RESOLVED, that the American Bar Association urges agencies of the United States federal government to include in any exit interview with a departing employee a question about the impact of federal government shutdowns on the employee's decision to leave the agency, and

FURTHER RESOLVED, that the American Bar Association urges Congress to request a study on the impact of federal government shutdowns on 1) the longevity of the current federal legal workforce, 2) the ability of agencies to hire and retain attorneys, and 3) the decision of recent law school graduates to apply for legal work in federal agencies.
REPORT

Background
This most recent partial government shutdown was the longest in U.S. history and directly impacted about 800,000 federal employees. As a result, many federal government attorneys are questioning their long-term commitment to federal government work. This resolution and report suggest the importance of why Congress should study the impact of government shutdowns on the federal bar.

History of Government Shutdowns
Prior to 1980, the federal government did not shut down when a lapse in funding occurred. However, a 1980 interpretation of the Antideficiency Act declared that non-essential operations of the federal government were to cease in the event of a funding lapse.\(^1\) Since that 1980 interpretation by then-U.S. Attorney General Benjamin Civiletti, the federal government has had 10 shutdowns in which federal employees were furloughed.

The 1980 shutdown was the first time a funding lapse resulted in furloughed employees. While this lapse only impacted the Federal Trade Commission, the shutdowns of 1981, 1984 and 1986 impacted multiple federal agencies. Each of these shutdowns only lasted a single day. In 1990, all federal agencies were closed due to a lapse in appropriations for three days, but only a few thousand employees were furloughed because the shutdown occurred over Columbus Day weekend. However, in November 1995, the federal government shut down for five days and approximately 800,000 employees were consequently furloughed. Shortly thereafter, a 21-day shutdown occurred from December 16, 1995 to January 6, 1996 and during this time approximately 280,000 employees were prohibited from working and earning their paychecks.

The first shutdown of the new millennium happened in 2013 and lasted from October 1 to October 16. In terms of the number of federal employees that were impacted, 800,000 employees were furloughed and more than 1 million worked without knowing when they would receive payment for their work. In January 2018, the federal government closed for three days which led to approximately 690,000 employees being furloughed. Most recently, parts of the federal government were closed from December 22, 2018 to January 25, 2019 (a record 35 days) resulting in 380,000 furloughed employees.

\(^1\) Benjamin Civiletti, Applicability of the Antideficiency Act Upon a Lapse in an Agency’s Appropriation, April 25, 1980 https://www.justice.gov/file/22281/download
employees and 420,000 employees that worked without knowing when they would receive payment for their work.

**Impact of Shutdowns**

The impact of government shutdowns takes a variety of forms. A study of the October 2013 shutdown showed that individuals impacted by that shutdown saw an increase in their debt due to delayed payments.\(^2\) During the most recent government shutdown, the social media hashtag #ShutdownStories highlighted the stories of federal employees who missed mortgage payments, filed unemployment claims, scrambled to make their student loan payments, and waited in food bank lines.\(^3\) The financial impact is especially onerous for attorneys employed by the federal government because law school graduates tend to have higher levels of student loan debt and earn significantly less than their private-sector counterparts.\(^4,5\)

Government shutdowns also impact mental and emotional health as well as employee morale. The October 2013 shutdown was found to result in “decreased life satisfaction and increased work–family conflict and physical, cognitive, and emotional burnout 5 weeks after the shutdown ended.”\(^6\) This is especially concerning in light of the significant rates of behavioral and mental health problems across the attorney population at large.\(^7\) Federal employees further reported having lower morale and

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\(^3\) Amelia Brust, #ShutdownStories trending as feds share furlough frustration, January 8, 2019 [https://federalnewsnetwork.com/workforce/2019/01/shutdownstories-trending-as-feds-share-their-furlough-frustration/](https://federalnewsnetwork.com/workforce/2019/01/shutdownstories-trending-as-feds-share-their-furlough-frustration/)

\(^4\) Stephanie Francis Ward, Law schools should make students' borrowing data public, include with admissions offers, report says, February 1, 2018 [http://www.abajournal.com/news/article/make_law_school_borrowing_data_public_and_include_it_with_admissions_offers](http://www.abajournal.com/news/article/make_law_school_borrowing_data_public_and_include_it_with_admissions_offers)


\(^7\) Patrick Krill, et al., The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, Journal of Addiction Medicine, January/February 2016 [https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx](https://journals.lww.com/journaladdictionmedicine/fulltext/2016/02000/The_Prevalence_of_Substance_Use_and_Other_Mental.8.aspx)
predicted an increase in employee turnover following the October 2013 shutdown. In a
study of different factors impacting employee retention, respondents expressed a lack of
trust in the federal budget process and an uncertainty in when the next shutdown would
occur.9

During the most recent shutdown, three major recruiting websites indicated that there
was a 10 percent increase in the number of federal employees searching for new jobs.10
According to Glassdoor Economic Research, there was a 46 percent decrease in the
number of applications for jobs at those federal agencies impacted by the partial
shutdown.11 Moreover, the popular professional networking site LinkedIn reported that
individuals employed by affected agencies indicated a willingness to be contacted about
private sector jobs at a rate that was 59 percent higher than those at agencies that were
not impacted by the shutdown.12 During this time, the website USAJobs.gov saw 22.5
percent fewer average daily visits.13 Sixty-seven percent of federal employees who used
ZipRecruiter to look for work identified the shutdown as a reason for seeking private
sector work.14

Federal Workforce Trends

These numbers coming out of the 2018-2019 shutdown are particularly concerning
when considered in light of the aging federal workforce and difficulties in the acquisition
and retention of new federal employees. Approximately one-fourth of the federal
workforce is older than 55 and only 17 percent of the workforce is younger than 35.15 In
the private sector, about 40 percent of the workforce is younger than 35.16 For many


9 Id.

10 Partnership for Public Service, Longest Federal Government Shutdown in History Created the Risk of a
Federal Brain Drain, February 19, 2019 https://ourpublicservice.org/wp-

11 Id.

12 Id.

13 Id.

14 Gretchen Frazee, The government’s workforce is aging. Now the shutdown could make hiring harder,
PBS NewsHour, January 18, 2019 https://www.pbs.org/newshour/economy/making-sense/the-
governments-workforce-is-aging-now-the-shutdown-could-make-hiring-harder

15 Id.

16 Id.
years, the federal government has had difficulty in hiring and retaining new employees as demonstrated by a 2015 study by Accenture. According to the study, 64 percent of public sector employers reported trouble attracting and retaining new talent. This data is further underscored by statistics from the Bureau of Labor Statistics (BLS) which generally show a steady uptrend in the number of separations from federal government employment from 2014 to 2018.

Attorneys in Federal Government

According to BLS, there were approximately 792,000 people employed as attorneys in 2016. As of March 2016, there were more than 37,000 attorneys working for a federal executive or independent agency in attorney positions. Approximately 12,000 individuals fill administrative law judge (ALJ) and administrative judge (AJ) roles. An additional 74,000 individuals were employed in law-related positions. The following agencies historically employ the largest number of attorneys: Department of Justice, Department of Homeland Security, and Department of Treasury. Each of these agencies was impacted by the partial government shutdown of 2018-2019.

Attorneys play a critical role in the operations of the federal government. As ALJs and AJs, attorneys preside over hearings, resolve disputes, adjudicate claims for various benefits and perform a host of other functions in areas such as immigration, equal employment, government contracts, and security clearances. These functions are supported by attorneys that provide advice and legal counsel to agency adjudicators.

17 Id.
18 Id.
24 Id.
Furthermore, attorneys represent agencies before other agencies, the legislative and judicial branches, state and local law-making entities, international bodies, interest groups, and the general public.

The importance of attorneys to the operations of the federal government cannot be overstated. This importance coupled with the documented difficulty in the acquisition and retention of talent across the public sector is concerning. The outlook becomes bleaker when one accounts for the existing federal employees’ waning faith in the budget process and shaky commitment to maintaining federal employment. The country has an interest in a fully-staffed and experienced federal bar.

It is for these reasons that the ABA should urge the U.S. Office of Personnel Management to gather information on the impact of government shutdowns on attorneys’ decisions to depart from federal employment. Congress should also act to study the long-term impact of the most recent partial government shutdown on the composition of the federal bar and whether the shutdown has impacted recent law graduates’ decisions to apply for federal employment. Finally, the ABA should reaffirm its commitment to support and uplift attorneys employed by the federal government—especially during times of a government shutdown.

Respectfully submitted,
Victoria Walker, Chair
YLD Government, Military & Public Sector Lawyers Committee
July 2019
1. **Summary of Recommendation:**

   The ABA should lobby the U.S. Office of Personnel Management and Congress to specifically track the impact of federal government shutdowns on acquisition and retention of attorneys in federal executive and independent agencies. The ABA should also reaffirm its commitment to attorneys employed by elevating the profile of the work of federal government attorneys and offering resources and support during prolonged government shutdowns.

2. **Approval of Submitting Entity:**

   Not Applicable

3. **Has this or a similar recommendation been submitted to the Assembly or Board previously?**

   Not that the committee is aware of.

4. **What existing Association policies are relevant to this Resolution and how would they be affected by its adoption?**

   None of which I am aware.

5. **Does this recommendation require immediate action at the next Assembly? If so, why?**

   Yes. Many federal government attorneys who have chosen to leave the federal government for the private sector have likely either already done so or are in the midst of their job search. Moreover, given the current political climate, it is very likely that there will be another shutdown in the near future and it would be helpful to federal government attorneys if OPM, Congress and the ABA adopted the recommendations contained herein.
6. **Status of Legislation (if applicable):**

None of which I am aware.

7. **Cost to Association.**

There would likely be a need for ABA staff to assist in the elevation of federal government attorney work and highlighting resources and support during prolonged government shutdowns.

8. **Disclosure of Conflict of Interest.**

None of which I am aware.

9. **Referrals.**

The recommendation in its final form will be circulated to the Government and Public Sector Lawyers Division.

10. **Contact Person (prior to meeting).**

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Board of Veterans’ Appeals  
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Washington, DC 20001  
202-632-5707  
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11. **Contact Person (to present the report to the House)**

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EXECUTIVE SUMMARY

1. Summary of the Resolution

This resolution focuses on the impact of federal government shutdowns on the acquisition and retention of attorneys. This resolution seeks to urge the U.S. Office of Personnel Management and Congress to study the impact of government shutdowns on retention of legal professions, and urges the ABA to elevate the profile of the work of federal attorneys and provide support and resources to federal attorneys during prolonged government shutdowns.

2. Summary of the Issue that the Resolution Addresses

The 2018-2019 government shutdown caused many federal employees, including attorneys, to reconsider their future as federal employees. The federal government and the ABA have an interest in maintaining an experienced and fully-staffed federal bar and recurrent government shutdowns directly harm that interest. This resolution seeks to produce curated information that directly represents how attorneys, who earn significantly less than their private sector counterparts.

3. Please Explain How the Proposed Policy Position Will Address the Issue

The proposed policy will encourage the federal executive and legislative branches to begin to collect data on whether government shutdowns impact attorneys’ (and judges’) decisions to remain in federal government and it will also allow these same entities to track the impact of increased turnover on agency productivity. The proposed policy will also encourage attorneys to consider careers in the federal government because these roles are highlighted and celebrated by the ABA, and there will be available resources for attorneys during prolonged shutdowns.