutdowns. See Andy Sullivan, Sarah N. Lynch, Mark Hosenball, *Law enforcement agencies squeezed by U.S. government shutdown*, REUTERS, Jan. 11, 2019, <https://www.reuters.com/article/us-usa-shutdown-lawenforcement/law-enforcement-agencies-squeezed-by-u-s-government-shutdown-idUSKCN1P515R>; Brian Bennett, *Federal shutdown closes law enforcement training center*, L.A. TIMES, Oct. 2, 2013, <https://www.latimes.com/nation/la-xpm-2013-oct-02-la-na-shutdown-police-20131003-story.htm> (discussing the closure of the Federal Law Enforcement Training Center during the FY 2014 shutdown, which is a DHS facility but partners with many federal law enforcement agencies, including components within DOJ).

<sup>873</sup> 1 West's Fed. Admin. Prac. U.S. Dep't of Justice § 250 (database updated July 2018).

<sup>874</sup> DEPT OF JUSTICE, FY 2018 AGENCY FINANCIAL REPORT I–7 (2018), <https://www.justice.gov/doj/page/file/1111821/download>.

<sup>875</sup> DOJ Letter.

<sup>876</sup> *Id.*

<sup>877</sup> *Id.*

*Federal Contractors.* In its response, DOJ stated that the Department did not have information requested by the Subcommittee related to whether contractors were laid off or required to use leave.<sup>878</sup>

*Shutdown Preparations.* DOJ told the Subcommittee that it is “not able to measure the cost of these activities.”<sup>879</sup> However, DOJ did provide examples of the types of activities that are associated with preparation for shutdowns, such as communications regarding shutdown guidance, including formal memorandums, emails, and conference calls.<sup>880</sup>

*Monitoring the Shutdowns.* DOJ told the Subcommittee that it is “not able to measure the cost of these activities”.<sup>881</sup> The Department stated that it “did not make significant changes to the Contingency Plans in place during the shutdowns, but minor changes were made as the shutdowns stretched on...or there were changes in [OMB guidance].”<sup>882</sup> DOJ noted that in some cases, furloughed employees were called back into work, but stated that “[t]hese shifts did not result in additional costs as all employees were paid at the end of each shutdown, whether or not they were excepted.”<sup>883</sup>

### **Disruptions to Agency Operations**

*Law Enforcement Activities.* DOJ told the Subcommittee that it is “not aware of any significant disruptions or delays to operational law enforcement activities.”<sup>884</sup>

*Grant Activities.* DOJ stated that throughout the shutdowns, grantees continued to receive their funds as they normally would—with the exception of three business days during the FY 2019 shutdown—during which grant payment processing ceased.<sup>885</sup> Additionally, before and throughout the lapses in appropriations, DOJ provided grantees with operational status updates, and staff were available to assist grantees, stakeholders, and the public.<sup>886</sup>

*Immigration.* The DOJ told the Subcommittee that approximately 60,000 immigration hearings for non-detained illegal immigrants were canceled, exacerbating the already existing 800,000-case backlog.<sup>887</sup>

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<sup>878</sup> *Id.*

<sup>879</sup> *Id.*

<sup>880</sup> *Id.*

<sup>881</sup> *Id.*

<sup>882</sup> *Id.*

<sup>883</sup> *Id.*

<sup>884</sup> *Id.*

<sup>885</sup> *Id.*

<sup>886</sup> *Id.*

<sup>887</sup> E-Mail Correspondence between Subcomm. Staff and DOJ Office of Leg. Affairs (Apr. 29, 2019) (on file with the Subcomm.).

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* DOJ told the Subcommittee that it was “not able to measure the costs of these activities.”<sup>888</sup> The agency did note, however, that the shutdowns resulted in additional work related to employee payroll and processing other delayed payments, but did not provide any quantitative data regarding costs incurred by this additional work.<sup>889</sup> DOJ also stated that its contingency plans in place during each shutdown indicate that “approximately 84% of [the agency’s] employees were excepted and working throughout the shutdowns.”<sup>890</sup>

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<sup>888</sup> DOJ Letter.

<sup>889</sup> *Id.*

<sup>890</sup> *Id.*

## R. Environmental Protection Agency

The U.S. Environmental Protection Agency (“EPA”) is responsible for protecting human health and the environment.<sup>891</sup> The agency works to create policy and enforce laws related to ensuring air, land, and water safety, provides information to the public about environmental risks; and ensures that contaminated lands are cleaned up responsibly.<sup>892</sup> Government shutdowns generally disrupt most of the operations at the EPA, unless the agency has available carryover funds.<sup>893</sup> Carryover funds have, historically, only been able to support EPA operations for a short duration, including during the FY 2018 shutdown.<sup>894</sup>

The EPA did not provide data on the number of employees furloughed, the number of combined furlough days, or the amount of back pay for furloughed employees.<sup>895</sup> The Agency also did not provide information regarding the cost of reopening after the shutdowns and resuming normal operations.<sup>896</sup> Therefore, the total estimated costs below are incomplete and do not represent the actual total costs to taxpayers.

### Summary of Estimated Cost to Taxpayers<sup>897</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	Not provided	\$175,000	\$7,000	\$182,000
FY 2018	N/A <sup>898</sup>	N/A	N/A	\$0
FY 2019	Not provided	\$535,000	\$90,000	\$625,000
<b>TOTAL COST</b>				<b>\$807,000</b>

<sup>891</sup> ENVTL. PROT. AGENCY, OUR MISSION AND WHAT WE DO, <https://www.epa.gov/aboutepa/our-mission-and-what-we-do> (last visited Aug. 1, 2019).

<sup>892</sup> *Id.*; West’s Law of Env’tl. Prot. § 4:1 (database updated November 2018).

<sup>893</sup> Letter from Troy Lyons, Assoc. Adm’r, Env’tl. Prot. Agency, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 10, 2019) (on file with the Subcomm.) [hereinafter referred to as “EPA Letter”].

<sup>894</sup> EPA Letter.

<sup>895</sup> *Id.*

<sup>896</sup> *Id.*

<sup>897</sup> EPA Letter.

<sup>898</sup> EPA did not have to furlough employees because the agency had enough available reserve funds to continue operations. *Id.*

### Employee Furloughs<sup>899</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>900</sup>
FY 2014	Not provided	167,000 <sup>901</sup>	640 Years
FY 2018	N/A	N/A	0 Years
FY 2019	Not provided	Not provided	Unknown

### Selected Shutdown Impacts

- Non-emergency EPA inspection activities are halted during shutdowns, including inspections of hazardous waste facilities, chemical facilities, and drinking water systems.<sup>902</sup>
- EPA halts its evaluations of potential health hazards of new industrial chemicals and also stops ongoing reviews of pesticides for adverse health and environmental impacts.<sup>903</sup>
- Routine agency work is suspended at all Superfund sites that are not designated as high-risk. These sites are located on land that has been contaminated by hazardous waste and may pose risks to local communities.<sup>904</sup>

### Overview of Agency Operations and Funding

The EPA is comprised of ten Regional Offices located throughout the U.S. and ten Headquarters Offices, including the Office of Air and Radiation (“OAR”), the Office of International and Tribal Affairs (“OITA”), the Office of Research and Development (“ORD”), the Office of Water (“OW”), and various departmental

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<sup>899</sup> EPA Letter.

<sup>900</sup> On an annual basis, OMB calculates the number of employees' compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>901</sup> EPA did not provide any information related to employee furloughs. The Subcommittee identified this number in a report issued by OMB in November 2013 summarizing the impacts and costs of the FY 2014 shutdown. See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 26 (Nov. 2013).

<sup>902</sup> *Id.*

<sup>903</sup> *Id.*

<sup>904</sup> *Id.*

offices.<sup>905</sup> All together, the EPA operates 134 facilities throughout the U.S. that carry out the functions of EPA's numerous programs.<sup>906</sup> For example, the "Greening EPA" program maintains 40 sites throughout the U.S. with laboratories and/or offices that are dedicated to green sustainability.<sup>907</sup>

EPA's operations are financed through an annual appropriations process. EPA appropriation language provides budget authority allowing for carryover use of funding.<sup>908</sup> While the vast majority of programs are considered on an annual basis, some programs retain two or three appropriation accounts with no year revolving funds.<sup>909</sup> The EPA experienced operational disruptions and shut downs as a result of the FY 2014 and FY 2019 lapses in appropriation.<sup>910</sup> The EPA was able to use carryover funds from FY 2017 to continue its normal operations during the FY 2018 lapse.<sup>911</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, the EPA furloughed an estimated 15,134 employees with a back pay cost of \$86,000,000.<sup>912</sup> The EPA did not furlough employees during the FY 2018 shutdown.<sup>913</sup> During the FY 2019 shutdown, the EPA furloughed an estimated 13,028 employees with a back pay cost \$165,000,000.<sup>914</sup>

*Federal Contractors.* The EPA was "unable to provide data regarding the impacts of a lapse of appropriations on contractor personnel, such as layoffs or lost pay, because they [were] not Agency employees."<sup>915</sup>

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<sup>905</sup> ENVTL. PROT. AGENCY, EPA ORGANIZATION CHART, <https://www.epa.gov/aboutepa/epa-organization-chart> (last visited Aug. 1, 2019).

<sup>906</sup> EPA FY 2019 Contingency Plan (included in EPA Letter).

<sup>907</sup> ENVTL. PROT. AGENCY, GREENING EPA, <https://www.epa.gov/greeningepa> (last visited Aug. 1, 2019).

<sup>908</sup> ENVTL. PROT. AGENCY, FISCAL YEAR 2018 AGENCY FIN. REPORT 36 (2018), <https://www.epa.gov/sites/production/files/2018-11/documents/epa-fy-2018-afr.pdf>.

<sup>909</sup> *Id.*

<sup>910</sup> EPA Letter.

<sup>911</sup> *Id.*

<sup>912</sup> The number of furloughed employees is based off the EPA's FY 2014 Contingency Plan; non-furloughed employees includes excepted and exempt employees, as well as the 162 EPA law enforcement who continued to work. See EPA Letter. See also ENVTL. PROT. AGENCY, CONTINGENCY PLAN FY 2014 3, 14, <https://research.ncsu.edu/sparcs/files/2013/10/epa-shutdown-contingency-plan.pdf>.

<sup>913</sup> During the FY 2018 shutdown, the EPA did not furlough employees because the Agency used carryover funds to continue its normal operations. See EPA Letter.

<sup>914</sup> The number of furloughed employees is based off the EPA's FY 2019 Contingency Plan. For example, EPA's FY 2019 shutdown plan states that of the agency's 13,972 employees, about 944 were given except or exempt status, which equals out to approximately 13,028 furloughed employees. EPA Contingency Plan FY 2019 3, 15 (included in EPA Letter).

<sup>915</sup> EPA Letter.

*Shutdown Preparation Activities.* The EPA expended large amounts of time and resources on preparing for the FY 2014 and FY 2019 shutdowns, especially on the agency's payroll activities and financial systems.<sup>916</sup> EPA estimates that costs related to preparing for the shutdown were \$25,000 for the FY 2014 shutdown and \$75,000 for the FY 2019 shutdown.<sup>917</sup>

*Monitoring the Shutdowns.* During the FY 2014 shutdown, the EPA spent at least \$150,000 on monitoring activities.<sup>918</sup> During the FY 2019 shutdown, the EPA spent at least \$460,000 on monitoring activities.<sup>919</sup>

### **Disruptions to Agency Operations**

*Policy Meetings.* The EPA canceled and later rescheduled thirteen federal advisory committee meetings as a result of the FY 2019 shutdown.<sup>920</sup> These committees are an important component of EPA operations, and help to shape agency policies and regulations. Committee meetings are intended to solicit expert advice and recommendations on a wide variety of environmental issues, and are a core component of EPA's commitment to transparent government and citizen participation.

*Research and Development.* Many of EPA's research and development programs are impacted by government shutdowns. Excepted personnel within the Office of Research and Development ("ORD") continue work only to maintain equipment and testing facilities during government shutdowns, but not to continue research and time sensitive timelines.<sup>921</sup> For example, during the FY 2019 shutdown, the EPA was unable to continue work on chemical assessments under the Integrated Risk Information System.<sup>922</sup>

*Financial Systems.* The EPA experienced lost productivity in its manual processing of all of financial obligations incurred during the lapses.<sup>923</sup> On a small number of payments, the agency incurred interest owed for late payments.<sup>924</sup>

*Contracting.* The EPA told the Subcommittee that it experienced impacts as a result of not exercising contract options and lapsed task orders.<sup>925</sup> Because of operational disruptions during the FY 2019 shutdown, the EPA failed to exercise

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<sup>916</sup> *Id.*

<sup>917</sup> *Id.*

<sup>918</sup> *Id.*

<sup>919</sup> *Id.*

<sup>920</sup> *Id.*; E-mail from Env'tl. Prot. Agency staff to Subcomm. Staff (Sept. 5, 2019) (on file with the Subcomm.).

<sup>921</sup> *Id.*

<sup>922</sup> Currently, IRIS is focused on eleven priority assessments and the FY 2019 shutdown delayed only the timeline for the inorganic arsenic assessment from March until July 2019. *Id.*

<sup>923</sup> *Id.*

<sup>924</sup> *Id.*

<sup>925</sup> *Id.*

options on seven contracts; this failure to exercise resulted in an estimated \$1.9 million loss of contractor support.<sup>926</sup> The EPA also spent an additional 149 staff-hours to execute contract modifications and extensions on 299 task orders and 49 solicitations and contracts.<sup>927</sup> In order to ensure continued service to five bridge contracts, the EPA spent approximately 47 staff-hours to amend and modify contract provisions.<sup>928</sup> The disruption to contracts experienced during the FY 2019 shutdown directly impacted procurement schedules and construction timelines.<sup>929</sup>

*Excepted Activities.* During the FY 2014 and FY 2019 shutdown, the EPA excepted activities involving Superfund responses, critical operations at EPA laboratories, emergency responses, and law enforcement.<sup>930</sup>

During the shutdown, several news outlets reported that Acting Administrator Wheeler recalled a limited number of EPA employees to prepare him for his confirmation hearing before the Senate Committee on Environment and Public Works on January 16, 2019.<sup>931</sup> Members of the Committee wrote to Mr. Wheeler in advance of the hearing requesting his justification for recalling those employees, arguing that the confirmation hearing did not appear to fall within the excepted categories described in EPA's Contingency Plan, and that the EPA's actions may have violated the ADA.<sup>932</sup> EPA told the Subcommittee that "[i]ndividuals working on the Administrator's hearing preparation were identified as necessary to the discharge of the President's Constitutional duties and powers. This number increased between the December 31 and January 14 Contingency Plans according to the work needed to directly support the hearing preparation activities."<sup>933</sup>

The Subcommittee identified another unique category of excepted activity that continued during the FY 2019 shutdown—law enforcement activities related to

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<sup>926</sup> *Id.*

<sup>927</sup> *Id.*

<sup>928</sup> *Id.*

<sup>929</sup> *Id.*

<sup>930</sup> EPA Contingency Plan FY 2019 (included in EPA Letter).

<sup>931</sup> Dino Grandoni, *The Energy 202: Senate Democrats Warn EPA may be ‘afoul’ of law by prepping Wheeler for confirmation during shutdown*, WASHINGTON POST, Jan. 11, 2019, <https://www.washingtonpost.com/news/powerpost/paloma/the-energy-202/2019/01/11/the-energy-202-senate-democrats-warn-epa-may-be-afoul-of-law-by-prepping-wheeler-for-confirmation-during-shutdown/5c37a7161b326b66fc5a1c0c/?noredirect=on>.

<sup>932</sup> Timothy Cama, *Dems ask why EPA is preparing for Wheeler confirmation during shutdown*, The Hill, Jan. 11, 2019, <https://thehill.com/policy/energy-environment/424956-dems-ask-why-epa-is-preparing-for-wheeler-confirmation-during>; U.S. SENATE COMM. ON ENVIRONMENT AND PUBLIC WORKS, PRESS RELEASE: AS EPA'S WORK GRINDS TO A HALT, CARPER, EPQ DEMOCRATS QUESTION WHEELER'S USE OF FURLoughED EPA STAFF, RESOURCES FOR HEARING PREPARATIONS (Jan. 11, 2019), <https://www.epw.senate.gov/public/index.cfm/2019/1/as-epa-s-work-grinds-to-a-halt-carper-epw-democrats-question-wheeler-s-use-of-furloughed-epa-staff-resources-for-hearing-preparations>.

<sup>933</sup> EPA Letter.

Super Bowl LIII.<sup>934</sup> Though the total costs incurred during the shutdown period were minimal, the Subcommittee chose to include this information because it emphasizes the way in which excepted activities vary from one agency to another. Although the Super Bowl took place in February 2019 after the shutdown was over, the EPA continued to engage in planning and “dry-run” training exercises during the shutdown period. The total estimated cost for these excepted Super Bowl activities, which took place between December 31, 2019, and January 25, 2019, is \$38,000.<sup>935</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* On a small number of payments, the agency incurred losses in productivity and interest owed.<sup>936</sup> Following the shutdowns, backlogs in the manual processing of obligations had to be reconciled before the systems could be made available to all users for new financial transactions.<sup>937</sup> The EPA incurred an interest cost of \$7,000 following the FY 2014 shutdown and \$90,000 following the FY 2019 shutdown.<sup>938</sup>

The EPA estimated that 4,251 staff-hours were necessary in order to resume normal operations following the FY 2019 shutdown; the EPA was unable to provide the monetary cost incurred due to these additional staff-hours.<sup>939</sup>

*Expected Long-Term Effects.* The EPA said it does not expect any long-term effects as a result of the government shutdowns.<sup>940</sup>

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<sup>934</sup> Email from EPA Congressional Affairs Staff to Subcomm. Staff (Jun. 10, 2019) (on file with the Subcomm.).

<sup>935</sup> *Id.*

<sup>936</sup> EPA Letter.

<sup>937</sup> *Id.*

<sup>938</sup> *Id.*

<sup>939</sup> *Id.*

<sup>940</sup> *Id.*

## S. Department of Homeland Security

The U.S. Department of Homeland Security (“DHS”) is responsible for analyzing threats, guarding the U.S. borders and airports, protecting infrastructure, and coordinating responses to emergency situations.<sup>941</sup> The Department’s day-to-day activities involve preventing terrorism, administering immigration laws, and securing cyberspace.<sup>942</sup> Historically, government shutdowns cause major disruptions to DHS operations and cause the agency to incur significant additional costs.

### Summary of Estimated Cost to Taxpayers<sup>943</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$216,812,165	\$20,600,445	Not provided	\$237,412,510
FY 2018	\$28,595,000	\$21,668,779	Not provided	\$50,263,779
FY 2019	\$396,721,169	\$25,305,385	\$1,292,948	\$423,319,502
<b>TOTAL COST</b>				<b>\$710,995,891</b>

### Employee Furloughs<sup>944</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>945</sup>
FY 2014	31,295	375,540	1,438.9 Years
FY 2018	30,322	60,644	233.3 Years
FY 2019	32,706	817,650	3,132.8 Years

<sup>941</sup> 1 West's Fed. Admin. Prac. § 170, *Dep't of Homeland Security* (database updated July 2018).

<sup>942</sup> DEP'T OF HOMELAND SEC., MISSION, <https://www.dhs.gov/mission> (last visited Aug. 1, 2019).

<sup>943</sup> Letter from R.D. Alles, Senior Official Performing Duties of the Deputy Under Sec'y for Mgmt., Dep't of Homeland Sec., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Jun. 21, 2019) (on file with the Subcomm.) [hereinafter referred to as “DHS Letter”].

<sup>944</sup> *Id.*

<sup>945</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

### **Selected Shutdown Impacts**

- Delayed maintenance of facilities had a serious impact on law enforcement officer operations and safety.<sup>946</sup> The lack of these critical maintenance and repair services endangered the lives of law enforcement officers and created significant border security vulnerabilities.<sup>947</sup>
- DHS halted background investigations and fitness and suitability determinations, which negatively impacted field offices by creating a backlog of applicants waiting for approval to support critical DHS missions.<sup>948</sup>
- The Department's E-Verify system is taken completely offline during shutdowns. Employers are unable to initiate or resolve E-Verify queries, and are not expected to meet the usual E-Verify deadlines. Employers are unable to take any adverse action against employees whose eligibility cannot be confirmed in E-Verify due to a shutdown.<sup>949</sup>

### **Overview of Department Operations and Funding**

DHS is organized into two major components— Departmental offices and operational and support components.<sup>950</sup> The 14 components of DHS are responsible for a number of activities, including border and transportation security; emergency preparedness and response; infrastructure protection; and citizenship and immigration Services.<sup>951</sup> DHS operations are funded through an annual appropriations process.<sup>952</sup> DHS was affected by all three of the relevant shutdowns.<sup>953</sup> DHS told the Subcommittee that a number of its key programs were negatively affected, and stated that lost productivity resulting from employee furloughs make up a significant portion of shutdown costs and impacts.<sup>954</sup>

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<sup>946</sup> DHS Letter.

<sup>947</sup> *Id.*

<sup>948</sup> *Id.*

<sup>949</sup> Joel Rose, *Shutdown Fight Over Border Security Takes Toll on Immigration Enforcement*, NPR, Jan. 3, 2019, <https://www.npr.org/2019/01/03/681969112/an-irony-shutdown-fight-over-border-security-takes-toll-on-immigration-enforcement>.

<sup>950</sup> DEPT' OF HOMELAND SEC., ORGANIZATION, <https://www.dhs.gov/organizational-chart> (updated June 28, 2019).

<sup>951</sup> 1 West's Fed. Admin. Prac. § 170, *Dep't of Homeland Sec.* (database updated July 2018); DEPT' OF HOMELAND SEC., OPERATIONAL AND SUPPORT COMPONENTS, <https://www.dhs.gov/operational-and-support-components> (last visited Aug. 1, 2019).

<sup>952</sup> CONG. RESEARCH SERV., R44927, DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS: FY2018 9 (May 22, 2018), <https://crsreports.congress.gov/product/pdf/R/R44927>.

<sup>953</sup> DHS Letter.

<sup>954</sup> *Id.*

## **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, DHS furloughed 31,295 employees for a combined total of 375,540 days.<sup>955</sup> DHS paid its furloughed employees \$216,812,165 in back pay once the shutdown ended.<sup>956</sup>

During the FY 2018 shutdown, DHS furloughed 30,322 employees for a combined total of 60,644 days.<sup>957</sup> DHS paid its furloughed employees \$28,595,000 in back pay once the shutdown ended.<sup>958</sup>

During the FY 2019 shutdown, DHS furloughed 32,706 employees for a combined total of 817,650 days.<sup>959</sup> DHS paid its furloughed employees \$396,721,169 in back pay once the shutdown was over.<sup>960</sup>

*Federal Contractors.* DHS did not provide the Subcommittee with any information regarding shutdown-related impacts on federal contractors.<sup>961</sup> However, DHS did note that FEMA issued stop-work orders to hundreds of federal contractors, instructing them to halt work on outstanding contracts for projects such as flood mapping, contract management support, and facilities maintenance work.<sup>962</sup>

*Shutdown Preparation and Monitoring Activities.* DHS told the Subcommittee that the estimated costs to prepare for and monitor the shutdowns were \$7,049,685 for FY 2014; \$7,371,279 for FY 2018; and \$9,436,538 for FY 2019 shutdown.<sup>963</sup>

## **Disruptions to Agency Operations**

*Reviews and Approvals.* The shutdowns caused halted and delayed reviews and approvals within DHS.<sup>964</sup> This affected field office operations and created a backlog of applicants waiting for approval to support DHS missions.<sup>965</sup> DHS provided two examples of disruptions caused by review and approval delays during the FY 2019 shutdown.<sup>966</sup> First, the U.S. Coast Guard's Maritime Center delayed the review and approval of 11,000 merchant mariner credentials, halted the testing

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<sup>955</sup> *Id.*

<sup>956</sup> *Id.*

<sup>957</sup> *Id.*

<sup>958</sup> *Id.*

<sup>959</sup> *Id.*

<sup>960</sup> *Id.*

<sup>961</sup> *Id.*

<sup>962</sup> Aaron Gregg, *Hundreds of FEMA contractors ordered to halt work as government shutdown drags on*, WASH. POST, Jan. 10, 2019, [https://www.washingtonpost.com/business/2019/01/10/hundreds-fema-contractors-ordered-halt-work-government-shutdown-drags/?utm\\_term=.b9fa5218820f](https://www.washingtonpost.com/business/2019/01/10/hundreds-fema-contractors-ordered-halt-work-government-shutdown-drags/?utm_term=.b9fa5218820f).

<sup>963</sup> DHS Letter.

<sup>964</sup> *Id.*

<sup>965</sup> *Id.*

<sup>966</sup> *Id.*

and approval of nearly 650 mariner examinations, and delayed the review and approval of 220 courses.<sup>967</sup> In addition, there were delays in the approval of vessel certificates of documentation, investigation activities, and technical reviews of commercial vessel construction, alteration, or repairs.<sup>968</sup>

*Law Enforcement Activities.* DHS noted that the shutdowns stalled law enforcement investigations that were not considered to be emergencies, and also said that the prolonged absences of support staff typically impede the ability of excepted law enforcement employees to do their jobs during shutdowns.<sup>969</sup>

The FY 2014 shutdown substantially affected law enforcement training because, at that time, law enforcement training facilities did not meet the criteria to be considered an excepted function.<sup>970</sup>

*Delayed Acquisitions and Contracts.* The lapses in funding affected some of DHS's acquisition projects and contracting opportunities.<sup>971</sup> In FY 2014 and FY 2019, DHS paid certain "firm-fixed price contracts" to the extent funding was available, but DHS did not receive its deliverables according to the fixed schedule detailed in these contracts.<sup>972</sup> Also, DHS incurred costs associated with extending existing contracts because DHS could not award new contracts due to operational disruptions directly resulting from the government shutdowns.<sup>973</sup>

*Maintenance Activities.* DHS told the Subcommittee that "[t]he extended shutdowns in FY 2014 and FY 2019 significantly delayed completion of planned and preventative maintenance needs."<sup>974</sup> The affected maintenance operations included repairs of pedestrian walls, fences, gates, roads, bridges, boat ramps, and drainage.<sup>975</sup> Because the shutdowns prevented DHS from completing these necessary maintenance activities, law enforcement officers, including those responsible for border security, faced significant vulnerabilities.<sup>976</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* DHS provided the Subcommittee with specific estimates regarding the late payment interest penalties

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<sup>967</sup> *Id.*

<sup>968</sup> *Id.*

<sup>969</sup> *Id.*

<sup>970</sup> *Id.*

<sup>971</sup> *Id.*

<sup>972</sup> *Id.*; E-mail from Dep't of Homeland Sec. Staff to Subcomm. Staff (Sep. 5, 2019) (on file with the Subcomm.).

<sup>973</sup> *Id.*

<sup>974</sup> *Id.*

<sup>975</sup> *Id.*

<sup>976</sup> *Id.*

that DHS faced following the FY 2019 shutdown.<sup>977</sup> DHS estimates that it paid approximately \$1,292,948 in interest following the FY 2019 shutdown.<sup>978</sup>

*Long-Term Effects of Shutdowns.* DHS told the Subcommittee that both the FY 2014 and FY 2019 shutdowns resulted and will result in significant long-term effects.<sup>979</sup>

DHS noted that it expects long-term effects from the FY 2019 to include: substantial delays in hiring; prolonged onboarding of personnel and backlogs across operating components; diminished readiness of forces and assets; delays in the implementation of new strategies that have pushed deadlines into future FYs; and a delay in momentum with both internal staff and external stakeholders.<sup>980</sup>

DHS said that the FY 2014 shutdown caused long term-effects similar to those caused by the FY 2019 shutdown, but for a shorter period of time.

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<sup>977</sup> *Id.*

<sup>978</sup> *Id.*

<sup>979</sup> *Id.*

<sup>980</sup> *Id.*

## T. General Services Administration

The U.S. General Services Administration (“GSA”) functions as “the government’s property manager.”<sup>981</sup> GSA manages U.S. assets and is responsible for activities including acquisition, operation, and disposal of real and personal property.<sup>982</sup> In general, shutdowns resulting in a lapse in funding disrupt operations throughout the agency.

GSA provided the Subcommittee with limited information related to the three shutdown periods. For the FY 2018 shutdown, GSA was unable to provide any information about the number of employees furloughed, combined furlough days, or back pay for furloughed employees.<sup>983</sup> For all three shutdowns, GSA stated that it was unable to provide any information about administrative costs related to the preparation and monitoring of shutdowns, or the reopening of the agency after the shutdowns.<sup>984</sup>

### Summary of Estimated Cost to Taxpayers<sup>985</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	\$12,575,336	Not provided	Not provided	\$12,575,336
FY 2018	Not provided <sup>986</sup>	Not provided	Not provided	Unknown
FY 2019	\$24,057,865	Not provided	Not provided	\$24,057,865
<b>TOTAL COST</b>				<b>\$36,633,201</b>

<sup>981</sup> GEN. SERV. ADMIN., ADM 4220.1L, ORDER ON THE OPERATIONS IN THE ABSENCE OF APPROPRIATIONS 2 (Sept. 24, 2018).

<sup>982</sup> *Id.*

<sup>983</sup> Letter from Jeffrey Post, Associate Adm’r, Office of Cong. and Intergovernmental Affairs, Gen. Serv. Admin., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 11, 2019) (on file with the Subcomm.) [hereinafter referred to as “GSA Letter”].

<sup>984</sup> GSA Letter.

<sup>985</sup> *Id.*

<sup>986</sup> GSA did not track these costs due to the short duration of the FY 2018 lapse in appropriations. E-mail from Gen. Serv. Admin. Staff to Subcomm. Staff (Sept. 4, 2019) (on file with the Subcomm.).

### Employee Furloughs<sup>987</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Approximate Work-Year Equivalent of Furlough Days<sup>988</sup></b>
FY 2014	8,633	34,744	133 Years
FY 2018	0	0	0 Years
FY 2019	5,929	59,817	229.2 Years

### Selected Shutdown Impacts

- During all of the shutdown periods, acquisitions were delayed, and timelines were pushed back for design and construction projects.<sup>989</sup>
- During the FY 2019 shutdown, 27 leasing projects were delayed.<sup>990</sup>
- During all of the shutdown periods, GSA was unable to fully collect earned revenue from government agencies that were affected by the shutdowns.<sup>991</sup>

### Overview of Agency Operations and Funding

GSA is the “government’s property manager.”<sup>992</sup> The Administration carries out its duties through two main services—the Federal Acquisition Service (“FAS”), which is dedicated to procuring goods and services for the government (e.g., technology, government vehicles, travel, and office furniture and equipment), and the Public Buildings Service (“PBS”), which manages GSA’s real property acquisitions, leasing, construction, and operations.<sup>993</sup>

GSA’s operating accounts are funded through direct, annual appropriations; its real property operations are funded through revenue from the Federal Buildings

<sup>987</sup> *Id.*

<sup>988</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A–11 § 85 (June 2019); OMB Circular No. A–11 § 85 (July 2017); OMB Circular No. A–11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>989</sup> *Id.*

<sup>990</sup> *Id.*

<sup>991</sup> *Id.*

<sup>992</sup> GEN. SERV. ADMIN., ADM 4220.1K, ORDER ON THE OPERATIONS IN THE ABSENCE OF APPROPRIATIONS 2 (July 2017).

<sup>993</sup> GEN. SERV. ADMIN., FEDERAL ACQUISITION SERVICE (updated July. 7, 2019), <https://www.gsa.gov/about-us/organization/federal-acquisition-service>; GEN. SERV. ADMIN., PUBLIC BUILDINGS SERVICE (updated Jun. 24, 2019), <https://www.gsa.gov/about-us/organization/public-buildings-service>.

Fund (“the Fund”), which Congress makes available for GSA’s payments each year.<sup>994</sup> The multi-billion dollar revolving Fund consists of payments deposited by federal agencies for leased GSA space.<sup>995</sup> Even though the Administration only furloughed employees during the FY 2014 and FY 2019 shutdowns, GSA told the Subcommittee that its work was “impacted and disrupted” during all three relevant shutdown periods.<sup>996</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, GSA furloughed 8,633 employees for a combined total of 34,744 days.<sup>997</sup> The agency paid those furloughed employees \$12,575,336 once the shutdown ended.<sup>998</sup>

The GSA did not provide any furlough data for the FY 2018 shutdown; the agency’s response stated that “[s]ince the shutdown did not span the end of a pay period or a full pay period, there were no time cards that were processed for furloughed employees so GSA has nothing to report.”<sup>999</sup>

During the FY 2019 shutdown, GSA furloughed 5,929 employees for a combined total of 59,817 days.<sup>1000</sup> The agency paid those furloughed employees \$24,057,865 in back pay once the shutdown ended.<sup>1001</sup>

*Federal Contractors.* GSA told the Subcommittee that it “does not have this data, since it manages multiple funds that have different characteristics and periods of availability combined with the fact that different types of contracts had varying abilities to continue to operate” during the shutdowns.<sup>1002</sup> GSA also noted that contractors “manage their own workforces” and that as a result, the agency does not know how many contractor employees “were laid off, used leave,

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<sup>994</sup> CONG. RESEARCH SERV., R45386, FINANCIAL SERVICES AND GENERAL GOVERNMENT (FSGG) FY2019 APPROPRIATIONS: INDEPENDENT AGENCIES AND GENERAL PROVISIONS 7 (May 24, 2019), <https://crsreports.congress.gov/product/pdf/R/R45386>.

<sup>995</sup> *Id.*

<sup>996</sup> GSA Letter.

<sup>997</sup> GSA told the Subcommittee that the number of combined furlough days does not include furlough days for the October 6 through October 19 pay period because GSA’s payroll system did not have a furloughed labor code. GSA stated that “the number of furlough days is greater than the 34,744 days reported in GSA’s timekeeping system, but [the agency] doesn’t have a record of the exact number in the system. *Id.*

<sup>998</sup> GSA told the Subcommittee that this back pay amount does not include back pay for furloughed employees from October 7 through October 16 because the shutdown ended in the middle of a payroll cycle with a back pay provision, so employees entered their regular labor codes for that period, not the furlough code *Id.*

<sup>999</sup> *Id.*

<sup>1000</sup> *Id.*

<sup>1001</sup> *Id.*

<sup>1002</sup> GSA said it lacks this data because the Administration manages multiple funds that have different characteristics and periods of availability, combined with the fact that contractors determine and manage their own workforces. *Id.*

transferred to other projects, or paid while not performing duties under a GSA contract.”<sup>1003</sup>

*Shutdown Preparation Activities.* GSA told the Subcommittee that it is unable to provide information about estimated costs associated with these activities.<sup>1004</sup> GSA stated that it follows OMB guidance in its development of “shutdown plans, preparing for a shutdown, monitoring activity during a shutdown, and restarting normal operations.”<sup>1005</sup> GSA also noted that “[a]s shutdowns occur infrequently, [the agency] does not track costs specifically related” to these activities.<sup>1006</sup>

*Monitoring the Shutdowns.* Again, GSA told the Subcommittee that it is unable to provide a total cost associated with these activities.<sup>1007</sup> GSA stated that it follows OMB guidance in its development of “shutdown plans, preparing for a shutdown, monitoring activity during a shutdown, and restarting normal operations.”<sup>1008</sup> GSA also noted that “[a]s shutdowns occur infrequently, [the agency] does not track costs specifically related” to these activities.<sup>1009</sup>

### **Disruptions to Agency Operations**

“GSA experienced a number of disruptions during the shutdown periods”.<sup>1010</sup> These disruptions “included the delay of acquisitions, pushed-back timelines for design and construction projects, and delays in leasing projects.”<sup>1011</sup> During all three shutdowns, GSA was not able to fully collect earned revenue from shutdown agencies.<sup>1012</sup> During the FY 2014 and FY 2019 shutdowns, there were numerous invoices that were not able to be accepted and paid due to employee furloughs.<sup>1013</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* Again, GSA told the Subcommittee that it was unable to provide a total cost associated with these activities.<sup>1014</sup> GSA stated that it follows OMB guidance in its development of “shutdown plans, preparing for a shutdown, monitoring activity during a shutdown, and restarting normal operations.”<sup>1015</sup> GSA also noted that “[a]s shutdowns occur

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<sup>1003</sup> *Id.*

<sup>1004</sup> *Id.*

<sup>1005</sup> *Id.*

<sup>1006</sup> *Id.*

<sup>1007</sup> *Id.*

<sup>1008</sup> *Id.*

<sup>1009</sup> *Id.*

<sup>1010</sup> *Id.*

<sup>1011</sup> *Id.*

<sup>1012</sup> *Id.*

<sup>1013</sup> *Id.*

<sup>1014</sup> *Id.*

<sup>1015</sup> *Id.*

infrequently, [the agency] does not track costs specifically related” to these activities.<sup>1016</sup>

*Expected Long-Term Effects.* GSA told the Subcommittee that it has not conducted a formal analysis on the long-term effects of each shutdown on the Administration.<sup>1017</sup> However, the agency noted that in general, long unplanned delays in the procurement of real property, goods or services may result in increased costs during the procurement process.<sup>1018</sup>

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<sup>1016</sup> *Id.*

<sup>1017</sup> *Id.*

<sup>1018</sup> *Id.*

## **U. Department of Veterans Affairs**

The U.S. Department of Veterans Affairs (“VA”) is responsible for operating federal programs for American veterans and their dependents, including the provision of health care and other benefits and opportunities.<sup>1019</sup> Government shutdowns impede “VA’s ability to deliver services and benefits that veterans have earned through their service” to the country.<sup>1020</sup> Claims processing operations are impacted which creates backlogs, and certain programs are closed completely.<sup>1021</sup> The VA was fully funded and not impacted by the FY 2018 and FY 2019 shutdowns, so the information provided below is applicable only to the FY 2014 shutdown.<sup>1022</sup>

### **Summary of Estimated Cost to Taxpayers<sup>1023</sup>**

<b>Shutdown Period</b>	<b>Back Pay for Furloughed Employees</b>	<b>Administrative Costs</b>	<b>Misc.</b>	<b>Total</b>
FY 2014	\$25,525,437.97	\$13,229.00	Not provided	\$25,538,666.97
FY 2018	N/A	N/A	N/A	\$0
FY 2019	N/A	N/A	N/A	\$0
<b>TOTAL COST</b>				<b>\$25,538,666.97</b>

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<sup>1019</sup> DEPT OF VETERANS AFFAIRS, ABOUT VA: VA PROGRAMS (updated Aug. 20, 2015), [https://www.va.gov/about\\_va/programs.asp](https://www.va.gov/about_va/programs.asp).

<sup>1020</sup> *Effect of Government Shutdown on VA Benefits and Services to Veterans: Hearing Before the H. Comm. on Veterans’ Affairs*, 113th Congress 4 (2013) (statement of Eric Shinseki, Sec’y, Dep’t of Veterans Affairs) (included as an attachment to VA Letter).

<sup>1021</sup> *Id.* at 5; Letter from Robert Wilkie, Sec’y, Dep’t of Veterans Affairs, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 16, 2019) (on file with the Subcomm.) [hereinafter referred to as “VA Letter”].

<sup>1022</sup> VA Letter.

<sup>1023</sup> *Id.*

### Employee Furloughs<sup>1024</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Lost Productivity of Furloughed Workers<sup>1025</sup></b>
FY 2014	10,554 <sup>1026</sup>	108,735.75	416.6 Years
FY 2018	0	0	0 Years
FY 2019	0	0	0 Years

### Selected Shutdown Impacts

- The FY 2014 shutdown stalled progress in “reducing the backlog of veterans’ disability claims, which was previously being reduced at a rate of almost 20,000 claims per week.”<sup>1027</sup> During the shutdown, the backlog remained roughly flat at about 418,000 claims.<sup>1028</sup>
- The FY 2014 shutdown halted important veterans’ services that help them understand their benefits—“including the education call center, hotlines, and all regional office outreach activities.”<sup>1029</sup> Veterans were also unable to access vocational rehabilitation and education services, which were unavailable during the shutdown.<sup>1030</sup>
- The Transition Assistance Program (“TAP”) assists military service members navigate the transition to civilian life and employment, and provides guidance on how to access available benefits.<sup>1031</sup> Due to the FY 2014

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<sup>1024</sup> *Id.*

<sup>1025</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A–11 § 85 (June 2019); OMB Circular No. A–11 § 85 (July 2017); OMB Circular No. A–11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>1026</sup> *Effect of Government Shutdown on VA Benefits and Services to Veterans: Hearing Before the H. Comm. on Veterans’ Affairs*, 113th Congress (2013) (statement of Eric Shinseki, Sec’y, Dep’t of Veterans Affairs) (included as an attachment to VA Letter).

<sup>1027</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 4 (Nov. 2013).

<sup>1028</sup> *Id.* at 15.

<sup>1029</sup> *Id.*

<sup>1030</sup> *Id.*

<sup>1031</sup> DEP’T OF VETERANS AFFAIRS, VA TRANSITION ASSISTANCE PROGRAM (TAP) (updated Feb. 14, 2019), <https://www.benefits.va.gov/tap/tap-index.asp>. VA operates TAP in coordination with the Departments of Defense and Labor. See *id.*

shutdown, a number of TAP workshops were postponed, which delayed access to support for about 1,400 service members.<sup>1032</sup>

### **Overview of Agency Operations and Funding**

The VA provides a wide range of benefits and services to veterans and their dependents, including medical care, disability compensation and pensions, education, vocational rehabilitation and employment services, assistance to homeless veterans, home loan guarantees, provision of insurance, and death benefits.<sup>1033</sup> The VA employs approximately 374,000 personnel, making it the second largest federal organization in the country.<sup>1034</sup> The Department carries out its duties through three main administrative divisions: Veterans Health Administration, Veterans Benefits Administration, and National Cemetery Administration.<sup>1035</sup>

The VA's operations are funded through an annual appropriations process.<sup>1036</sup> Unlike most agencies, however, the VA receives some advance appropriations in addition to its annual appropriations.<sup>1037</sup> For example, the agency receives advance appropriations for the Veterans Health Administration, which accounts for about 86 percent of the VA's discretionary budget and its "functions are not subject to the negative effects of a government shutdown."<sup>1038</sup>

The FY 2014 shutdown affected the VA's operations; the agency had to implement its shutdown plan and furlough employees.<sup>1039</sup> The VA's funding lapsed during the FY 2018 shutdown, but the agency continued to fully operate because it was able to use carryover funding and advance appropriations.<sup>1040</sup> The VA was not affected by the FY 2019 shutdown because at that time, it had already been funded through the annual appropriations process.<sup>1041</sup>

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<sup>1032</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 15 (Nov. 2013).

<sup>1033</sup> CONG. RESEARCH SERV., R45047, DEP'T OF VETERANS AFFAIRS FY2018 APPROPRIATIONS 1 (Mar. 9, 2019), <https://crsreports.congress.gov/product/pdf/R/R45047>.

<sup>1034</sup> DEP'T OF VETERANS' AFFAIRS, VA RELEASES DATA ON VACANCIES AS REQUIRED UNDER MISSION ACT (Aug. 31, 2018), <https://www.va.gov/opa/pressrel/pressrelease.cfm?id=5104>.

<sup>1035</sup> *Id.*

<sup>1036</sup> CONG. RESEARCH SERV., R45047, DEP'T OF VETERANS AFFAIRS FY2018 APPROPRIATIONS 2–4 (Mar. 9, 2019), <https://crsreports.congress.gov/product/pdf/R/R45047>.

<sup>1037</sup> VA Letter.

<sup>1038</sup> *Id.*

<sup>1039</sup> *Id.*

<sup>1040</sup> *Id.*

<sup>1041</sup> *Id.*

## **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown period, the VA furloughed about 10,554 employees for a combined total of 108,735.75 days.<sup>1042</sup> The VA paid \$25,525,437.93 in back pay to its furloughed employees once the shutdown ended.<sup>1043</sup>

*Federal Contractors.* The VA did not provide the Subcommittee with any information regarding federal contractors.<sup>1044</sup>

*Shutdown Preparation and Monitoring Activities.* The VA estimates the total costs associated with preparing for the FY 2014 shutdown were \$11,753, and that the costs associated with monitoring the shutdown were \$1,476.<sup>1045</sup>

## **Disruptions to Agency Operations**

When shutdowns affect the VA, “the impact[s] to specific missions can be significant.”<sup>1046</sup> The VA told the Subcommittee that the FY 2014 shutdown affected the National Cemetery Administration and the Office of Information Technology.<sup>1047</sup> Specifically, the agency stated it experienced delayed reviews that affected benefits claims submitted by veterans and their families.<sup>1048</sup>

*Access to Services.* The FY 2014 shutdown curtailed or halted important services the VA typically provides to veterans.<sup>1049</sup> “Services that help veterans understand their benefits—including the education call center, hotlines, and all regional...outreach activities—were closed to the public during the shutdown, and many veterans lost access to vocational rehabilitation and education counseling services.”<sup>1050</sup>

*Halted or Delayed Reviews.* The FY 2014 shutdown stalled the VA’s “weekly progress in reducing the veterans’ disability claims backlog, which had previously

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<sup>1042</sup> *Effect of Government Shutdown on VA Benefits and Services to Veterans: Hearing Before the H. Comm. on Veterans’ Affairs*, 113th Congress (2013) (statement of Eric Shinseki, Sec’y, Dep’t of Veterans Affairs) (included as an attachment to VA Letter); E-mail from Dep’t of Veterans Affairs Staff to Subcomm. Staff (June 5, 2019) (on file with the Subcomm.).

<sup>1043</sup> *Id.*

<sup>1044</sup> VA Letter.

<sup>1045</sup> E-mail from Dep’t of Veterans Affairs Staff to Subcomm. Staff (Jun. 5, 2019) (on file with the Subcomm.); VA Letter (noting that the VA “[does] not have detailed accounting data to support cost estimates”).

<sup>1046</sup> VA Letter.

<sup>1047</sup> *Id.; Effect of Government Shutdown on VA Benefits and Services to Veterans: Hearing Before the H. Comm. on Veterans’ Affairs*, 113th Congress (2013) (statement of Eric Shinseki, Sec’y, Dep’t of Veterans Affairs) (included as an attachment to VA Letter)

<sup>1048</sup> *Id.*

<sup>1049</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 15 (Nov. 2013).

<sup>1050</sup> *Id.*

been progressing at a rate of almost 20,000 claims per week.”<sup>1051</sup> During the six months before the shutdown, VA staff had been able to reduce the backlog by about 30 percent, and, “in the week before the shutdown, [agency staff] processed enough applications to reduce the backlog by about 18,000 claims.”<sup>1052</sup> “In contrast, during the [FY 2014 shutdown], the backlog remained roughly flat (at about 418,000 claims).”<sup>1053</sup>

Additionally, ongoing improvements to the agency’s Veterans Benefit Management System completely stopped during the shutdown, affecting the ability of veterans to receive quick and accurate decisions on their claims.<sup>1054</sup>

*Inter-Agency Programs.* The Transition Assistance Program (“TAP”) helps military service members with the transition to civilian life and employment, and provides guidance on how to access available benefits.<sup>1055</sup> The VA, DOL, and DOD work together to administer the program.<sup>1056</sup> TAP provides services such as employment workshops and virtual curriculum to separating service members, veterans, and spouses.<sup>1057</sup> Due to the FY 2014 shutdown, a number of TAP workshops were postponed, which delayed access to support for about 1,400 service members.<sup>1058</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* To recover from the shutdown, the VA incurred costs associated with participating in Government-wide and VA-specific planning activities, analyzing the VA’s financial position post-shutdown, and directing and reviewing issues with furloughed employees.<sup>1059</sup> Although the VA “[does] not have detailed accounting data to support cost estimates,” it told the Subcommittee that, to their best knowledge, the agency incurred nominal reopening costs.<sup>1060</sup>

*Expected Long-Term Effects.* The VA’s response to the Subcommittee’s letter did not provide any information regarding long-term effects of the government shutdown.<sup>1061</sup> However, in 2013, Eric Shinseki—the VA Secretary at the time—

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<sup>1051</sup> *Id.*

<sup>1052</sup> *Id.*

<sup>1053</sup> *Id.*

<sup>1054</sup> VA Letter.

<sup>1055</sup> DEP’T OF VETERANS AFFAIRS, VA TRANSITION ASSISTANCE PROGRAM (TAP) (updated Feb. 14, 2019), <https://www.benefits.va.gov/tap/tap-index.asp>.

<sup>1056</sup> *Id.*

<sup>1057</sup> DEP’T OF LABOR, TRANSITION ASSISTANCE PROGRAM (TAP) INFORMATION, <https://www.dol.gov/agencies/vets/programs/tap> (last visited August 22, 2019).

<sup>1058</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 15 (Nov. 2013).

<sup>1059</sup> *Id.*

<sup>1060</sup> *Id.*

<sup>1061</sup> VA Letter.

testified before Congress about the impacts of the FY 2014 shutdown.<sup>1062</sup> Much of his testimony was focused on the long-term effects the shutdown would have on the VA's claims and appeals backlog.<sup>1063</sup>

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<sup>1062</sup> See generally *Effect of Government Shutdown on VA Benefits and Services to Veterans: Hearing Before the H. Comm. on Veterans' Affairs*, 113th Congress (2013) (statement of Eric Shinseki, Sec'y, Dep't of Veterans Affairs) (included as an attachment to VA Letter).

<sup>1063</sup> *Id.*

## V. Department of Commerce

The U.S. Department of Commerce (“DOC”) is responsible for promoting “job creation, economic growth, sustainable development and improved standards of living...by working in partnership with businesses, universities, communities and...workers.”<sup>1064</sup> DOC “affects trade and economic development by working to open new markets for U.S. goods and services,” and also promotes pro-growth business policies.<sup>1065</sup> “It also invests in research and development projects to foster innovation.”<sup>1066</sup> Additionally, DOC monitors coastal and ocean resources to support environmental and economic health, conducts the decennial census, and operates the national patent system.<sup>1067</sup> DOC was affected by all three shutdowns, but only provided information to the Subcommittee regarding the FY 2019 shutdown.<sup>1068</sup> For the FY 2019 shutdown, DOC only provided information regarding employee furloughs and back pay, and did not provide information regarding any other costs related to the shutdown.<sup>1069</sup>

### Summary of Estimated Cost to Taxpayers<sup>1070</sup>

Shutdown Period	Back Pay for Furloughed Employees	Administrative Costs	Misc.	Total
FY 2014	Not provided	Not provided	Not provided	Unknown
FY 2018	Not provided	Not provided	Not provided	Unknown
FY 2019	\$190,941,960	Not provided	Not provided	\$190,941,960
<b>TOTAL COST</b>				<b>\$190,941,960</b>

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<sup>1064</sup> CONG. RESEARCH SERV., R44409, OVERVIEW OF FY2017 APPROPRIATIONS FOR COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES 2 (May. 24, 2017), <https://crsreports.congress.gov/product/pdf/R/R44409>.

<sup>1065</sup> *Id.*

<sup>1066</sup> *Id.*

<sup>1067</sup> *Id.*

<sup>1068</sup> See Letter from Charles Kolo Rathburn, Acting Ass’t Sec’y for Legislative and Gov’t Affairs, Dep’t of Comm., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, Permanent Subcomm. on Investigations (June 13, 2019) [hereinafter “DOC Letter”]. See also OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 26 (Nov. 2013) (indicating the Dep’t of Comm. furloughed employees for approximately 312,000 combined days during the FY 2014 shutdown); Alicia Parlapiano & Karen Yourish, *What Will Happen if the Government Remains Shut Down*, N.Y. TIMES, Jan. 20, 2018, <https://www.nytimes.com/interactive/2018/01/19/us/politics/government-shutdown-employee-effects.html?module=inline> (indicating the Dep’t of Comm. was affected by the FY 2018 government shutdown).

<sup>1069</sup> DOC Letter.

<sup>1070</sup> *Id.*

### Employee Furloughs<sup>1071</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Lost Productivity of Furloughed Workers<sup>1072</sup></b>
FY 2014	Not provided	312,000 <sup>1073</sup>	1,195.4 Years
FY 2018	Not provided	Not provided	Unknown
FY 2019	15,875	349,250	1,338.1 Years

### Selected Shutdown Impacts

- During the FY 2019 shutdown, DOC stopped processing requests for steel and aluminum tariff exclusions, resulting in a significant backlog and additional delays and uncertainty for U.S. companies seeking reprieve from certain burdensome tariffs.<sup>1074</sup>
- During shutdowns, DOC’s Bureau of Industry and Security (“BIS”) was unable to accept new export license applications, and all pending requests were put on hold.<sup>1075</sup> This imposed delays and hardships on companies that export certain types of products to other countries.<sup>1076</sup>
- During shutdowns, DOC’s International Trade Administration (“ITA”), which focuses on developing trade opportunities for U.S. businesses and assists with the complex process of expanding into international sales, is unable to

<sup>1071</sup> DOC Letter (for FY 2019 information only).

<sup>1072</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A–11 § 85 (June 2019); OMB Circular No. A–11 § 85 (July 2017); OMB Circular No. A–11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>1073</sup> DOC did not provide any information related to employee furloughs. The Subcommittee identified this number in a report issued by OMB in November 2013 summarizing the impacts and costs of the FY 2014 shutdown. See OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 26 (Nov. 2013).

<sup>1074</sup> DOC Letter; Nithya Nagarajan & Courtney Morgan, *How the Government Shutdown is Affecting Trade*, INDUSTRYWEEK, Jan. 22, 2019, <https://www.industryweek.com/economy/how-government-shutdown-affecting-trade>.

<sup>1075</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 10 (Nov. 2013).

<sup>1076</sup> Samuel Rubenfeld, *Government Shutdown Slows Exports of Sensitive U.S. Materials*, WALL ST. J., Jan. 16, 2019, <https://www.wsj.com/articles/government-shutdown-slows-exports-of-sensitive-u-s-materials-11547672196>.

process foreign trade zone applications.<sup>1077</sup> Businesses are unable to access important ITA export guidance necessary to send international shipments of products.<sup>1078</sup> These disruptions can interfere with businesses' supply chain management and hurt the U.S. manufacturing industry.<sup>1079</sup>

### **Overview of Agency Operations and Funding**

DOC is responsible for a wide range of activities including "trade, economic development, technology, entrepreneurship and business development, monitoring the environment, forecasting weather, managing marine resources, and statistical research and analysis."<sup>1080</sup> Some key agencies within DOC include:

- the International Trade Administration ("ITA"), which focuses on developing the export potential of U.S. firms and works to improve trade opportunities for U.S. industry;
- the Bureau of Industry and Security ("BIS"), which enforces export laws consistent with national security and foreign policy; and
- the Economic Development Administration ("EDA"), which administers grants for projects in economically distressed communities and regions;
- the Minority Business Development Agency ("MBDA") which seeks to promote private and public sector investment in minority businesses;
- the Economics and Statistics Administration ("ESA"), which provides information on the state of the economy by interpreting economic data, and provides analytical support to DOC officials;
- the Census Bureau, a component of ESA, which collects, compiles, and publishes a broad range of data related to the decennial census;
- the United States Patent and Trademark Office ("USPTO"), which examines and approves applications for patents of claimed inventions and registration of trademarks; and

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<sup>1077</sup> CONG. RESEARCH SERV., R44409, OVERVIEW OF FY2017 APPROPRIATIONS FOR COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES 2 (May 24, 2017),

<https://crsreports.congress.gov/product/pdf/R/R44409>; DOC Letter.

<sup>1078</sup> Brock Blake, *The Real Cost of The Government Shutdown on Small Businesses*, FORBES, Jan. 31, 2019, <https://www.forbes.com/sites/brockblake/2019/01/31/the-real-cost-of-the-government-shutdown-on-small-business/#6c483c119a1c>.

<sup>1079</sup> *Id.*

<sup>1080</sup> CONG. RESEARCH SERV., R44409, OVERVIEW OF FY2017 APPROPRIATIONS FOR COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES 2 (May 24, 2017),

<https://crsreports.congress.gov/product/pdf/R/R44409>.

- the National Oceanic and Atmospheric Administration (“NOAA”), which promotes safe and efficient marine and air navigation, assesses the health of coastal and marine resources and engages in related protection efforts, and monitors and predicts the weather.<sup>1081</sup>

The DOC’s operations are mainly funded through an annual appropriation process.<sup>1082</sup> USPTO, however, is fully funded by user fees that are collected from patent applicants and trademark registrations.<sup>1083</sup>

Despite the fact that DOC implemented shutdown procedures during the FY 2014 and FY 2018 shutdowns, the Department did not provide the Subcommittee with information about any relevant impacts on agency activities.<sup>1084</sup> While Subcommittee staff were able to identify alternate sources for some of this information, the majority of the information below relates only to the FY 2019 shutdown.

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2019 shutdown, DOC furloughed 15,875 employees for a combined total of 349,250 days.<sup>1085</sup> DOC estimated that it paid \$190,941,960 in back pay to its furloughed employees once the shutdown ended.<sup>1086</sup> According to OMB, during the FY 2014 shutdown, DOC furloughed an unknown amount of employees for a combined total of 312,000 days.<sup>1087</sup>

*Federal Contractors.* DOC told the Subcommittee that it was unable to provide any information regarding the impact of the shutdowns on federal contractors.<sup>1088</sup>

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<sup>1081</sup> *Id.*

<sup>1082</sup> CONG. RESEARCH SERV., R43509, COMMERCE, JUSTICE, SCIENCE, AND RELATED AGENCIES: FY2015 APPROPRIATIONS 11–12 (Feb. 18, 2015), <https://crsreports.congress.gov/product/pdf/R/R43509>.

<sup>1083</sup> *Id.* at 13.

<sup>1084</sup> DOC Letter. *See also* OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 26 (Nov. 2013) (indicating that Dep’t of Commerce activities were impacted by the FY 2014 shutdown); Alicia Parlapiano & Karen Yourish, *What Will Happen if the Government Remains Shut Down*, N.Y. TIMES, Jan. 20, 2018, <https://www.nytimes.com/interactive/2018/01/19/us/politics/government-shutdown-employee-effects.html?module=inline> (indicating the Dep’t of Commerce was affected by the FY 2018 government shutdown).

<sup>1085</sup> DOC Letter.

<sup>1086</sup> The \$190,941,960 back pay cost includes the salary and benefits that DOC paid to its furloughed employees. The DOC estimates that the salary-only number amounts to \$152,747,980. *See* DOC Letter.

<sup>1087</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 26 (Nov. 2013).

<sup>1088</sup> DOC Letter.

*Shutdown Preparation Activities.* DOC did not provide the Subcommittee with any information regarding the cost of its shutdown preparation activities.<sup>1089</sup>

*Monitoring the Shutdowns.* DOC did not provide the Subcommittee with any information regarding costs related to monitoring the shutdowns.<sup>1090</sup>

### **Disruptions to Agency Operations**

DOC told the Subcommittee that the FY 2019 shutdown affected five out of its 11 operating bureaus, and noted that the disruptions the agency described in its response may not include all impacts caused by the shutdown.<sup>1091</sup>

*Bureau of Industry and Security.* The Bureau of Industry and Security (“BIS”) experienced disruptions, including the shutdown of “the processing of steel and aluminum section 232 exclusion requests, warrants, arrests, and other enforcement activities.”<sup>1092</sup> During the FY 2019 shutdown, exclusion request delays caused some companies to increase prices, and therefore pass on additional costs to consumers.<sup>1093</sup>

*National Oceanic and Atmospheric Administration.* The National Oceanic and Atmospheric Administration experienced disruptions to its research activities, including its planned weather satellite launch and issuance of research grants.<sup>1094</sup> This not only impacted government programs, but also affected some private businesses that rely on NOAA data.<sup>1095</sup> For example, one aerospace company based in Texas was forced to delay a project because, according to the COO, the company did not have access to NOAA’s wind data that was necessary for safety analyses.<sup>1096</sup>

*National Institutes of Standards and Technology.* The National Institutes of Standards and Technology (“NIST”), a physical science laboratory dedicated to bolstering U.S. industrial competitiveness, experienced disruptions to several of its key services.<sup>1097</sup> “From the smart electric power grid and electronic health records to atomic clocks, advanced nanomaterials, and computer chips, innumerable

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<sup>1089</sup> *Id.*

<sup>1090</sup> *Id.*

<sup>1091</sup> *Id.*

<sup>1092</sup> *Id.*

<sup>1093</sup> Liz Hampton, *Some U.S. importers resigned to higher prices as Trump’s tariffs bite*, REUTERS, Feb. 1, 2019, <https://www.reuters.com/article/us-usa-trade-metals-focus/some-u-s-metals-importers-resigned-to-higher-prices-as-trumps-tariffs-bite-idUSKCN1PQ3PI> (noting that “the recent government shutdown added to a wait that for some [companies] had stretched to eight months without a ruling” on exclusion applications, and that “companies are passing on as much of the extra cost as they can to consumers, while absorbing the rest.”).

<sup>1094</sup> DOC Letter.

<sup>1095</sup> Jeff Foust, *Shutdown’s toll mounts for NASA and companies*, SPACENEWS, Jan. 23, 2019, <https://spacenews.com/shutdowns-toll-mounts-for-nasa-and-companies/>.

<sup>1096</sup> *Id.*

<sup>1097</sup> DOC Letter; NAT’L INST. OF STANDARDS AND TECH., ABOUT NIST (updated June 14, 2017), <https://www.nist.gov/about-nist>.

products and services rely in some way on technology, measurement, and standards provided by NIST.”<sup>1098</sup> Even though NIST regulates federal agencies, many corporate entities rely on NIST standards as a baseline for best practices and guidance related to internal systems such as corporate enterprise security programs.<sup>1099</sup> During shutdowns, important NIST guideline releases are typically delayed, and can impact security teams that rely on the information, exposing companies and their customers to cyber-related vulnerabilities.<sup>1100</sup>

*International Trade Administration.* DOC told the Subcommittee that during the FY 2019 shutdown, the International Trade Administration experienced disruptions to its investigative and processing activities.<sup>1101</sup> ITA effectively ceased all Antidumping and Countervailing duty investigations; these enforcement activities are intended to reinforce principles of fair trade and ensure that foreign governments and manufactures are not selling or subsidizing goods at less than fair value.<sup>1102</sup> The ITA also stopped processing foreign trade zone applications, which disrupts the manufacturing process for companies that use trade zone benefits to reduce duty payments on foreign goods.<sup>1103</sup> Additionally, businesses were unable to access important ITA export guidance necessary to send international shipments of products.<sup>1104</sup> These disruptions can interfere with businesses’ supply chain management and hurt the U.S. manufacturing industry.<sup>1105</sup>

*Economic Development Administration.* The Economic Development Administration (“EDA”) experienced disruptions to its “development and publication of Notice of Funding Opportunities (“NOFOs”).”<sup>1106</sup> The EDA publishes NOFOs to solicit applications from businesses in “construction, non-construction,

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<sup>1098</sup> NAT'L INST. OF STANDARDS AND TECH., ABOUT NIST (updated June 14, 2017), <https://www.nist.gov/about-nist>.

<sup>1099</sup> Fahmida Y. Rashid, *Government Shutdown Impacts Enterprise Security*, DUO SECURITY, Dec. 31, 2018, <https://duo.com/decipher/government-shutdown-impacts-enterprise-security>.

<sup>1100</sup> *Id.*

<sup>1101</sup> DOC Letter.

<sup>1102</sup> *Id.*; Nithya Nagarajan & Cortney Morgan, *How the Government Shutdown is Affecting Trade*, INDUSTRY WEEK, Jan. 22, 2019, <https://www.industryweek.com/economy/how-government-shutdown-affecting-trade>.

<sup>1103</sup> DOC Letter; Rossella Brevetti, *Shutdown Hurts Administration Crackdown on Unfair Trade Practices*, BLOOMBERG LAW, Jan. 9, 2019, [https://www.bloomberg.com/document/X3RBV2PS000000?bna\\_news\\_filter=international-trade&jcsearch=BNA%252000000167ec28dbd6afe7edfc9ea10002#jcite](https://www.bloomberg.com/document/X3RBV2PS000000?bna_news_filter=international-trade&jcsearch=BNA%252000000167ec28dbd6afe7edfc9ea10002#jcite).

<sup>1104</sup> Brock Blake, *The Real Cost of The Government Shutdown on Small Businesses*, FORBES, Jan. 31, 2019, <https://www.forbes.com/sites/brockblake/2019/01/31/the-real-cost-of-the-government-shutdown-on-small-business/#6c483c119a1c>.

<sup>1105</sup> *Id.*

<sup>1106</sup> DOC Letter.

planning, and technical assistance,” so that DOC may provide those businesses with investments.<sup>1107</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* DOC did not provide the Subcommittee with any information regarding costs related to reopening and resuming full agency operations.<sup>1108</sup>

*Expected Long-Term Effects.* DOC told the Subcommittee that it did not expect any noteworthy long-term effects related to “any recent shutdowns.”<sup>1109</sup>

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<sup>1107</sup> U.S. ECON. DEV. ADMIN., FUNDING OPPORTUNITIES, <https://www.eda.gov/funding-opportunities/> (last visited August 23, 2019).

<sup>1108</sup> DOC Letter.

<sup>1109</sup> *Id.*

## **W. Department of Agriculture**

The U.S. Department of Agriculture (“USDA”) is responsible for providing “leadership on food, agriculture, natural resources, rural development, nutrition,” and related public policy issues.<sup>1110</sup> USDA also promotes rural development, agriculture production, and engages in efforts to preserve natural resources.<sup>1111</sup> USDA activities are impacted by shutdowns unless they are considered excepted or are funded by no-year, multi-year, or mandatory funding.<sup>1112</sup>

USDA provided limited data to the Subcommittee on costs related to the relevant shutdowns; the agency’s response only provided one cost related to all three shutdowns—\$10,000 in interest owed after the FY 2019 shutdown.<sup>1113</sup>

### **Summary of Estimated Cost to Taxpayers**<sup>1114</sup>

<b>Shutdown Period</b>	<b>Back Pay for Furloughed Employees</b>	<b>Administrative Costs</b>	<b>Misc.</b>	<b>Total</b>
FY 2014	Not provided	Not provided	Not provided	Unknown
FY 2018	Not provided	Not provided	Not provided	Unknown
FY 2019	Not provided	Not provided	\$10,000	Unknown
<b>TOTAL COST</b>				<b>Unknown</b>

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<sup>1110</sup> U.S. DEP’T OF AGRICULTURE, ABOUT USDA, <https://www.usda.gov/our-agency/about-usda> (last visited Aug. 21, 2019).

<sup>1111</sup> *Id.*

<sup>1112</sup> Letter from Sonny Perdue, Sec’y, U.S. Dep’t of Agriculture, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, Permanent Subcomm. on Investigations (Apr. 24, 2019) (on file with the Subcomm.) [hereinafter “UDSA Letter”].

<sup>1113</sup> *Id.*

<sup>1114</sup> With the exception of the \$10,000 that the USDA owed in interest following the end of the FY 2019 shutdown, as of June 26, 2019, the USDA has not provided the Subcommittee with any quantitative cost data or estimates. See USDA Letter.

### Employee Furloughs<sup>1115</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days<sup>1116</sup></b>	<b>Lost Productivity of Furloughed Workers<sup>1117</sup></b>
FY 2014	67,000	1,072,000	4,107.3 Years
FY 2018	68,000	204,000	784.6 Years
FY 2019	38,233 <sup>1118</sup>	1,338,155	5,127 Years

### Selected Shutdown Impacts

- During the FY 2019 shutdown, USDA was unable to process any applications for the Market Facilitation Program, an initiative designed by the Trump administration to mitigate losses within the agricultural community caused by trade disputes with China and other countries.<sup>1119</sup> This added to existing backlogs; tens of thousands of farmers received their payments late — a delay that has cost the government more than \$1 million in interest so far this year.<sup>1120</sup>
- USDA’s single-family loan guarantee program, which assists low-income working families in rural communities, is suspended during government

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<sup>1115</sup> USDA Letter (only for number of employees furloughed).

<sup>1116</sup> USDA did not provide the Subcommittee with data on the number of combined employee furlough days. Furlough practices vary across agencies, due to factors such as available multi-year or no-year funding. Additionally, as with the USDA during the FY 2019 shutdown, furlough days can vary due to employees being recalled or increases in the number of furloughed employees. See USDA Letter. Because the Subcommittee did not have the relevant data from USDA, staff calculated the numbers of “Combined Furlough Days” based on the total duration of each shutdown, and therefore, the numbers may not reflect the actual numbers.

<sup>1117</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate. Subcommittee staff used the estimated “Combined Furlough Days” numbers to calculate this figure. Therefore, these figures are estimates. See *supra*, note 1024.

<sup>1118</sup> The USDA told the Subcommittee that it furloughed approximately 36,400 employees during the first week of the FY 2019 shutdown, and then increased that number to 44,000 after the first week. During the final week of the shutdown, USDA recalled 9,700 staff. As the Subcommittee is unable to determine the exact number of combined furlough days and how many employees were furloughed during any given time, staff used the average number of USDA employees furloughed at any given time during the shutdown— 38,233. See USDA Letter.

<sup>1119</sup> Gina Heeb, *U.S. has paid more than \$1M in interest for late bailout payments to farmers*, NBC NEWS, Aug. 28, 2019, <https://www.nbcnews.com/business/business-news/u-s-has-paid-more-1m-interest-late-bailout-payments-n1046401>.

<sup>1120</sup> *Id.*

shutdowns. In FY 2014, USDA was unable to process applications and delayed home loan decisions for about 8,000 families.<sup>1121</sup>

- Reports and data releases were put on hold during shutdowns. During the FY 2014 shutdown, the “National Agricultural Statistics Service postponed, canceled, or reduced in scope 21 commodity, service, and farm wage reports and data releases.”<sup>1122</sup> Additionally, during the FY 2014 lapse, the release of the Census of Agriculture statistical products was postponed.<sup>1123</sup>

### **Overview of Agency Operations and Funding**

USDA is made up of 29 agencies and offices with more than 100,000 employees who work at 4,500 locations across the country and abroad.<sup>1124</sup> These offices and agencies carry out the objectives of USDA’s eight defined mission areas: farm production and conservation; food, nutrition, and consumer services; food safety; marketing and regulatory programs; natural resources and environment; research, education and economics; rural development; and trade and foreign agricultural affairs.<sup>1125</sup>

Most of USDA’s operations are funded through the annual appropriations process, with a minority of the Department’s programs receiving no-year, multi-year or mandatory funds.<sup>1126</sup> USDA was impacted by all three relevant shutdowns, but the agency’s response to the Subcommittee did not include information about costs incurred by any of these funding lapses.<sup>1127</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, USDA furloughed approximately 67,000 of its 97,115 employees.<sup>1128</sup>

During the FY 2018 shutdown, USDA furloughed approximately 68,000 of its 101,401 employees.<sup>1129</sup>

During the FY 2019 shutdown, the number of furloughed USDA employees fluctuated; on average, 38,233 out of 95,383 employees were furloughed at any given

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<sup>1121</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 16 (Nov. 2013).

<sup>1122</sup> *Id.* at 12.

<sup>1123</sup> *Id.*

<sup>1124</sup> U.S. DEP’T OF AGRICULTURE, ABOUT USDA, <https://www.usda.gov/our-agency/about-usda> (last visited Aug. 21, 2019).

<sup>1125</sup> U.S. DEP’T OF AGRICULTURE, MISSION AREAS, <https://www.usda.gov/our-agency/about-usda/mission-areas> (last visited August 22, 2019).

<sup>1126</sup> USDA Letter.

<sup>1127</sup> *Id.*

<sup>1128</sup> *Id.*

<sup>1129</sup> *Id.*

time.<sup>1130</sup> During the first week of the shutdown, USDA furloughed approximately 36,400 employees.<sup>1131</sup> After the first week, USDA increased the number of furloughed employees to 44,000.<sup>1132</sup> At the start of the fifth and final week of the shutdown, the USDA “recalled and designated 9,700 furloughed Farm Service Agency staff as excepted and reopened all Farm Service Agency offices.”<sup>1133</sup>

*Employee Back Pay.* USDA did not provide any information about the amount of back pay that furloughed employees received once the three shutdowns ended.<sup>1134</sup> While the agency did not explicitly state that they did not have the relevant data, its response to the Subcommittee stated that “USDA’s time and attendance systems were coded to reflect regular duty time codes.”<sup>1135</sup> This suggests that once the shutdown ended, all employees, whether they were furloughed or not, would have entered their time into the internal systems as “regular duty.” Therefore, there would likely be no way for USDA to distinguish the amount of back pay paid to furloughed employees who were unable to work during the shutdown versus the amount paid to excepted and exempt employees who did work during the shutdown.

USDA did note that processing of back pay after the FY 2019 shutdown “was a herculean effort for our payroll provider due to the timing of the re-opening and system limitations.”<sup>1136</sup> While most employees received their full back pay by January 31, 2019, less than ten percent of employees had their back pay delayed due to what USDA described as “the complexity of their time and attendance process.”<sup>1137</sup>

*Federal Contractors.* USDA told the Subcommittee that it is unable to provide information about contractors affected by the relevant shutdowns because it “does not collect or track data on the internal employment activities or decisions of [its] contractor population.”<sup>1138</sup>

*Shutdown Preparation and Monitoring Activities.* USDA was unable to provide an estimate of costs related to preparing for and monitoring the shutdowns.<sup>1139</sup> However, USDA did tell the Subcommittee that in order “[t]o accurately capture such efforts in the future, [the agency] is working to enhance its

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<sup>1130</sup> *Id.*

<sup>1131</sup> *Id.*

<sup>1132</sup> *Id.*

<sup>1133</sup> *Id.*

<sup>1134</sup> *Id.*

<sup>1135</sup> *Id.*

<sup>1136</sup> *Id.*

<sup>1137</sup> *Id.*

<sup>1138</sup> *Id.*

<sup>1139</sup> *Id.*

time and attendance reporting codes to document such time expenditures in the event of future shutdowns.”<sup>1140</sup>

### **Disruptions to Agency Operations**

USDA told the Subcommittee that “[t]o date [the agency] has performed no detailed analyses related to internal or external costs incurred during three most recent shutdown events” and that there is similarly “little quantitative data at this time concerning disruptions to services.”<sup>1141</sup> USDA, did, however, provide the Subcommittee with some information about general disruptions to agency activities during the most recent shutdown.<sup>1142</sup>

At the start of the FY 2019 shutdown, USDA “announced several activities would not continue during the shutdown including provisions of new rural development loans and grants for housing, community facilities, utilities and businesses; recreation sites across the U.S. National Forest System, some timber sales and most forest fuels reduction dogged activities; mandatory audits; agricultural, economic, [and] commodity research, staff analysis and statistical reports and projections; investigation of packers and stockyards related to fraudulent and anti-competitive activities; assistance for the control of most plant and animal pests and diseases...and research facilities except for the care for animals, plants and associated infrastructure to preserve agricultural research.”<sup>1143</sup>

During the FY 2019 shutdown, the USDA also experienced a delay in retirement and benefits processing “due to unclear guidance from the regulating agencies.”<sup>1144</sup> As a result, these activities were not designated as “excepted” until almost three weeks into the shutdown, resulting in a backlog of processing.<sup>1145</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Operations.* USDA “has no data concerning any costs associated with the resumption of normal agency operations and the end of shutdowns to date.”<sup>1146</sup>

*Expected Long-Term Effects.* USDA said that is “does not anticipate significant long-term impacts from the most recent shutdown” but noted that the agency would continue to review for any impacts.<sup>1147</sup> USDA did state, however, that “[f]rom a high-level perspective, [the agency] could have downstream impacts related to compliance and audit requirements, which were suspended because the

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<sup>1140</sup> *Id.*

<sup>1141</sup> *Id.*

<sup>1142</sup> *Id.*

<sup>1143</sup> *Id.*

<sup>1144</sup> *Id.*

<sup>1145</sup> *Id.*

<sup>1146</sup> *Id.*

<sup>1147</sup> *Id.*

employees that do this work were furloughed. In addition, there was catch up required for financial reporting requirements that were not waived.”<sup>1148</sup> The agency’s response did not include any comments about expected or actual long-term effects caused by the FY 2014 or FY 2018 shutdowns.<sup>1149</sup>

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<sup>1148</sup> *Id.*

<sup>1149</sup> *Id.*

## X. Department of the Interior

The U.S. Department of the Interior (“DOI”) is responsible for conserving and managing the nation’s natural resources, providing scientific information about natural resources and hazards, and honoring the nation’s trust responsibilities or special commitments to certain communities, including American Indians and Alaska Natives.<sup>1150</sup>

DOI was affected by all three relevant shutdowns, but told the Subcommittee that furlough “data is not available [for the FY 2018 shutdown] as it occurred largely over the weekend.”<sup>1151</sup> Aside from back pay for furloughed employees, DOI did not provide information regarding any administrative or other miscellaneous costs related to any of the shutdowns, such as lost revenue at National Parks or deferred maintenance.<sup>1152</sup> DOI also did not provide information about any substantive impacts to agency activities or property other than stop-work orders on contracts.<sup>1153</sup> However, Subcommittee staff were able to identify some information about how shutdowns have affected DOI’s operations and property from government publications, news reports, and independent groups such as the National Parks Conservation Association.<sup>1154</sup>

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<sup>1150</sup> U.S. DEPT OF THE INTERIOR, ABOUT DOI, <https://www.doi.gov/whoweare> (last visited Aug. 22, 2019).

<sup>1151</sup> Letter from Cole Rojewski, Director, Office of Cong. and Legislative Affairs, Dep’t of the Interior, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Apr. 12, 2019) [hereinafter referred to as “Apr. 12 DOI Letter”].

<sup>1152</sup> Letter from Cole Rojewski, Director, Office of Cong. and Legislative Affairs, Dep’t of the Interior, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (June 25, 2019) [hereinafter referred to as “June 25 DOI Letter”]; Apr. 12 DOI Letter.

<sup>1153</sup> *Id.*

<sup>1154</sup> See, e.g., CONG. RESEARCH SERV., IN FOCUS 7-5700, NATIONAL PARK SERVICE: GOVERNMENT SHUTDOWN ISSUES (updated Feb. 19, 2019); OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 3, 6, 9, 11 (Nov. 2013); Denise Lu & Anjali Singhvi, *Government Shutdown Timeline: See How the Effects Are Piling Up*, N.Y. TIMES, Jan. 28, 2019, <https://www.nytimes.com/interactive/2019/01/08/us/politics/government-shutdown-calen>; Emily Douce & John Garder, *How Is the Partial Government Shutdown Affecting National Parks?*, NAT’L PARKS CONSERVATION ASSOC., Jan. 16, 2019, <https://www.nPCA.org/articles/2029-how-is-the-partial-government-shutdown-affecting-national-parks>.

### Summary of Estimated Cost to Taxpayers<sup>1155</sup>

<b>Shutdown Period</b>	<b>Back Pay for Furloughed Employees</b>	<b>Administrative Costs</b>	<b>Misc.</b>	<b>Total</b>
FY 2014	\$183,016,067	Not provided	\$21,318	\$183,037,385
FY 2018	Not provided	Not provided	Not provided	Unknown
FY 2019	\$336,998,701	Not provided	\$257,288	\$337,255,989
<b>TOTAL COST</b>				<b>\$520,293,374.00</b>

### Employee Furloughs<sup>1156</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Lost Productivity of Furloughed Workers<sup>1157</sup></b>
FY 2014	58,432	689,964	2,643.5 Years
FY 2018	Not provided	Not provided	Unknown
FY 2019	48,184	1,111,671	4,259.3 Years

### Selected Shutdown Impacts

- During shutdowns, the National Park Service (“NPS”) loses significant visitor revenue.<sup>1158</sup> Local economies suffer as well; lost visitor spending nationwide represents “a significant economic hit to communities surrounding national parks and monuments.”<sup>1159</sup> Additionally, NPS is already suffering from nearly \$12 billion in repair needs due to lack of funding, and during shutdowns, park staff are unable to perform daily maintenance, therefore increasing the risk of adding even more to the deferred maintenance backlog.<sup>1160</sup>

<sup>1155</sup> Apr. 12 DOI Letter.

<sup>1156</sup> *Id.*

<sup>1157</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A-11 § 85 (June 2019); OMB Circular No. A-11 § 85 (July 2017); OMB Circular No. A-11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>1158</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 3, 6 (Nov. 2013).

<sup>1159</sup> *Id.*

<sup>1160</sup> NAT’L PARK SERV., WHAT IS DEFERRED MAINTENANCE? (updated June 14, 2018), <https://www.nps.gov/subjects/infrastructure/deferred-maintenance.htm>; NAT’L PARKS CONSERVATION ASSOC., POLICY UPDATE, TESTIMONY: IMPACTS OF THE PARTIAL FEDERAL GOVERNMENT SHUTDOWN

- The FY 2014 shutdown delayed efforts to combat invasive species that are endangering Great Lakes fisheries.<sup>1161</sup> U.S. Geological Survey scientists were unable to complete field testing intended to prevent the spread of Asian carp into the Great Lakes. The window of opportunity for these tests was missed due to cooling water temperatures, which forced scientists to delay the project.<sup>1162</sup>
- The Bureau of Land Management was unable to issue permits to conduct drilling operations on federal lands during the FY 2014 shutdown, “and it stopped or delayed environmental reviews of planned transportation and energy projects, which prevented companies from moving forward on these projects” and delayed energy development on federal lands in several states. Oil and gas lease sales were also postponed.<sup>1163</sup>

### **Overview of Agency Operations and Funding**

DOI manages America's vast natural and cultural resources and employs about 70,000 people, including “expert scientists and resource-management professionals” who work in one of the nine technical bureaus.<sup>1164</sup> In addition to the bureaus, there are a number of departmental offices that fall under the Office of the Secretary and other top-level officials.<sup>1165</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, DOI furloughed 58,432 employees for a combined total of 689,964 days.<sup>1166</sup> DOI paid a total of \$183,016,067 to its furloughed employees once the shutdown ended.<sup>1167</sup>

During the FY 2019 shutdown, DOI furloughed 48,184 employees for a combined total of 1,111,671 days.<sup>1168</sup> DOI paid a total of \$336,998,701 to its furloughed employees once the shutdown ended.<sup>1169</sup> DOI told the Subcommittee it

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(Jan. 15, 2019), <https://www.nPCA.org/articles/2096-testimony-impacts-of-the-partial-federal-government-shutdown>.

<sup>1161</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 12 (Nov. 2013).

<sup>1162</sup> *Id.*

<sup>1163</sup> *Id.* at 9.

<sup>1164</sup> U.S. DEP’T OF INTERIOR, BUREAUS, <https://www.doi.gov/bureaus> (last visited Aug. 24, 2019).

<sup>1165</sup> *Id.*

<sup>1166</sup> Apr. 12 DOI Letter.

<sup>1167</sup> *Id.*

<sup>1168</sup> *Id.*

<sup>1169</sup> *Id.*

is unable to provide furlough data from the FY 2018 shutdown because it took place largely over a weekend.<sup>1170</sup>

*Federal Contractors.* DOI was able to identify information related to certain stop-work orders issued to contractors during the FY 2019 shutdown.<sup>1171</sup> The Bureau of Ocean and Energy Management and the Bureau of Safety and Environmental Enforcement “utilize the same contracting office and were able to identify 102 pre-award and post-award actions that were delayed during the lapse.”<sup>1172</sup> The Fish and Wildlife Service identified 211 stop-work orders, and the Interior Business Center identified 167 contract “that were delayed during the lapse.”<sup>1173</sup> DOI was unable to retrieve information from its Bureaus regarding the impact of the shutdowns on contractor employees.<sup>1174</sup>

*Shutdown Preparation and Monitoring Activities.* DOI was unable to retrieve information regarding preparation costs incurred by preparation or monitoring activities related to the relevant shutdowns.<sup>1175</sup>

### **Disruptions to Agency Operations**

During the FY 2014 and FY 2019 shutdowns, a number of the DOI’s day-to-day activities were disrupted.<sup>1176</sup> The FY 2014 shutdown impacted all nine of DOI’s bureaus, and the FY 2019 shutdown impacted eight.<sup>1177</sup>

*U.S. Fish and Wildlife Service.* “The U.S. Fish and Wildlife Service (“FWS”) is the principal federal agency tasked with the conservation, protection, and restoration of fish, wildlife, and natural habitats across the United States and its insular territories.”<sup>1178</sup> The FY 2014 and FY 2019 lapses restricted visitor access to FWS’s refuges and wetland management districts.<sup>1179</sup> During the FY 2019 public activities on FWS lands were less restricted than they were during the FY 2014

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<sup>1170</sup> *Id.*

<sup>1171</sup> June 25 DOI Letter.

<sup>1172</sup> *Id.*

<sup>1173</sup> *Id.*

<sup>1174</sup> *Id.*; Apr. 12 DOI Letter.

<sup>1175</sup> Apr. 12 DOI Letter.

<sup>1176</sup> *Id.*; June 25 DOI Letter.

<sup>1177</sup> The Bureau of Reclamation receives funding through the Energy and Water Development appropriations bill, which Congress passed prior to the FY2019 shutdown. See June 25 DOI Letter; MARK DESANTIS, CONG. RESEARCH SERV., R45480, U.S. DEP’T OF THE INTERIOR: AN OVERVIEW 22 (Jan. 31, 2019).

<sup>1178</sup> MARK DESANTIS, CONG. RESEARCH SERV., R45480, U.S. DEP’T OF THE INTERIOR: AN OVERVIEW 14 (Jan. 31, 2019).

<sup>1179</sup> U.S. FISH AND WILDLIFE SERV., CONTINGENCY PLAN FACT SHEET (Sept. 27, 2013), <https://www.doi.gov/sites/doi.gov/files/migrated/shutdown/fy2014/upload/FWS-Fact-Sheet.pdf>; U.S. FISH AND WILDLIFE SERV., CONTINGENCY PLAN FOR OPERATIONS IN THE EVENT OF A LAPSE IN APPROPRIATIONS (Jan. 2019), <https://www.doi.gov/sites/doi.gov/files/2019-01-fws-contingency-plan.pdf>.

shutdown, likely due to a change in the Bureau’s funding process and contingency plans.<sup>1180</sup>

*United States Geological Survey.* USGS investigates and assesses the land, water, energy, and mineral resources of the United States, conducts research on global changes, and produces geological-map databases for the United States.<sup>1181</sup> During the FY 2014 and FY 2019 shutdowns, a majority of USGS activities were suspended, including scientific research projects.<sup>1182</sup> For example, during the FY 2014 shutdown, USGS efforts to combat invasive species that endanger Great Lakes fisheries were delayed.<sup>1183</sup> Scientists were unable to “complete field-testing of a technology to prevent the spread of Asian carp into the Great Lakes.”<sup>1184</sup> The window of opportunity to field test this technology was missed, due to cooling water temperatures,” causing testing to be delayed by about six months.<sup>1185</sup> Other invasive species projects were also delayed, including research on “the spread of dangerous Africanized honeybees in the South-west, invasive grass species involved in intensifying wildfires, and white-nose bat syndrome impacting bats in national parks.”<sup>1186</sup>

*Office of Surface Mining Reclamation and Enforcement.* “The [OSMRE] operates a nationwide program protecting society and the environment from the adverse effects of coal mining.”<sup>1187</sup> During the FY 2014 and FY 2019 shutdowns, OSMRE continued to conduct emergency response activities only.<sup>1188</sup>

*Bureau of Indian Affairs.* “BIA provides services to federally recognized American Indian and Alaska Native tribes and their nearly 1.9 million

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<sup>1180</sup> *Id.* For example, during the FY2019 shutdown, Fire management staff was limited to “preparedness and wildfire suppression” during the shutdown; regular fire management activities such as “prescribed burning” ceased.

<sup>1181</sup> 1 West's Fed. Admin. Prac. § 231, Department of the Interior—United States Geological Survey.

<sup>1182</sup> CONG. RESEARCH SERV., R43142, INTERIOR, ENVIRONMENT, AND RELATED AGENCIES: FY2013 AND FY2014 APPROPRIATIONS 2 (May 1, 2014); U.S. GEOLOGICAL SURVEY, PLAN IN THE ABSENCE OF AN APPROPRIATION 1 (Sept. 2018),

[https://www.doi.gov/sites/doi.gov/files/2018\\_09\\_usgs\\_contingency\\_plan.pdf](https://www.doi.gov/sites/doi.gov/files/2018_09_usgs_contingency_plan.pdf).

<sup>1183</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 12 (Nov. 2013).

<sup>1184</sup> *Id.*

<sup>1185</sup> *Id.*

<sup>1186</sup> *Id.*

<sup>1187</sup> 1 West's Fed. Admin. Prac. § 232.

<sup>1188</sup> CONG. RESEARCH SERV., R43142, INTERIOR, ENVIRONMENT, AND RELATED AGENCIES: FY2013 AND FY2014 APPROPRIATIONS 2 (May 1, 2014); OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT, CONTINGENCY PLAN IN THE EVENT OF A LAPSE IN APPROPRIATIONS (Jan. 2019), <https://www.doi.gov/sites/doi.gov/files/2019-01-osmre-contingency-plan.pdf>.

members.”<sup>1189</sup> Most of BIA’s activities were suspended during the FY 2014 and FY 2019 shutdowns.<sup>1190</sup>

*Bureau of Ocean Energy Management.* “[BOEM] manages the environmentally and economically responsible development of offshore energy and mineral resources on the U.S. Outer Continental Shelf.”<sup>1191</sup> During the FY 2014 shutdown, BOEM suspended many of its core activities, including renewable energy activities, review of oil and gas exploration or production plans, and the awarding of contracts for environmental studies.<sup>1192</sup> During the FY 2019 shutdown, the impacts to BOEM activities were similar, except for the fact that there were personnel available on an on-call basis to perform functions related to preparing for certain offshore drilling sales and for some permitting activities. BOEM recalled 40 workers in mid-January to work on these activities.<sup>1193</sup> BOEM did not experience any delays in making grant payments.<sup>1194</sup>

*Bureau of Land Management.* BLM manages more than 270 million acres of public lands, most of which is located in Alaska.<sup>1195</sup> During the FY 2014 and FY 2019 shutdowns, BLM terminated all non-emergency activities on the public lands managed by the Bureau.<sup>1196</sup>

*Bureau of Safety and Environmental Enforcement.* BSEE works to improve safety and ensure environmental protection related to the offshore energy industry, primarily oil and natural gas.<sup>1197</sup> Except for reviews and inspections of offshore oil and gas operations, which continued during the FY 2014 and FY 2019 shutdowns,

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<sup>1189</sup> MARK DESANTIS, CONG. RESEARCH SERV., R45480, U.S. DEP’T OF THE INTERIOR: AN OVERVIEW 14 (Jan. 31, 2019).

<sup>1190</sup> BUREAU OF INDIAN AFFAIRS, SHUTDOWN CONTINGENCY Plan (Jan. 2019), <https://www.doi.gov/sites/doi.gov/files/2019-01-bia-contingency-plan.pdf>; BUREAU OF INDIAN AFFAIRS, PRESS RELEASE: INDIAN AFFAIRS PROVIDING LIMITED SERVICES DURING THE FEDERAL GOVERNMENT SHUTDOWN (Oct. 1, 2013), <https://www.bia.gov/as-ia/opa/online-press-release/indian-affairs-providing-limited-services-during-federal-government>.

<sup>1191</sup> BUREAU OF OCEAN ENERGY MGMT., FY 2019 CONTINGENCY PLAN (Jan. 8, 2019), <https://www.doi.gov/sites/doi.gov/files/2019-1-boem-contingency-plan.pdf>.

<sup>1192</sup> BUREAU OF OCEAN ENERGY MGMT., CONTINGENCY PLAN Q & A DOCUMENT (Sept. 27, 2013), <https://www.doi.gov/sites/doi.gov/files/migrated/shutdown/fy2014/upload/BOEM-FAQ.pdf>.

<sup>1193</sup> BUREAU OF OCEAN ENERGY MGMT., FY 2019 CONTINGENCY PLAN (Jan. 8, 2019), <https://www.doi.gov/sites/doi.gov/files/2019-1-boem-contingency-plan.pdf>; Timothy Cama, *Trump Administration to bring back offshore drilling staff during shutdown*, THE HILL, Jan. 15, 2019, <https://thehill.com/policy/energy-environment/425501-trump-administration-to-bring-back-offshore-drilling-staff-during>.

<sup>1194</sup> June 25 DOI Letter.

<sup>1195</sup> 1 West’s Fed. Admin. Prac. § 235.

<sup>1196</sup> CONG. RESEARCH SERV., R43142, INTERIOR, ENVIRONMENT, AND RELATED AGENCIES: FY2013 AND FY2014 APPROPRIATIONS 2 (May 1, 2014); BUREAU OF LAND MGMT. CONTINGENCY PLAN FOR POSSIBLE SHUTDOWN OF GOVERNMENT FUNCTIONS (Jan. 2019), <https://www.doi.gov/sites/doi.gov/files/2019-01-blm-contingency-plan.pdf>.

<sup>1197</sup> BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT, ABOUT US, <https://www.bsee.gov/who-we-are/about-us> (last visited August 26, 2019).

BSEE suspended almost all of its normal operations.<sup>1198</sup> The Bureau continued, however, to make grant payments without delay.<sup>1199</sup>

*Bureau of Reclamation.* BOR helps the Western States, Native American Tribes and other groups meet new and increasing water demands by building, operating, and maintaining water facilities.<sup>1200</sup> During the FY 2014 shutdown, BOR suspended various activities, including processing right-of-way and special-use permit applications, certain project management actions, and non-essential contract activities.<sup>1201</sup> BOR continued to deliver water and generate power during the shutdown period, and certain visitor centers of BOR facilities—such as the Hoover Dam—remained open.<sup>1202</sup> During the FY 2019 shutdown, BOR did not experience a lapse in funding, and continued its full operations as normal.<sup>1203</sup>

*National Park Service.* NPS administers and protects approximately 80 million acres of federal land, including 419 units that comprise the National Park System across all 50 states and U.S. territories.<sup>1204</sup>

Although the FY 2014 and FY 2019 shutdowns both disrupted normal visitor access at NPS and the operations of privately owned businesses on park lands and in surrounding communities, the level of impact was different due to the contrasting priorities reflected in shutdown procedures.<sup>1205</sup> During the FY 2014 shutdown, all parks were “closed to public visitation and use,” including almost all privately owned business operations within the parks.<sup>1206</sup> “To implement the closures, NPS required all visitors to leave the parks. Where possible, park roads were closed and

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<sup>1198</sup> CONG. RESEARCH SERV., R43142, INTERIOR, ENVIRONMENT, AND RELATED AGENCIES: FY2013 AND FY2014 APPROPRIATIONS 2 (May 1, 2014); BUREAU OF SAFETY AND ENVIRONMENTAL ENFORCEMENT, CONTINGENCY PLAN (Dec. 17, 2018), <https://www.doi.gov/sites/doi.gov/files/2018-12-bsee-contingency-plan.pdf>.

<sup>1199</sup> June 25 DOI letter.

<sup>1200</sup> U.S. BUREAU OF RECLAMATION, BUREAU OF RECLAMATION SHUTDOWN IMPACTS (Oct. 1, 2013), <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=44744>; MARK DESANTIS, CONG. RESEARCH SERV., R45480, U.S. DEP’T OF THE INTERIOR: AN OVERVIEW 14 (Jan. 31, 2019).

<sup>1201</sup> *Id.*

<sup>1202</sup> The visitor centers that remained open operated with non-appropriated funds and visitors fees. See U.S. BUREAU OF RECLAMATION, BUREAU OF RECLAMATION SHUTDOWN IMPACTS (Oct. 1, 2013), <https://www.usbr.gov/newsroom/newsrelease/detail.cfm?RecordID=44744>.

<sup>1203</sup> Unlike the other DOI bureaus, BOR receives funding through the Energy and Water Development appropriations bill, which Congress passed prior to the FY2019 shutdown. See Apr. 12 DOI Letter; MARK DESANTIS, CONG. RESEARCH SERV., R45480, U.S. DEP’T OF THE INTERIOR: AN OVERVIEW 14 (Jan. 31, 2019).

<sup>1204</sup> MARK DESANTIS, CONG. RESEARCH SERV., R45480, U.S. DEP’T OF THE INTERIOR: AN OVERVIEW 14 (Jan. 31, 2019).

<sup>1205</sup> June 25 DOI Letter; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 12 (Nov. 2013).

<sup>1206</sup> CONG. RESEARCH SERV., IN FOCUS 7-5700, NATIONAL PARK SERVICE: GOVERNMENT SHUTDOWN ISSUES (updated Feb. 19, 2019).

access was denied.”<sup>1207</sup> NPS also suspended almost all services, except very limited activities, primarily related to emergencies.<sup>1208</sup>

Shutdown procedures in place during the FY 2014 shutdown had tangible impacts on NPS.<sup>1209</sup> In a November 2013 report about effects of the FY 2014 shutdown, OMB stated that NPS “estimates that it lost about \$7,000,000 in revenue as a result of the shutdown.”<sup>1210</sup> The OMB report also said that the FY 2014 park closures “impacted the broader travel industry and local businesses, as families across the country canceled their travel plans.”<sup>1211</sup> NPS “estimates that the shutdown led to over \$500 million in lost visitor spending nationwide, a significant economic hit to communities surrounding national parks and monuments.”<sup>1212</sup>

During the FY 2019 shutdown, NPS did not “operate” parks, but “certain park areas [were] still [] accessible to visitors.”<sup>1213</sup> The Administration’s approach meant “[t]he majority of parks—including well-known units such as Yellowstone, Grand Canyon, Yosemite, Statue of Liberty, and the National Mall—remained at least partially accessible to visitors during the shutdown, with varying levels of services and law enforcement.”<sup>1214</sup> Some privately owned businesses were allowed to continue operations at the discretion of park superintendents.<sup>1215</sup>

Reports during the FY 2019 shutdown suggested NPS was experiencing negative impacts not only as a result of lost revenue, but also due to issues in some park sites that remained accessible.<sup>1216</sup> “These [issues] included trash buildups, restroom waste problems, and accidental and intentional damage to natural resources, among others.”<sup>1217</sup> For example, the National Parks Conservation Association and National Geographic reported trash buildup, vandalism, trespassing, and destruction of the natural environment at Joshua Tree National Park in California caused by visitors to the park in the absence of adequate staffing at the park.<sup>1218</sup> In Washington, DC, the local government paid for trash collection

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<sup>1207</sup> *Id.*

<sup>1208</sup>

<sup>1209</sup> *Id.* at 3, 6; CONG. RESEARCH SERV., IN FOCUS 7-5700, NATIONAL PARK SERVICE: GOVERNMENT SHUTDOWN ISSUES (updated Feb. 19, 2019).

<sup>1210</sup> *Id.* at 6.

<sup>1211</sup> *Id.* at 11.

<sup>1212</sup> *Id.* at 3.

<sup>1213</sup> CONG. RESEARCH SERV., IN FOCUS 7-5700, NATIONAL PARK SERVICE: GOVERNMENT SHUTDOWN ISSUES (updated Feb. 19, 2019). DOI implemented its current, FY2019 Contingency Plan during the shutdown and there are currently no official reports on the extent of park unit closures, although it is known that some parks, which consisted solely of buildings and lockable areas, were closed entirely.

<sup>1214</sup> *Id.*

<sup>1215</sup> *Id.*

<sup>1216</sup> *Id.*;

<sup>1217</sup> *Id.*

<sup>1218</sup> Emily Douce & John Garder, *How Is the Partial Government Shutdown Affecting National Parks?*, NAT'L PARKS CONSERVATION ASSOC., Jan. 16, 2019, <https://www.nPCA.org/articles/2029-how>

and snow removal services on NPS land within the district for the first three weeks of the FY 2019 shutdown.<sup>1219</sup> The city estimated that trash removal alone would cost the city \$46,000 per week.<sup>1220</sup>

On January 6, 2019, NPS announced that it was amending its contingency plan in order to allow the use of available Federal Lands Recreation Enhancement Act (“FLREA”) funds to address the ongoing negative impacts and to provide many services at certain park sites, including trash collection and road maintenance.<sup>1221</sup> DOI stated that these activities were authorized under FLREA, which allows NPS to collect and retain revenue from park entrance and recreation fees.<sup>1222</sup> NPS initially approved the use of FLREA funds at 83 sites.<sup>1223</sup> Ultimately, over the period of the FY 2019 shutdown, NPS approved the use of FLREA funds for more than 100 sites.<sup>1224</sup> Park managers were permitted to use these funds for activities that DOI determined were allowable under FLREA, including those related to restrooms and sanitation, trash collection, road maintenance, campground operations, law enforcement and emergency operations, and basic visitor services.<sup>1225</sup> Excepted staff who worked on these activities funded by FLREA dollars were paid on time.<sup>1226</sup>

NPS was scrutinized for its use of FLREA funds.<sup>1227</sup> DOI defended its actions based on its interpretation of the statutory text of FLREA and the Department’s historical practices dating back to at least 2014.<sup>1228</sup> On February 6, 2019, DOI announced that it would retroactively move obligations incurred against

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is-the-partial-government-shutdown-affecting-national-parks; Sarah Gibbens, *National parks face years of damage from government shutdown*, NAT’L GEO., Jan. 7, 2019, <https://www.nationalgeographic.com/environment/2019/01/why-national-parks-trashed-during-government-shutdown/>.

<sup>1219</sup> Don Parker, *NPS thanks DC for picking up trash during shutdown, says it will resume services Friday*, WJLA NEWS, Jan. 10, 2019, <https://wjla.com/news/local/nps-dc-trash-shutdown>.

<sup>1220</sup> *Id.*

<sup>1221</sup> Letter from David Bernhardt, Acting Sec’y of the Interior, to Sen. Tom Udall, Ranking Member, S. Subcomm. on the Interior, Environ., and Related Agencies (Mar. 1, 2019).

<sup>1222</sup> Letter from David Bernhardt, Acting Sec’y of the Interior, to Sen. Tom Udall, Ranking Member, S. Subcomm. on the Interior, Environ., and Related Agencies (Mar. 1, 2019); NAT’L PARK SERV., YOUR FEE DOLLARS AT WORK (last updated Mar. 14, 2019), <https://www.nps.gov/aboutus/fees-at-work.htm> (“Out of the 419 units in the [NPS], 112 parks charge an entrance fee.”).

<sup>1223</sup> Letter from David Bernhardt, Acting Sec’y of the Interior, to Sen. Tom Udall, Ranking Member, S. Subcomm. on the Interior, Environ., and Related Agencies (Mar. 1, 2019).

<sup>1224</sup> *Id.*

<sup>1225</sup> *Id.*

<sup>1226</sup> *Id.*

<sup>1227</sup> Rob Hotakainen, *Facing probe, NPS reverses spending decision*, ENERGY & ENVIRONMENT NEWS, Feb. 7, 2019, <https://www.eenews.net/stories/1060119873/print>.

<sup>1228</sup> Letter from David Bernhardt, Acting Sec’y of the Interior, to Sen. Tom Udall, Ranking Member, S. Subcomm. on the Interior, Environ., and Related Agencies (Mar. 1, 2019); Letter from Gregory Zerdan, Dep. Solicitor for Gen. Law, Dep’t of the Interior, to Thomas Armstrong, Gen. Counsel, Gov’t Accountability Office (Sep. 6, 2019).

FLREA accounts and instead apply those to the NPS annual operating account, effectively replenishing the previously obligated FLREA account balance.<sup>1229</sup> The Department stated that it relied on the FY 2019 Continuing Resolution (P.L. 115-245) and the FY 2019 Additional Continuing Appropriations Act (P.L. 116-5), as the statutory basis to move the obligations.<sup>1230</sup>

The Government Accountability Office (“GAO”) considered whether DOI complied with appropriations law<sup>1231</sup> when it initially obligated FLREA funds and when it reversed those funding obligations on February 6. On September 5, 2019, GAO issued a legal determination that DOI’s actions violated the purpose statute and the Antideficiency Act, and stated that DOI “should report its violation as required by 31 U.S.C. § 1351.”<sup>1232</sup> GAO asserted that the NPS did not have a practice of using FLREA funds for day-to-day operational tasks.<sup>1233</sup>

DOI responded to GAO’s report the next day, stating that the agency’s actions did not violate federal law and that “[t]he use of FLREA fees to maintain access to National Parks during the lapse...was consistent with Congress’s intent in enacting [FLREA].”<sup>1234</sup> Specifically, DOI defended its actions by noting that “the longstanding practice of NPS is [that] FLREA funds have been used for custodial services on dozens of occasions, spanning years.”<sup>1235</sup> DOI provided examples of instances of FLREA fees being used for day-to-day operations are documented an attachment to its response to GAO.<sup>1236</sup>

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<sup>1229</sup> Letter from David Bernhardt, Acting Sec’y of the Interior, to Rep. Betty McCollum, Chair, Subcomm. on the Interior, Environment, and Related Agencies, Comm. on Appropriations (Feb. 6, 2019); Letter from Edward Keable, Assoc. Solicitor for Gen. Law, Dep’t of the Interior, to Omari Norman, Ass’t Gen. Counsel for Appropriations Law, Gov’t Accountability Office (Sep. 6, 2019).

<sup>1230</sup> *Id.* at 9–10.

<sup>1231</sup> GAO’s inquiry focused on whether DOI’s conduct violated the purpose statute and the Antideficiency Act. The purpose statute explains that appropriated funds are available only for authorized purposes. 31 U.S.C. § 1301(a).

<sup>1232</sup> U.S. GOV’T ACCOUNTABILITY OFFICE, B-330776, DEP’T OF THE INTERIOR—ACTIVITIES AT NATIONAL PARKS DURING THE FISCAL YEAR 2019 LAPSE IN APPROPRIATIONS (Sep. 5, 2019), <https://www.gao.gov/assets/710/701165.pdf>.

<sup>1233</sup> *Id.*

<sup>1234</sup> Letter from Edward Keable, Assoc. Solicitor for Gen. Law, Dep’t of the Interior, to Omari Norman, Ass’t Gen. Counsel for Appropriations Law, Gov’t Accountability Office 21 (Sep. 6, 2019).

<sup>1235</sup> Letter from Gregory Zerdan, Dep. Solicitor for Gen. Law, Dep’t of the Interior, to Thomas Armstrong, Gen. Counsel, Gov’t Accountability Office 1 (Sep. 6, 2019) (Specific instances of FLREA fees used for day-to-day operations are documented in Attachment A to DOI’s Letter to Armstrong).

<sup>1236</sup> Letter from Edward Keable, Assoc. Solicitor for Gen. Law, Dep’t of the Interior, to Omari Norman, Ass’t Gen. Counsel for Appropriations Law, Gov’t Accountability Office Attachment A (Sep. 6, 2019).

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Activities.* The FY 2014 and FY 2019 shutdowns caused the DOI to miss scheduled payments and incur interest fees -- \$21,318 for FY 2014 and \$257,288 for FY 2019.<sup>1237</sup>

*Expected Long-Term Effects.* DOI did not provide the Subcommittee with information on any expected long-term effects from the shutdowns.<sup>1238</sup>

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<sup>1237</sup> Apr. 12 DOI Letter.

<sup>1238</sup> Apr. 12 DOI Letter; June 25 DOI Letter.

## **Y. Department of Health and Human Services**

The U.S. Department of Health and Human Services (“HHS”) is responsible for a wide variety of health services and related research.<sup>1239</sup> The mission of HHS is to “enhance the health and well-being of Americans by providing for effective health and human services and by fostering sound, sustained advances in the sciences, underlying medicine, public health, and social services.”<sup>1240</sup> In terms of budgetary resources, HHS is one of the largest federal departments. Historical estimates from OMB indicate “that HHS has accounted for at least 20% of all federal outlays in each year since FY 1995.”<sup>1241</sup>

All three relevant shutdowns impacted HHS.<sup>1242</sup> The FY 2014 shutdown “affected all HHS Operating...and Staff Divisions, as there were no signed appropriations bills during that timeframe.”<sup>1243</sup> Most of HHS’s Operation and Staff Divisions were funded ahead of the FY 2019 shutdown, so only certain divisions and programs were affected.<sup>1244</sup> HHS told the Subcommittee that “many of the numbers included in [the agency’s] response are ... best estimates.”<sup>1245</sup>

### **Summary of Estimated Cost to Taxpayers**<sup>1246</sup>

<b>Shutdown Period</b>	<b>Back Pay for Furloughed Employees</b>	<b>Administrative Costs</b>	<b>Misc.</b>	<b>Total</b>
FY 2014	\$265,311,371	\$2,400,000	Not provided	\$267,711,371
FY 2018	\$593,685	\$660,000	Not provided	\$1,253,685
FY 2019	\$99,810,165	\$2,620,000	\$280,000	\$102,710,165
<b>TOTAL COST</b>				<b>\$371,675,221</b>

<sup>1239</sup> KAREN E. LYNCH AND JESSICA TOLLESTOP, CONG. RESEARCH SERV., R45138, DEPARTMENT OF HEALTH AND HUMAN SERVICES: FY2019 BUDGET REQUEST (Mar. 22, 2018).

<sup>1240</sup> DEP’T OF HEALTH AND HUMAN SERV., INTRODUCTION: ABOUT HHS (last updated Feb. 28, 2018), <https://www.hhs.gov/about/strategic-plan/introduction/index.html>. See also KAREN E. LYNCH AND JESSICA TOLLESTOP, CONG. RESEARCH SERV., R45138, DEPARTMENT OF HEALTH AND HUMAN SERVICES: FY2019 BUDGET REQUEST (Mar. 22, 2018).

<sup>1241</sup> KAREN E. LYNCH AND JESSICA TOLLESTOP, CONG. RESEARCH SERV., R45138, DEPARTMENT OF HEALTH AND HUMAN SERVICES: FY2019 BUDGET REQUEST (Mar. 22, 2018); OMB Historical Tables of the FY2019 President’s Budget, Table 4.2, “Percentage Distribution of Outlays by Agency: 1962–2023,” <https://www.whitehouse.gov/omb/historical-tables/>.

<sup>1242</sup> Letter from Jen Moughalian, Acting Ass’t Sec’y for Fin. Resources, Dep’t of Health and Human Servs., to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (July 11, 2019) (on file with the Subcomm.) [hereinafter referred to as “HHS Letter”].

<sup>1243</sup> *Id.*

<sup>1244</sup> *Id.*

<sup>1245</sup> *Id.*

<sup>1246</sup> *Id.*

### Employee Furloughs<sup>1247</sup>

<b>Shutdown Period</b>	<b>Number of Employees Furloughed</b>	<b>Combined Furlough Days</b>	<b>Lost Productivity of Furloughed Workers<sup>1248</sup></b>
FY 2014	55,248	742,495	2,844.8 Years
FY 2018	1,662 <sup>1249</sup>	1,662	6.4 Years
FY 2019	7,997	279,327	1,070.2 Years

### Selected Shutdown Impacts

- The FDA stopped routine food and food manufacturing facility inspections during both the FY 2014 and FY 2019 shutdowns.<sup>1250</sup> During the FY 2014 shutdown, the FDA had to delay nearly 500 domestic food and feed inspections and about 355 food safety inspections under state contracts. These inspections ensure that unsanitary conditions and practices that may result in foodborne illnesses are addressed.<sup>1251</sup>
- Shutdowns disrupt the distribution of grant money. During the FY 2014 shutdown, six Head Start grantees serving nearly 6,300 children were forced to temporarily close.<sup>1252</sup>
- Staff furloughs hinder HHS public health monitoring activities, including flu season surveillance.<sup>1253</sup> During the FY 2014 shutdown, the Centers for Disease Control (“CDC”) suspended weekly flu reporting, “leaving local public

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<sup>1247</sup> *Id.*

<sup>1248</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A–11 § 85 (June 2019); OMB Circular No. A–11 § 85 (July 2017); OMB Circular No. A–11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>1249</sup> Though the appropriation bill was enacted on the first business day of the shutdown, furloughed staff had already been sent home. *Id.*

<sup>1250</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 5 (Nov. 2013); *Food and Drug Administration – Status of Operations, Before the Subcomm. on Agric., Rural Dev., Food and Drug Admin., and Related Agencies of the H. Comm. on Appropriations*, 116th Cong. (2019) (statement of Scott Gottlieb, M.D., Comm’r, Food and Drug Admin.).

<sup>1251</sup> HHS Letter; OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 5 (Nov. 2013).

<sup>1252</sup> OFFICE OF MGMT. & BUDGET, EXEC. OFFICE OF THE PRESIDENT, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 15–16 (Nov. 2013).

<sup>1253</sup> *Id.* at 16.

health authorities without access to complete national flu season data for two weeks.”<sup>1254</sup> CDC also discontinued analysis and surveillance of certain contagious infection and disease clusters.<sup>1255</sup>

### **Overview of Agency Operations and Funding**

HHS is focused on enhancing and protecting the health and well-being of Americans, and fulfills that mission “by providing for effective health and human services and fostering advances in medicine, public health, and social services.”<sup>1256</sup> “Many HHS-funded services are provided at the local level by state or county agencies, or through private sector grantees.”<sup>1257</sup> HHS is the largest grant-making agency within the federal government, and distributes more grant dollars than all other federal agencies combined.<sup>1258</sup> HHS administers more than 300 programs across its 11 operating divisions.<sup>1259</sup> The staff divisions within the Office of the Secretary provide leadership, direction, and policy guidance to the Department.<sup>1260</sup>

HHS divisions and offices generally rely on funds allocated annually through the Labor, Health and Human Services, and Education appropriation.<sup>1261</sup> However, some HHS components, including the FDA, are funded through other appropriations bills, while other HHS programs are funded “outside of the annual appropriations process (e.g., direct appropriations for Medicare or mandatory funds provided by authorizing laws, such as the Patient Protection and Affordable Care Act).”<sup>1262</sup>

HHS was affected by all three relevant shutdowns and had to furlough employees during each of the lapse periods.<sup>1263</sup> During the FY 2019 shutdown, most of the agency’s operations and staff divisions were already “funded by the Labor,

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<sup>1254</sup> *Id.*

<sup>1255</sup> *Id.*

<sup>1256</sup> DEPT OF HEALTH AND HUMAN SERV., PROGRAMS & SERVICES, <https://www.hhs.gov/programs/index.html> (last visited Aug. 30, 2019); DEPT OF HEALTH AND HUMAN SERV., ABOUT HHS, <https://www.hhs.gov/about/index.html> (last visited Aug. 30, 2019).

<sup>1257</sup> HHS Letter; DEPT OF HEALTH AND HUMAN SERV., HHS FAMILY OF AGENCIES, <https://www.hhs.gov/about/agencies/index.html> (last visited Aug. 30, 2019);

<sup>1258</sup> DEPT OF HEALTH AND HUMAN SERV., HHS GRANTS, <https://www.hhs.gov/grants/grants/index.html> (last visited Aug. 30, 2019); DEPT OF HEALTH AND HUMAN SERV., STRATEGIC PLAN, INTRODUCTION: ABOUT HHS, <https://www.hhs.gov/about/strategic-plan/introduction/index.html> (last visited Aug. 30, 2019).

<sup>1259</sup> DEPT OF HEALTH AND HUMAN SERV., HHS FAMILY OF AGENCIES, <https://www.hhs.gov/about/agencies/index.html> (last visited Aug. 30, 2019).

<sup>1260</sup> DEPT OF HEALTH AND HUMAN SERV., STRATEGIC PLAN, INTRODUCTION: ABOUT HHS, <https://www.hhs.gov/about/strategic-plan/introduction/index.html> (last visited Aug. 30, 2019).

<sup>1261</sup> HHS Letter; CONG. RESEARCH. SERV., R-45869, LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION: FY2019 APPROPRIATIONS 18 (Aug. 5, 2019). <https://crsreports.congress.gov/product/pdf/R/R45869>.

<sup>1262</sup> CONG. RESEARCH. SERV., R-45869, LABOR, HEALTH AND HUMAN SERVICES, AND EDUCATION: FY2019 APPROPRIATIONS 18 (Aug. 5, 2019). <https://crsreports.congress.gov/product/pdf/R/R45869>.

<sup>1263</sup> HHS Letter.

Health and Human Services, and Education appropriation (which represented approximately 60% of HHS staff overall).<sup>1264</sup> Therefore, the partial government shutdown only impacted those divisions and programs that are not funded through regular HHS appropriations.<sup>1265</sup>

### **Furloughs, Contractors, and Shutdown Preparations and Monitoring**

*Employee Furloughs.* During the FY 2014 shutdown, HHS furloughed 55,248 employees for a total of 742,495 combined furlough days, and paid those employees about \$265,311,371 in back pay once the shutdown ended.<sup>1266</sup> During the FY 2018 shutdown, HHS furloughed 1,662 employees for one day, and paid those employees about \$593,865 in back pay once the shutdown ended.<sup>1267</sup> During the FY 2019 shutdown, HHS furloughed 7,997 employees for a total of 279,327 combined furlough days, and paid those employees about \$99,810,165 in back pay once the shutdown ended.<sup>1268</sup>

*Federal Contractors.* HHS told the Subcommittee that it does not centrally track information on contractor employees.<sup>1269</sup> HHS also noted that there are “significant differences in the types of contract vehicles and mechanisms used across the Department that influence whether contract activities” continue or stop during shutdowns.<sup>1270</sup> These “significant differences” that are factored into decisions include whether the contract is based on time and materials versus firm-fixed price, whether the project is performed on-site versus off-site, and whether the contract is for advisory and assistance services versus research and development services.<sup>1271</sup>

*Shutdown Preparation Activities.* HHS estimates that preparation costs for each shutdown were \$500,000 in FY 2014; \$350,000 in FY 2018; and \$310,000 in FY 2019.<sup>1272</sup>

*Monitoring the Shutdowns.* HHS estimates that costs associated with monitoring each shutdown were \$1,300,000 in FY 2014; \$80,000 in FY 2018; and \$1,710,000 in FY 2019.<sup>1273</sup>

### **Disruptions to Agency Operations**

*FDA.* According to former Commissioner Scott Gottlieb, the FY 2019 shutdown “was a significant operational challenge” for the FDA, and he testified

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<sup>1264</sup> *Id.*

<sup>1265</sup> *Id.*

<sup>1266</sup> *Id.*

<sup>1267</sup> *Id.*

<sup>1268</sup> *Id.*

<sup>1269</sup> *Id.*

<sup>1270</sup> *Id.*

<sup>1271</sup> *Id.*

<sup>1272</sup> *Id.*

<sup>1273</sup> *Id.*

before Congress that during the shutdown, the agency was “at partial strength.”<sup>1274</sup> Gottlieb noted that the agency was able to maintain its “critical public health functions...and continued to perform review activities supported by user fees.”<sup>1275</sup> However, because many FDA programs are primarily supported by budget authority rather than user fees, “many [of the agency’s employees] were not at their posts” during the 35-day lapse.<sup>1276</sup> Gottlieb highlighted several parts of the agency impacted the most during the shutdown, including the food program, the FDA inspectorate, the Center for Veterinary Medicine, and the blood program.<sup>1277</sup>

During the FY 2019 shutdown, the FDA could not accept any medical product applications and as a result, could not initiate reviews of any new medical products.<sup>1278</sup> Additionally, FDA’s field staff only continued to perform inspections of food and medical product facilities designated as “high-risk.”<sup>1279</sup> The agency was unable to conduct any other inspections of food and medical product facilities and reviews of imports during the lapse, and as a result, has lowered its inspections and import field sampling goals for the year.<sup>1280</sup> Gottlieb said he expected the FDA’s inability to continue investigations and reviews during the shutdown would primarily impact the human and animal food, biologics, and devices programs.<sup>1281</sup>

The FY 2014 shutdown caused similar disruptions to the FDA’s operations.<sup>1282</sup> Approvals of medical products, devices, and drugs were put on hold, which in turn “delayed businesses in moving products to market.”<sup>1283</sup> “In general, no new [FY 2014] drug applications, biologics applications, generic drug applications, animal drug applications, or medical device applications sent to the FDA during the shutdown could be accepted, processed, or reviewed.”<sup>1284</sup> During the lapse period, the FDA continued to conduct “for cause” inspections where there was an imminent threat to health or life, but had to delay “nearly 500 food and feed domestic inspections and roughly 355 food safety inspections under [s]tate contracts. These routine inspections enable [the] FDA to determine compliance with law and ensure that unsanitary conditions and practices that may result in

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<sup>1274</sup> *Food and Drug Administration – Status of Operations, Before the Subcomm. on Agric., Rural Dev., Food and Drug Admin., and Related Agencies of the H. Comm. on Appropriations*, 116th Cong. (2019) (statement of Scott Gottlieb, M.D., Comm’r, Food and Drug Admin.).

<sup>1275</sup> *Id.*

<sup>1276</sup> *Id.*

<sup>1277</sup> *Id.*

<sup>1278</sup> *Id.*

<sup>1279</sup> *Id.*

<sup>1280</sup> *Id.*

<sup>1281</sup> *Id.*

<sup>1282</sup> OFFICE OF MGMT. AND BUDGET, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 3, 5, 12 (Nov. 2013), <https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf>.

<sup>1283</sup> *Id.* at 3.

<sup>1284</sup> *Id.* at 12.

foodborne illness are addressed.”<sup>1285</sup> The agency also cut back on “examination, sampling, and laboratory analysis of imported products.”<sup>1286</sup>

The FY 2014 shutdown also forced the FDA to discontinue almost all of its oversight activities involving certain non-food products such as cosmetics. Finally, the FDA was “unable to answer any routine customer questions regarding food safety, medical devices, blood products and vaccines, and veterinary products.”<sup>1287</sup>

*Grants.* The FY 2014 and FY 2019 shutdowns impacted HHS grant disbursement activities.<sup>1288</sup> Specifically, formula grant awards funded from regular appropriations, such as grants from the Administration for Community Living, were delayed.<sup>1289</sup> HHS told the Subcommittee that “[i]n these cases [s]tates could use carryover funds or state revenue to make up for delays” in award funding.<sup>1290</sup> Also during the FY 2014 shutdown, six Head Start grantees across the country that served over 6,000 children were forced to close for up to nine days due to lack of grant funding from HHS.<sup>1291</sup> The grantees were able to open before the shutdown ended using funds provided by their states and by philanthropists through the National Head Start Association.<sup>1292</sup>

While the Administration for Children and Families was not subject to employee furloughs during the FY 2019 shutdown, Temporary Assistance for Needy Families (“TANF”) funding had been provided through CRs up until the lapse in appropriations began in December 2018.<sup>1293</sup> “Due to the lapse, \$4.2 billion in January grants to states were delayed.”<sup>1294</sup>

“Notably, on January 18, 2019, [OMB] issued revised guidance which made clear that staff work to disburse valid prior obligations would be considered an excepted activity under the [ADA]. Prior to this guidance being issued, grantees could draw down on existing funds, but [staff could not] assist with payment issues.”<sup>1295</sup> “This revised guidance enables HHS to assist with drawdown issues as well as execute disbursements on other types of funding mechanisms.”<sup>1296</sup>

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<sup>1285</sup> *Id.* at 5, 18.

<sup>1286</sup> *Id.* at 18.

<sup>1287</sup> *Id.*

<sup>1288</sup> HHS Letter.

<sup>1289</sup> *Id.*

<sup>1290</sup> *Id.*

<sup>1291</sup> OFFICE OF MGMT. AND BUDGET, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 15–16 (Nov. 2013),

<https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf>.

<sup>1292</sup> *Id.*

<sup>1293</sup> *Id.*

<sup>1294</sup> *Id.*

<sup>1295</sup> HHS Letter.

<sup>1296</sup> *Id.*

*National Institutes of Health.* During the FY 2014 shutdown, the National Institutes of Health (“NIH”) had to furlough nearly three quarters of its staff.<sup>1297</sup> Although NIH Clinical Center studies with enrolled patients continued to operate, NIH was generally unable to enroll new patients in those ongoing studies, and could not start new studies, “except for patients with life-threatening or urgent medical problems.”<sup>1298</sup> Although most of its existing grantees were able to draw down funds during the FY 2014 shutdown period, NIH suspended grant review and award action activities, and “had to reschedule the review process for over 13,700 grant applications.”<sup>1299</sup>

*Centers for Disease Control.* During the FY 2014 shutdown, the CDC “cut back its annual flu vaccination campaign for a period of time and suspended its weekly ‘Flu View’ report, leaving local public health authorities without access to complete national flu season data for two weeks. CDC staff also discontinued analysis of surveillance and molecular epidemiologic data to identify clusters of linked Hepatitis and Tuberculosis cases that cross [s]tate or location jurisdictional boundaries.”<sup>1300</sup>

*Miscellaneous Costs.* “HHS incurred some costs associated with the cancellation of travel and bringing travelers home sooner than planned,” but HHS said it considers these amounts to be “minor.”<sup>1301</sup> Additionally, HHS told the Subcommittee it was not able to assess the impact of interest due on late payments during the FY 2014 shutdown, but noted that interest payments at the Indian Health Service (“IHS”) increased by \$280,000 during the FY 2019 shutdown.<sup>1302</sup>

### **Post-Shutdown Activities**

*Reopening and Resuming Full Agency Activities.* HHS estimated that costs associated with reopening and restarting normal agency operations during each shutdown were \$600,000 in FY 2014; \$230,000 in FY 2018; and \$600,000 in FY 2019.<sup>1303</sup>

*Expected Long-Term Effects.* HHS told the Subcommittee that there are “some assumed long-term effects” due to the FY 2019 government shutdown.<sup>1304</sup>

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<sup>1297</sup> OFFICE OF MGMT. AND BUDGET, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 16 (Nov. 2013), <https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf>.

<sup>1298</sup> *Id.* at 17.

<sup>1299</sup> GOV’T ACCOUNTABILITY OFFICE, GAO-15-86, 2013 GOVERNMENT SHUTDOWN: THREE DEPARTMENTS REPORTED VARYING DEGREES OF IMPACTS ON OPERATIONS, GRANTS, AND CONTRACTS 17, 27–28 (Oct. 15, 2014), <https://www.gao.gov/assets/670/666526.pdf>.

<sup>1300</sup> *Id.* at 16.

<sup>1301</sup> HHS Letter.

<sup>1302</sup> *Id.*

<sup>1303</sup> HHS Letter.

<sup>1304</sup> *Id.*

“Tribes, Tribal Organizations, and Urban Indian Organizations (“T/TO/UIO”) that rely on IHS funding for health care operations did not receive federal IHS funds during the lapse. T/TO/UIO partners are disproportionately impacted by lapses since they do not have the same emergency obligation authority (such as the ability to obligate [funds during] a lapse to protect life and property) [that is] granted to federal agencies.”<sup>1305</sup> HHS told the Subcommittee that as a result, IHS health care plans and entire communities experience disruptions, and distrust of the federal government within the T/TO/UIO community continues to grow.<sup>1306</sup>

HHS also noted that the prolonged 35-day shutdown “weakened agency recruitment and retention efforts. For example, current employees and potential new hires reconsidered employment with the IHS, and gave higher consideration to other employment opportunities (e.g., the VA that can offer more competitive pay scales and has advance appropriations).”<sup>1307</sup>

Additionally, the FDA lowered its annual target goals for inspections and import and field sampling, and will be unable to conduct as many reviews as the agency had originally planned.<sup>1308</sup> The FDA also expects certain long-term policy work will be delayed, particularly within the food and animal health programs.<sup>1309</sup>

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<sup>1305</sup> *Id.*

<sup>1306</sup> *Id.*

<sup>1307</sup> *Id.*

<sup>1308</sup> *Food and Drug Administration – Status of Operations, Before the Subcomm. on Agric., Rural Dev., Food and Drug Admin., and Related Agencies of the H. Comm. on Appropriations*, 116th Cong. (2019) (statement of Scott Gottlieb, M.D., Comm'r, Food and Drug Admin.).

<sup>1309</sup> *Id.*

## Z. Department of Defense

The Department of Defense (“DoD”) provides “the military forces needed to deter war and to ensure our nation’s security.”<sup>1310</sup> DoD has grown over time into one of the largest bureaucracies in the world and has over three million employees stationed across the United States and across the world.<sup>1311</sup> The DoD’s National Defense Strategy focuses on three key priorities: lethality (building a more lethal force); partnerships (strengthening alliances and attracting new partners); and reform (instituting reforms within the Department).<sup>1312</sup> DoD was impacted by the FY 2014 and FY 2018 shutdowns, and had to furlough civilian employees and cease certain operations during those lapse periods.<sup>1313</sup> DoD was already fully funded for FY 2019, and therefore was not affected by the most recent partial government shutdown.<sup>1314</sup>

With the exception of some information regarding furloughs during the FY 2014 shutdown, DoD was unable to provide relevant data or information in response to any of the Subcommittee’s requests, which covered a broad range of categories.<sup>1315</sup>

### **Summary of Estimated Cost to Taxpayers**<sup>1316</sup>

<b>Shutdown Period</b>	<b>Back Pay for Furloughed Employees</b>	<b>Administrative Costs</b>	<b>Misc.</b>	<b>Total</b>
FY 2014	\$379,953,467	Not provided	Not provided	\$379,953,467
FY 2018	Not provided	Not provided	Not provided	Unknown
FY 2019	N/A	N/A	N/A	\$0
<b>TOTAL COST</b>				<b>\$379,953,467</b>

<sup>1310</sup> DEP’T OF DEFENSE, OUR STORY, <https://www.defense.gov/Our-Story/> (last visited August 22, 2019).

<sup>1311</sup> CONG. RESEARCH SERV., IF10543, DEFENSE PRIMER: THE DEPARTMENT OF DEFENSE (updated Dec. 20, 2018), <https://crsreports.congress.gov/product/pdf/IF/IF10543>.

<sup>1312</sup> DEP’T OF DEFENSE, OUR STORY, <https://www.defense.gov/Our-Story/> (last visited August 22, 2019).

<sup>1313</sup> Letter from Christopher A. Kapellas, Director, Washington Headquarters Services, Human Resources, Dep’t of Defense, to Sen. Rob Portman, Chairman, and Sen. Tom Carper, Ranking Member, S. Permanent Subcomm. on Investigations (Aug. 14, 2019) (on file with the Subcomm.) [hereinafter referred to as “DoD Letter”]; AMY BELASCO & PAT TOWELL, CONG. RESEARCH SERV., R41745, GOVERNMENT SHUTDOWN: OPERATIONS OF THE DEPARTMENT OF DEFENSE DURING A LAPSE IN APPROPRIATIONS (Oct. 15, 2013).

<sup>1314</sup> DoD Letter.

<sup>1315</sup> *Id.*

<sup>1316</sup> *Id.*

### Employee Furloughs<sup>1317</sup>

Shutdown Period	Number of Employees Furloughed	Combined Furlough Days	Lost Productivity of Furloughed Workers <sup>1318</sup>
FY 2014	352,738 <sup>1319</sup>	1,304,449	4,997.9 Years
FY 2018	Not provided	Not provided	Unknown
FY 2019	N/A <sup>1320</sup>	N/A	0 Years

### Selected Shutdown Impacts

- The FY 2014 shutdown “[s]ignificantly impacted small businesses that contract with the [f]ederal government. Compared with the same period the prior year, small business contracts with DoD dropped by almost one-third during the shutdown, and spending dropped 40 percent.”<sup>1321</sup>
- During the FY 2014 shutdown, civilian and military employees across the United States and around the world had to divert resources from normal agency activities and “spent thousands of hours developing and implementing plans for managing a shutdown, implementing the Pay Our Military Act, and restarting full operations.”<sup>1322</sup>

### Furloughs, Contractors, and Shutdown Preparations and Monitoring

*FY 2014 Employee Furloughs.* DoD was able to provide the Subcommittee with furlough information related to the FY 2014 shutdown.<sup>1323</sup> At the beginning of the FY 2014 shutdown on October 1, DoD initially furloughed 399,539 civilian

<sup>1317</sup> DoD Letter.

<sup>1318</sup> On an annual basis, OMB calculates the number of employees’ compensable days and hours for the current and forthcoming fiscal years, in order for agencies to use a common methodology in calculating full-time equivalent staffing for a given fiscal year. During the relevant fiscal years, the OMB set the number of compensable days 261 for FY 2014, 260 for FY 2018, and 261 for FY 2019. See OMB Circular No. A–11 § 85 (June 2019); OMB Circular No. A–11 § 85 (July 2017); OMB Circular No. A–11 § 85 (July 2013). The Subcommittee used these numbers to calculate this estimate.

<sup>1319</sup> The number of furloughed civilian employees varied throughout the FY 2014 shutdown period, which lasted from October 1 through October 16, 2013. Once the Pay our Military Act was enacted, almost all furloughed DoD employees were recalled. This number represents the amount of employees that were furloughed for at least some time during the lapse. See DoD Letter.

<sup>1320</sup> DoD did not have to furlough any employees during the FY 2019 shutdown because appropriations were in place. DoD Letter.

<sup>1321</sup> OFFICE OF MGMT. AND BUDGET, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 3 (Nov. 2013),

<https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf>.

<sup>1322</sup> *Id.* at 6.

<sup>1323</sup> DoD Letter.

employees.<sup>1324</sup> Just a few days later, on October 5, the Secretary of Defense announced that after consulting with DOJ, DoD was taking the position that a newly enacted law, H.R. 3210, the Pay Our Military Act (“POMA”), would permit the Department to “recall most, but not all, DoD civilians from furlough rather than the fewer number” that been excepted under DoD’s original 2013 contingency plan.<sup>1325</sup> It is unclear from the data provided by DoD how many civilian employees remained on furlough during the remainder of the funding lapse.

*FY 2018 Employee Furloughs.* DoD told the Subcommittee it is unable to provide data for the FY 2018 shutdown regarding the number of employees furloughed, the total number of employee furlough days, or the amount of back pay compensation paid to furloughed workers.<sup>1326</sup> DoD “[g]uidance issued at that time required employees to code ‘Furlough’ hours as ‘Regular’ hours before submitting time cards. In doing so, [DoD’s] systems of record did not capture ‘Furlough’ codes” or hours.<sup>1327</sup> DoD staff said that they identified this problem as a result of the Subcommittee’s inquiries related to this report, and also said they were working to address the issue with the time entry software.<sup>1328</sup> As of September 2019, DoD has been unable to tell the Subcommittee why the Department was able to capture employee furlough data from the FY 2014 shutdown, but not from the FY 2018 shutdown.

*Federal Contractors.* DoD told the Subcommittee that it “does not keep nor require contractors to report the information” requested regarding contractors who were laid off or required to use leave.<sup>1329</sup>

*Administrative Costs Related to Shutdowns.* DoD told the Subcommittee that it does “not intentionally capture” data on costs associated with planning for and monitoring shutdowns, or costs related to reopening and resuming regular agency operations after a shutdown ends.<sup>1330</sup>

*Miscellaneous Costs and Effects.* DoD told the Subcommittee that it “uses available authority provided in the shutdown guidance to keep essential operations from being disrupted” and that information about impacts on agency activities caused by shutdowns “is not available.”<sup>1331</sup> DoD did note that the start-up of “nonessential operations” after a shutdown is “problematic” and said that “[s]utting down the human resources hiring pipeline, for instance, even for a short

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<sup>1324</sup> DoD Letter.

<sup>1325</sup> AMY BELASCO & PAT TOWELL, CONG. RESEARCH. SERV., R41745, GOVERNMENT SHUTDOWN: OPERATIONS OF THE DEPARTMENT OF DEFENSE DURING A LAPSE IN APPROPRIATIONS 3 (Oct. 15, 2013).

<sup>1326</sup> DoD Letter.

<sup>1327</sup> DoD Letter.

<sup>1328</sup> E-mail correspondence between Subcommittee Staff and DoD Legislative Affairs Staff (July 15, 2019) (on file with the Subcomm.).

<sup>1329</sup> DoD Letter.

<sup>1330</sup> *Id.*

<sup>1331</sup> *Id.*

period of time creates a backlog and surge requirement to overcome the delayed actions. When surge operations are not possible[,] this draws out the hiring timeline even further.”<sup>1332</sup>

According to OMB, the FY 2014 shutdown caused DoD to incur lost productivity costs associated with preparing for, implementing, and monitoring the shutdown—particularly due to employee time spent analyzing the effects of POMA and recalling most civilian employees who were originally furloughed.<sup>1333</sup> OMB reported that civilian and military DoD employees across the United States and around the world had to divert resources from normal agency activities and “spent thousands of hours developing and implementing plans for managing a shutdown, implementing the Pay Our Military Act, and restarting full operations.”<sup>1334</sup>

OMB also noted that the FY 2014 shutdown negatively impacted small businesses that perform contract work for DoD.<sup>1335</sup> According to OMB, during the shutdown, small business contracts with DoD dropped by almost one-third and spending dropped 40 percent, compared with the same time period the year before.<sup>1336</sup>

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<sup>1332</sup> *Id.*

<sup>1333</sup> OFFICE OF MGMT. AND BUDGET, IMPACTS AND COSTS OF THE OCTOBER 2013 FEDERAL GOVERNMENT SHUTDOWN 6 (Nov. 2013), <https://obamawhitehouse.archives.gov/sites/default/files/omb/reports/impacts-and-costs-of-october-2013-federal-government-shutdown-report.pdf>.

<sup>1334</sup> *Id.*

<sup>1335</sup> *Id.* at 3.

<sup>1336</sup> *Id.*