

**Department of Education Contingency Plan**  
***Current as of December 15, 2011, 10 a.m.***

MEMORANDUM

TO: U.S. Office of Management & Budget

FROM: Beverly Ortega Babers  
Chief Administrative Officer

SUBJECT: Contingency Plan for Lapse in FY 2012 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, 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 plan, the Department would furlough approximately 94 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, and those employees charged with the protection of life and property, the conduct of audit work funded by the America Recovery and Reinvestment Act of 2009, and, as appropriate, 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 underlying activity. At most, a total of not more than 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; the combined number of excepted employees would not exceed 7 percent of ED’s total full-time equivalents (FTEs).) As of December 1, the Department employed 4,659 full and part-time employees. This plan reflects a decrease in FTEs that would be called in as compared to the number of employees called in under the Department’s 1996 shutdown plan, and is consistent with our April 2011 plan in the percent of FTEs excepted. The decrease from 1996 is due in part to the lesser number of necessary employees to conduct the activities of our mandatory funded Federal Student Aid programs.

This contingency plan for the Department of Education, similar to the 1996 and April 2011 plans, 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-expected 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 appointee, would be considered excepted from the furlough. Each of the Department’s 14 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-expected 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 involving misuse of Department funds. The total number of FTEs excepted for this purpose is shown in the chart titled “Total Number of Excepted FTEs” at the end of this document.

## **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 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 the Inspector General (OIG) would also except personnel to engage in law enforcement functions whose suspension would, among other things, 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 titled “Total Number of Excepted FTEs”.

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 additional excepted FTEs included in the total based on changes in national security functions for the Federal government since 1996, and for law enforcement purposes. Similar to the 2011 plan, 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 Programs**

Programs which can make obligations and payments include mandatory programs such as Pell Grants and the Federal Direct Student Loans Program. Approximately 20 non-mandatory programs have remaining unobligated balances from FY 2011, 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. Three programs – Race to the Top, Investing in Innovation, and Promise Neighborhoods – have funds that are available through December 31, 2011, and must be obligated by this date.

Non-mandatory funds made available under the 2012 continuing resolutions are not available for obligation while under a government shutdown caused by an interruption in appropriations.

After a lapse of one week, 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 number of employees needed would be brought into work. The “Total Number of Excepted FTEs” chart at the end of this document specifies the number of excepted FTEs required in week one and the maximum number required for weeks two through four for these activities.

This approach is consistent with that taken in 1996 and April 2011.

## B. Direct Loans

A potential lapse in appropriations that might occur during December of 2011 or in early 2012 would fall at a critical point in the student financial aid process. 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 in one or more weeks of a shutdown. The student financial aid services should continue 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.

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 of 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 designate 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 would be listed as excepted personnel. This activity is consistent with the Department's Inspector General's understanding of the guidance given to the Offices of Inspector General across the Federal government. The number of FTEs excepted for this purpose is shown in the chart titled "Total Number of Excepted FTEs".

## 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 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, the employees working on these programs will be on furlough. 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 December of 2011 or in early 2012. Staffing levels for the first week of a lapse in appropriations include 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 or 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 2012 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 not exceed 326 FTE; approximately 4,333 employees would be furloughed.

Specific information required by the Office of Management & Budget 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 December 1, the Department employed 4,659 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: 43
  - Their compensation would be financed by a resources other than annual appropriations: tbd
  - Number of employees, not otherwise exempt, to be retained to protect life and property: 16

If a lapse occurred at another point after early 2012, the chart below would have to be adjusted to reflect our assessment of activities and risks to operations at that time.

Total Number of Excepted FTEs

<b>EXCEPTED POSITION</b>	<b>WEEK 1</b>	<b>WEEK 2 – Week 4</b>	<b>April 2011</b>	<b>1996</b>
Necessary to protect life or property (not separately reported in 1996)	23	23	23	--
Presidential appointees	14	14	16	17
Excepted to support the Secretary/Deputy Secretary/Under Secretary	11	11	11	7
Excepted to support other Presidential appointees	11	11	13	17
Direct Loan and FFEL	138	146	146	496
Excepted for authorized payments and obligations	23	45	37	50
ARRA Audits/OIG Functions	60	64	67	--
National Institute for Literacy (no longer in existence)	0	0	0	13
<b>TOTAL</b>	<b>280</b>	<b>314</b>	<b>313</b>	<b>600</b>