

**Department of Education Contingency Plan**  
***Updated through April 8, 2011 (9:30am)***

MEMORANDUM

TO: OMB

FROM: Beverly Ortega Babers  
Chief Administrative Officer

SUBJECT: Contingency Plan for Lapse in FY 2011 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 unlikely event of an interruption or absence of an appropriation or continuing resolution, the Department of Education (the Department), in the interim, will only perform work that is supported by permanent or multi-year appropriations, or that otherwise supports an activity that is considered an “exception” to the Anti-Deficiency Act and “excepted” from the shutdown. As set forth in this draft plan, the Department would furlough approximately 4,150 employees or approximately 93% 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, the protection of life and property, the conduct of audit work funded by the America Recovery and Reinvestment Act of 2009, and the obligation, payment, and support of student financial aid.

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 activity. At most, a total of 312 employees, or about 7% percent of the total staff, would be called back to work during a longer interruption. (Some of these employees will be called in on a partial or rotating basis; we anticipate the combined number of excepted employees to total approximately 312 full-time equivalents (FTEs).) As of March 1, the Department employed 4,465 full and part-time on board employees. The revised shutdown plan reflects a decrease of 288 FTEs that would be called in as compared to the number of employees called in under the Department’s 1996 shutdown plan. The proposed decrease is due in part to the lesser number of necessary employees to conduct the activities of our mandatory funded Federal Student Aid programs.

This draft contingency plan for the Department of Education, similar to the 1996 plan, would authorize certain programs and 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 wholly devoted to “closing down” their individual and group work functions. The Department would ensure that this shutdown process would be completed within a relatively short period (e.g., no more than 4 hours). The non-excepted employees would then be released on furlough. Examples of shutdown activities would 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; and
- Setting up consistent voice mail and email “out of office” messages.

## **2. Authorized by Law**

Each Presidential Appointee requiring Senate Confirmation for appointment, and one additional FTE support employee named by each Presidential Appointee, would be considered excepted from the furlough. Each of the Department’s 16 Presidential appointees, based on his or her specific needs, would determine which employee(s) would report for duty to support them in their 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 (this could not exceed one eighth of the time in each eight hour day). In the case of the Secretary, additional personnel comprising up to an additional 7 FTEs may be deemed essential depending on his excepted activities for the days involved, and up to an additional 3 FTEs each may be deemed essential by the Deputy Secretary and Under Secretary. As an example, in past shutdowns additional staff were deemed essential so that they could appear in judicial proceedings involving misuse of Department funds.

## **3. Necessary to Protect Life or Property**

The Department engages in certain regular, on-going functions whose suspension would pose a threat to life and property. The Department’s Office of Management would coordinate and direct these activities.

Up to 12 FTEs would be excepted for this purpose. The Department’s approach is generally consistent with that taken in 1996 as it relates to the protection of life or property. However, there would be up to 5 excepted FTEs included in the 12 that are based on changes in National Security functions for the Federal Government since 1996. In addition, we are including this as a separate item in the 2011 plan, rather than include these personnel in the more general categories, below.

#### **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 Programs**

Programs which can make obligations and payments include mandatory programs such as Education Jobs Fund, Pell Grants, Academic Competitiveness and SMART grants, and the Federal Direct Student Loans Program. Approximately 20 non-mandatory programs have remaining unobligated balances from FY 2010 multi-year or no year discretionary appropriations. Obligations and payments from these programs may resume, dependent on the length of the lapse. Only those grant activities which, if not resumed, would prevent or significantly damage the execution of funded functions (the “significant damage standard”) will resume on a limited basis after a lapse of one week and continue through a short-term shutdown.

Non-mandatory funds made available under the 2011 continuing resolutions are not available for obligation while under a government shutdown caused by an interruption in appropriations.

Employees would be brought into work as “excepted employees” to provide payments and obligations to grant and other recipients under programs where Congress has already appropriated funds for use in this fiscal year under the significant damage standard. The number of staff required for making these payments and obligations will vary depending on such factors as the length of the shutdown, amount of money and number of recipients involved, and the point during the fiscal year the shutdown occurs. These numbers include employees in the program and support areas. In each case, only the minimum needed would be brought into work. The chart at the end of this document specifies the number of excepted FTEs required week-by-week for these activities.

This approach is consistent with that taken in 1996 though the number of excepted employees is slightly higher due to an increased number of excepted programs. A list of these programs is also attached.

##### **B. Direct Loans**

A potential lapse in appropriations that might occur during April or May of 2011 would fall at a critical point in the student financial aid process. Many students are weighing postsecondary options, including financial aid packages, more than 50% of which are funded by the Department. Thus, during this period, the Department is heavily engaged with colleges, universities, students and their families as they work through this process. The Department has determined that, due to the likely impact on a delay or disruption on this and subsequent

academic years under the significant damage standard, this activity should continue. This type of disruption in service would result in potential loss of federal assets and student aid delivery would be at risk. The maximum support necessary at any given time to ensure proper controls and avoid improper payments during this period would be at least 140 FTE. This is 11% of the Federal Student Aid workforce.

The Department no longer has a permanent appropriation for the administration of the Pell Grants and Direct Loan programs and activities related to the management the other Title IV programs as it did in 1996. However the funds for these programs are provided through mandatory appropriations. Over 15 million students receive student aid grants and loans at over 6,600 schools through these programs. As a result of these permanent and multi-year appropriations, there would not be a hiatus in appropriations for these accounts. Staff and contractors associated with these areas will continue to work, and only skeletal program operations would continue under the significant damage standard.

Federal Student Aid's Chief Operating Officer and other management officials responsible for functions related to Pell Grants, Direct Student Loans and the additional Title IV programs have designated the employees necessary for these programs. Other staff are necessary to support FSA's activities by, for example, obligating and processing payments, maintaining systems, and providing legal counsel. Those employees devote part or all of their time to functions necessary to provide services to students and to safeguarding the fiscal interests of the loan programs. For the short term, these employees would continue to work on a regular schedule.

#### C. American Recovery and Reinvestment Act of 2009 Audit Work

In the event of an interruption or furlough, the Department's Inspector General (IG) would continue to perform its scheduled audit and other work connected to American Recovery and Reinvestment Act of 2009 (ARRA) activities, and would continue pending whistleblower investigations under ARRA. These IG functions are funded by a separate multi-year appropriation through FY 2012. The staff assigned to work on these projects, approximately 58 FTEs, would be listed as excepted personnel. This activity is consistent with OIG's understanding of the guidance given to the Offices of Inspector General across the Federal government.

#### Effect of Shutdown Caused by a Hiatus in Appropriations

Generally, an interruption in appropriations for one week or less should not result in a major impact on the Department's customers – elementary and secondary schools, State and local education officials and employees, institutions of higher education, their officials and employees, and students and families – except for recipients of Federal Student Aid funds as noted.

In a number of cases, the lack of or 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 get 80 percent of the cost of providing services to adult individuals with disabilities from the Department's program. Below are the kinds of services and programs that would be affected significantly by the failure to secure new obligations or make payments on prior obligations for a period of more than a few days, and certainly for more than one week.

Institutions would not be able to draw down and disburse to students any campus-based program awards, listed below. If this delay continues it could impact students' awards (and perhaps their decisions/ability) to begin attendance in the 2011-2012 award year. Note the 2011-2012 award year begins on July 1, 2011, with some "cross-over payment periods" beginning as early as May 1, 2011. These are impacted programs:

- The Federal Perkins Loan (Perkins Loan) Program, affecting approximately 673,000 students in approximately 1,600 participating institutions
- The Federal Supplemental Educational Opportunity Grant (FSEOG) Program, about \$755M affecting approximately 1 million students in approximately 3,800 participating institutions
- The Federal Work-Study (FWS) Programs, about \$951M affecting about 590,000 students in approximately 3,400 participating institutions

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 example, most formula grants (of approximately \$50 billion) are awarded in either July or October. For the most part, the employees working on these programs will be on furlough. Attached is a list of programs for which supporting activity will be closed during a lapse in appropriations. In addition, citizens and institutions seeking specific information regarding the affect of a shutdown will have limited access to information.

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. Existing contractors 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 in early April. Staffing levels for the first week of a lapse in appropriations includes only Presidential Appointees and those that would be engaged in certain functions or whose furlough would pose a serious problem for excepted activities, including a threat to life and property.

Beyond the first week of a lapse, our planning generally contemplates a continuation of those bare 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 2011 appropriations or are otherwise mandatory.

If the lapse lasts more than 3 weeks, the total number of employees working during the shutdown would be approximately 312 FTE; 4,153 employees would be furloughed.

Specific information required by OMB Circular No. A-11, Section 124.2, follows:

- Estimated time to complete shutdown:
  - This shutdown could be completed in no more than 4 hours.
- Number of employees expected to be on-board before implementation of plan:
  - As of March 1, the Department employed 4,465 full and part-time employees.
- Total number of employees to be retained under the plan because:
  - They are engaged in military, law enforcement, or direct provision of health care activities: 0
  - Their compensation would be financed by a resources other than annual appropriations: 70
  - Number of employees, not otherwise exempt, to be retained to protect life and property: 16

If a lapse occurred at another point after early April, the chart below would have to be adjusted to reflect our assessment of activities and risks to operations at that time.

<b>EXCEPTED POSITION</b>	<b>WEEK 1</b>	<b>WEEK 2</b>	<b>WEEK 3</b>	<b>1996</b>
Necessary to protect life or property (not separately reported in 1996)	12	12	12	--
Presidential appointees	16	16	16	17
Excepted to support the Secretary/Deputy Secretary/Under Secretary	7	11	11	7
Excepted to support other Presidential appointees	16	16	16	17
Direct Loan and FFEL	133	146	146	496
Excepted for authorized payments and obligations	19	43	43	50
ARRA Audits	68	68	68	--
National Institute for Literacy (no longer in existence)	0	0	0	13
<b>TOTAL</b>	<b>271</b>	<b>312</b>	<b>312</b>	<b>600</b>