



THE SECRETARY OF EDUCATION

WASHINGTON, DC 20202

September 25, 2018

MEMORANDUM

TO: Office of Management and Budget

FROM: Betsy DeVos /s/

SUBJECT: U.S. Department of Education Contingency Plan for Lapse
in FY 2019 Appropriation

The contingency plan for the U.S 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 budget authority that does not require congressional action to establish funds availability such as permanent appropriations (mandatory and advance), balances from multi-year or no-year appropriations, or authority 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 more than 90 percent of its total staff 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.

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 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 7 percent of the Department’s total full-time equivalents (FTEs). As of September 2018, the Department employed 3,672 full- and part-time employees.

This contingency plan for the Department, similar to the 1996, 2011, 2013, 2016, 2017, and 2018 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 or reduction-in-force notices;
- Setting up consistent voice mail and email “out-of-office” messages;
- Notifying grantees of any impact on funds disbursement; and
- Notifying contractors as to whether they will be required to stop work.

2. Authorized by Law

Each of the Department’s confirmed Presidential appointees subject to Senate confirmation (PAS), and one (1) additional FTE identified by each PAS, would be considered excepted from the furlough. Each of the Department’s confirmed Presidential appointees (i.e., the number confirmed by the Senate), based on his or her specific needs, would determine which employee(s) would report for duty as the PAS’ one (1) additional FTE to provide support in carrying out excepted activities. The PAS may identify and name one or more employees to provide support so long as the total period of work performed by the employee(s) on any given day does not exceed the total of one (1) FTE. For example, the PAS could identify the same person each day, more than one individual each day 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 her excepted activities for the days involved. As an example, in past shutdowns, additional staff members 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. Individuals who are delegated the authority to perform the functions and duties of a PAS employee are excluded.

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 OIG’s 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, 2013, 2016, 2017, and 2018 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 advance appropriations, or unobligated multi-year or no-year funding from a prior year (carryover) 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 with mandatory funding can make obligations and payments during a shutdown. Examples of such programs include Pell Grants and Federal Direct Student Loans. Approximately 30 non-mandatory programs have advance funds appropriated in FY 2018 and/or remaining unobligated balances from FY 2018, multi-year, or no-year discretionary appropriations and/or advance funds appropriated in FY 2018. 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.

For programs meeting the "significant damage standard," employees could 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 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 2018 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 could fall at a critical point in the administration of the large student aid programs. Program funds for Pell Grants and Direct Student Loans are provided through

mandatory and carryover appropriations. More than 13 million students receive student aid, in the form of grants and loans, at more than 6,200 schools through these programs. As a result of the permanent and multi-year appropriations, Pell Grants and student loans could continue as normal for some time. Staff and contractors associated with these areas will continue to work, and only skeletal program operations would continue under the “significant damage” standard. Should multi-year, unobligated funding be available, these funds could help cover costs for a period of time.

Federal Student Aid’s (FSA’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 Federal 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 fiscal year. For the most part, employees associated with these programs 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. 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, 2018. Staffing levels for the first week of a lapse in appropriations include Presidential appointees confirmed by the Senate (PAS) and those who would perform certain critical functions or whose furlough would pose 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 damage standard threshold is met. The Department will phase in employees as necessary to conduct excepted activities that are funded by other than FY 2019 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 256 FTE; approximately 3,416 employees would be furloughed. The FTE and employee numbers in this plan reflect levels in September 2018.

EXCEPTED POSITIONS	WEEK 1	WEEK 2 – WEEK 4
Necessary to protect life or property	20	20
Presidential appointees (PAS)	13	13
Excepted to support the Secretary/Deputy Secretary/Under Secretary	31	31
Excepted to support Presidential appointees other than Secretary/Deputy Secretary/Under Secretary	5	5
Direct Loan and Pell Grants	141	141
Excepted for authorized payments and obligations; critical program work	46	46
TOTAL	256	256