

USED & White House

SEP 27

US ED and the possible government shutdown

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by Richard Long, Executive Director for Government Relations

Today the United States Department of Education updated its contingency plan for itself if the spending plan is not agreed to and there is a partial government shutdown. This plan can be found at:

<http://www2.ed.gov/about/furlough2013/index.html>

Basically in the first week of a shutdown, 90% of USED staff would be furloughed. The Presidentially appointed, Senate confirmed employees and those whose jobs related to "the obligation, payment, and support of student financial aid as well as other authorized payments and obligations" would be required to work.

The plan continues (related to Title I):

"For a lapse occurring during the first week of October, the authorized obligations would include the \$22 billion in advance appropriations for formula grants to States under Titles I and II of ESEA, IDEA Part B State Grants, and Career and Technical Education. These funds, which were included in the 2013 appropriation, are normally obligated on October 1 and provide the second installment of critical funding under annual allocations for the school year that began July 1. These funds are already appropriated and do not require further Congressional authorization. The Department believes that any delay in obligating these funds could, in some cases, significantly damage State and local program operations. Particularly in light of recent Federal and state funding reductions, the Department considers the October obligation of advance appropriations for formula grants to States under Titles I and II of ESEA, IDEA Part B State Grants, and Career and Technical Education as a necessary exception requiring a limited number of employees to work in the absence of an appropriation of separate administrative funds."

If the shutdown continues for longer than one week other staff may be brought back to "conduct other excepted activities...."

Department of Education Contingency Plan
Updated through September 27, 2013

MEMORANDUM

TO: U.S. Office of Management & Budget

FROM: James Shelton
Deputy Secretary, Acting

SUBJECT: Contingency Plan for Lapse in FY 2014 Appropriation
Department of Education

The contingency plan for the Department of Education (the Department) was developed pursuant to applicable legal requirements governing a Federal lapse in appropriation. In the event of an interruption or absence of an appropriation or continuing resolution, the Department, in the interim, will perform only work that is supported by permanent or multi-year appropriations, or that otherwise supports an activity that is considered an "exception" to the Antideficiency Act and "excepted" from the shutdown. As set forth in this plan, the Department would furlough over 90 percent of its total staff level for the first week of such a lapse. During this first week, we would maintain only those excepted functions related to the discharge of the duties of Presidentially-appointed, Senate-confirmed individuals; those employees charged with the protection of life and property; and, as appropriate, the obligation, payment, and support of student financial aid as well as other authorized payments and obligations.

For a lapse occurring during the first week of October, the authorized obligations would include the \$22 billion in advance appropriations for formula grants to States under Titles I and II of ESEA, IDEA Part B State Grants, and Career and Technical Education. These funds, which were included in the 2013 appropriation, are normally obligated on October 1 and provide the second installment of critical funding under annual allocations for the school year that began July 1. These funds are already appropriated and do not require further Congressional authorization. The Department believes that any delay in obligating these funds could, in some cases, significantly damage State and local program operations. Particularly in light of recent Federal and state funding reductions, the Department considers the October obligation of advance appropriations for formula grants to States under Titles I and II of ESEA, IDEA Part B State Grants, and Career and Technical Education as a necessary exception requiring a limited number of employees to work in the absence of an appropriation of separate administrative funds.

If the interruption were to last longer than one week, the Department would phase in employees only as necessary to conduct other excepted activities to prevent significant damage

to the underlying activity. At most, a total of not more than 6 percent of the total staff would be called back to work during a longer interruption. (Some employees would be called in on a partial or rotating basis; the combined number of excepted employees working at any given time would not exceed approximately 6 percent of the Department's total full-time equivalents (FTEs).) As of September, the Department employed 4,225 full and part-time employees.

This contingency plan for the Department, similar to the 1996, April 2011, and December 2011 plans, would authorize certain categories of employees ("excepted employees") to work in the absence of a specific appropriation.

1. Necessary to Ensure an Orderly Shutdown

Immediately upon receiving notification of a lapse or interruption in appropriations, the Department would direct employees to be entirely devoted to "closing down" their individual and group work functions. The Department would ensure that this shutdown would be completed within a relatively short period (e.g., no more than 4 hours for most employees). The non-excepted employees would then be released on furlough. Examples of shutdown activities include:

- Performing payroll functions and processing travel vouchers for the period just prior to the appropriations lapse;
- Completing inventories of property;
- Securing Federal property;
- Performing personnel functions to process furlough/reduction-in-force notices;
- Setting up consistent voice mail and email "out-of-office" messages; and
- Notifying contractors as to whether they will be required to stop work.

2. Authorized by Law

Each Presidential appointee subject to Senate confirmation (PAS), and one additional FTE support employee named by each PAS, would be considered excepted from the furlough. Each of the Department's 10 Presidential appointees (i.e., the number confirmed by the Senate as of September), based on his or her specific needs, would determine which employee(s) would report for duty to provide support in carrying out excepted activities. For example, it could be the same person each day, two people on alternate days, or any other combination totaling at most one FTE each day. These employees may also be incidentally involved in non-excepted activities (not to exceed one-eighth of the time in each eight hour day). In the case of the Secretary, additional personnel comprising up to 7 FTEs may be deemed excepted depending on his excepted activities for the days involved, and up to 3 FTEs may be deemed excepted by the Deputy Secretary. As an example, in past shutdowns, additional staff were deemed excepted so that they could appear in judicial proceedings. The total number of FTEs excepted for this purpose is shown in the chart, "Total Number of Excepted FTEs," at the end of this document.

3. Necessary to Protect Life or Property

The Department engages in certain regular, ongoing functions the suspension of which would pose a threat to life and property. The Department's Office of Management would generally coordinate and direct these activities, with additional support from the Office of the Chief Information Officer and the Office of the Secretary. The Office of Inspector General (OIG) would also except personnel to engage in law enforcement functions, the suspension of which would pose a threat to the protection of property and resources, impact ongoing criminal investigations, and impede the execution of search warrants and arrests. All of these excepted law enforcement personnel would report to duty on an as-needed basis only to meet critical needs as approved by OIG. The number of FTEs excepted for this purpose is shown in the chart, "Total Number of Excepted FTEs."

The Department's approach is mostly consistent with that taken in 1996 as it relates to the protection of life or property. However, there would be additional excepted FTEs based on changes in national security functions for the Federal Government since 1996, and for law enforcement purposes. Similar to the 2011 plans, we are including this category as a separate item in the "Total Number of Excepted FTEs" chart.

4. Funded from an Alternative Source

Programs using mandatory or multi-year funding from a prior year would continue to operate through a government shutdown. For these programs, staff may be brought in on an excepted basis to make payments for the following activities:

A. Grant and Loan Programs

Programs which can make obligations and payments include Pell Grants and Federal Direct Student Loans. Approximately 20 non-mandatory programs are expected to have remaining unobligated balances from FY 2013, multi-year, or no-year discretionary appropriations and/or advance funds appropriated in FY 2013. Obligations and payments from these programs may continue, dependent on the length of the lapse. Only those grant activities which, if not continued, would prevent or significantly damage the execution of funded functions (the "significant damage standard") will continue on a limited basis after a lapse of one week and continue through a short-term shutdown. Three programs – Race to the Top, Investing in Innovation, and Promise Neighborhoods – have funds that are available through December 31, 2013, and must be obligated by this date.

After a lapse of one week, employees would be brought into work as "excepted employees" to provide payments and obligations to grantees and other recipients. The number of excepted staff will vary depending on the length of the shutdown and amount of money and number of recipients involved. These numbers include employees in the program and support areas. In each case, only the minimum number of employees needed would be brought in to work. The "Total Number of Excepted FTEs" chart at the end of this document specifies the number of

excepted FTEs necessary in week one and the maximum number required for weeks two through four for these activities. It is assumed that the G-5 system for making payments to grantees—either grants awarded in prior years or those made with mandatory or carryover appropriations—would continue to operate under contracts obligated in 2013—at least for the first week. For a lapse of more than a week, Department staff would be needed as excepted employees to monitor the contractors and resolve any issues.

Non-mandatory programs that do not have available unobligated balances from FY 2013 may not incur new obligations while under a government shutdown caused by a lapse in appropriations.

B. Direct Loans and Pell Grants

A lapse in appropriations starting October 1, 2013, would fall at a critical point in the administration of the large student aid program. Examples of work include completing end-of-year closeout and reporting activities, fiscal year start up for mandatory and carry-over funds, and implementing the April 2013 sequester order for mandatory programs that requires an increase in origination fees. The Department may determine that, due to the likely impact of a delay or disruption in this process under the “significant damage standard,” this activity should continue. The student financial aid services should continue in order to avoid the potential loss of federal assets and to maintain the delivery of student aid. The maximum support necessary at any given time to ensure proper controls and avoid improper payments during this period is shown in the “Total Number of Excepted FTEs” chart.

Program funds for Pell Grants and Direct Student Loans are provided through mandatory and carryover appropriations. Over 14 million students receive student aid, in the form of grants and loans, at over 6,600 schools through these programs. As a result of the permanent and multi-year appropriations, Pell Grants and student loans could continue as normal. Staff and contractors associated with these areas will continue to work, and only skeletal program operations would continue under the “significant damage” standard. Mandatory and carryover funding is also available for servicing contracts and many other administrative functions.

Federal Student Aid’s Chief Operating Officer and other management officials responsible for Pell Grants and Direct Student Loans will designate the minimum number of employees necessary for these programs. These could include employees needed to obligate and process payments, maintain systems necessary to disburse Pell Grants and student loan payments, and provide legal counsel in FSA and other offices. For the short term, these employees would continue to work. FSA employees working in areas not directly related to Pell Grants or Direct Student Loans, such as the Campus-Based Programs of College Work-Study and Supplemental Educational Opportunity Grants, customer service activities, administrative functions not related to providing student aid to schools and students, and development of new programs or activities, would not be excepted.

Effect of Shutdown Caused by a Hiatus in Appropriations

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. For example, many school districts receive more than 20 percent of their funds from Department-funded programs. Colleges rely on Higher Education funds to pay ongoing expenses of staff running programs for disadvantaged students seeking to enter and stay in college. Vocational rehabilitation agencies receive 80 percent of the cost of providing services to adult individuals with disabilities from the Department's program.

Under a shutdown, the likely disruption to Department grant programs will be a potential delay in activities necessary to make competitive and formula grant awards later in the year. For the most part, these employees will be furloughed. In addition, citizens and institutions seeking specific information regarding the impact of a shutdown will have limited access to information.

Some contractors on existing contracts could continue to work under a hiatus in appropriations for some short period of time. However, during a period of interruption, generally no new contracts would be awarded unless they were significantly related to excepted activities. Since this shutdown will occur soon after the end of FY 2013, contractors receiving recently awarded contracts may be ordered to stop work during the furlough, since Department staff will not have had sufficient time to provide initial direction to these contractors. Those contractors allowed to continue their work would not immediately receive payment for their services, but the Department would be obligated to make payment, along with any Prompt Payment Act interest to compensate for the delay, once funds were available.

Summary Numbers

The chart below is illustrative and is based on our current thinking if an interruption were to occur on October 1, 2013. Staffing levels for the first week of a lapse in appropriations include only Presidential appointees confirmed by the Senate (PAS) and those who would perform certain functions or whose furlough would pose a serious problem for excepted activities, including a threat to life or property.

Beyond the first week of a lapse, our planning generally contemplates a continuation of those minimal, skeletal functions and resulting personnel levels that are absolutely necessary when the significant standard threshold is met. The Department will phase in employees as necessary to conduct excepted activities that are funded by other than FY 2014 appropriations or are otherwise mandatory.

If the lapse lasts more than 1 week, the total number of employees working at some point during the shutdown would be approximately 242 FTE; approximately 3,983 employees would be furloughed. The FTE and employee numbers in this plan reflect levels in September 2013.

Total Number of Excepted FTEs

EXCEPTED POSITIONS	WEEK 1	WEEK 2 – WEEK 4
Necessary to protect life or property (not separately reported in 1996)	23	23
Presidential appointees (PAS)	10	10
Excepted to support the Secretary/Deputy Secretary/Under Secretary	11	11
Excepted to support other Presidential appointees	7	7
Direct Loan and Pell Grants	138 (TBD)	146 (TBD)
Excepted for authorized payments and obligations	23 (TBD)	45 (TBD)
TOTAL	212	242