

Selected Sources for Budget Brief 18-19, Table 1

(verbatim excerpts of agency shutdown guidance)

Agriculture (USDA)

Food and Nutrition Services (FNS). <https://www.usda.gov/sites/default/files/documents/usda-fns-shutdown-plan.pdf>

“Excepted Personnel Required for the Continuation of Excepted Programs and Activities: USDA and OMB have jointly determined that there is Congressional intent that core programs of the nutrition safety net, including the Supplemental Nutrition Assistance Program (SNAP), the Child Nutrition (CN) programs and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) shall continue operations during a lapse in appropriations. Budget authority including: multi-year carry over funds; contingency reserves; and quarterly apportionment of funds by OMB under the continuing resolutions due standard obligational patterns and the special mandatory payments provision have been apportioned by OMB to support program operations during the period of the lapse. To fulfill this Congressional intent, it is a necessary implication that a limited number of FNS employees be excepted from furlough to support program operations. These activities include, but are not limited to, program policy, operations, and financial management.”

Partner Activities in FNS Programs: FNS’ partners (State agencies and other grantees) may continue operations during a lapse in appropriations utilizing legally available Federal resources previously provided to them or their own resources. For excepted or exempt programs and activities, funding and Federal support will continue. This may be on a limited or restricted basis. For other FNS program and activities all Federal support will cease for the duration of the lapse.”

National Institute of Food and Agriculture. <https://www.usda.gov/sites/default/files/documents/usda-ree-shutdown-plan.pdf>

“Shutdown Communication: NIFA program activities will be suspended during a shutdown. The scope of the activities includes all NIFA extramural funding programs supporting research, education, extension or a combination of two or more of these functions. This includes agency activities associated with competitively awarded, noncompetitive Federal financial assistance payments, capacity and infrastructure, endowment, and all other NIFA grant programs.”

Commerce

<https://www.commerce.gov/sites/default/files/2018-12/DOC%20Lapse%20Plan%20-%20OMB%20Approved%20-%20Dec%2017%2C%202018.pdf>

Services Not Available During a Lapse in Funding: “The following services and activities will not be available during a lapse except to the extent funded by other than current year annual appropriations:

- Most research activities at NIST and NOAA (excluding real-time regular models on research computers used for Hurricane and FAA flight planning)
- Assistance and support for recipients of grant funding
- Technical oversight of non-mission essential contracts
- Services and activities provided by:
 - Bureau of Economic Analysis
 - Economic Development Administration
 - Minority Business Development agency
 - Bureau of the Census
- Most services and activities provided by the International Trade Administration”

Environmental Protection Agency

https://www.epa.gov/sites/production/files/2018-12/documents/epa_contingency_plan_december_18_2018_508.pdf

1. **“Halt Obligations:** In the event of a shutdown in the absence of an appropriations act or a continuing resolution, the EPA will stop incurring new obligations other than those supporting excepted or approved exempted activities, and shutdown operations.

Under the authority of the ADA (31 USC 1342), federal officials may incur obligations as necessary for excepted activities such as emergencies involving the safety of human life or the protection of property where the threat to life or property is imminent and for orderly termination activities. Additionally, the U.S. government has the legal authority to incur obligations to pay for:

- a. Its workforce for the approximate one-half day (4 hours) furlough activities and necessary agency shutdown activities estimated not to exceed five days;
- b. Costs incurred in conjunction with equitable adjustments for work stoppages on contract and grant activities
- c. Infrastructure costs associated with shutdown and excepted activities such as rent, telephone service, etc. which will be incurred until appropriations have been provided; and
- d. Approved travel costs incurred in by excepted personnel in the performance of excepted activities.

Additionally, the EPA may incur obligations to pay approved travel costs incurred by exempted personnel in the performance of exempted activities to the extent that there is carryover or other funds available for obligations to pay the travel costs.

The authority to incur the obligation to pay does not extend to the actual disbursement. Payment for these obligations will not be disbursed until the resumption of normal agency

activities following the shutdown when an Appropriations Act or Continuing Resolution is enacted.

2. **New Contract Obligations:** Unless necessary for excepted activities or for approved exempted activities, no new obligations for contracts including the exercise of options, may be entered into beginning with the first day of a fiscal year when an appropriations act or a continuing resolution has not been enacted or on the first day immediately following the expiration of a continuing resolution and no new appropriations act or continuing resolution has been enacted. Options exercised prior to the start of the new fiscal year already contain a "subject to availability of funds" clause to provide for any lack of funding in the new fiscal year. If a new obligation is necessary for an excepted or exempted activity, the national program manager is to be consulted who will then consult with other organizations such as OMS and OCFO.
3. **Existing Contract Obligations:** EPA has thousands of ordering documents including contracts, delivery orders, work assignments and task orders. Contracting officers may not issue any new work assignments, task or delivery orders, unless for excepted activities or approved exempted activities. Existing funded contracts that do not require interaction with federal employees can continue work until such time government interaction is necessary and/or funding is exhausted.

EPA employees will not be available to make payments until the shutdown ends.

4. **Existing Grants, Cooperative Agreements, and Interagency Agreements:** EPA has 5,593 active assistance agreements and 1,419 active interagency agreements as of the date of this plan. As a general rule, recipients of funded grants and cooperative agreements can continue work on their projects during any EPA shutdown. Grant recipients currently approved to utilize the Automated Standard Application Payment (ASAP) system may make drawdowns of authorized obligated levels during a shutdown. With the exception of grant recipients using ASAP, in the case of government shutdown no payment processing will be available for cost reimbursable or recipients with special award terms and conditions requiring EPA approval prior to payment disbursement (either by paper check, drawdown, or by ACH payment outside of the ASAP system). EPA staff will not be available to make payments until the shutdown ends. Recipients must stop work if they reach a point at which they require EPA involvement or approval. Recipients should maintain documentation of any allowable costs associated with the work stoppage. Recipient staff assigned to EPA facilities will not be allowed access to those facilities. If they can satisfactorily continue work offsite, the project can continue. SEE enrollees will be notified of furlough in accordance with their grant procedures. Additional guidance will be provided through the agency's SEE program manager.

EPA program offices in conjunction with the OGD and in consultation with the other agency will determine if work under any funds-in IAs is necessary for shutdown, excepted, or

approved exempted activities. If not, work on such agreements will stop. Other agencies can continue to work on fully funded funds-out IAs if the other agency is not shut down. However, other agencies must stop work if they reach a point at which they require EPA involvement or approval. If the other agency is closed, that agency in consultation with EPA will determine whether activities under funds-out IAs are necessary for shutdown or are for excepted or exempt activities.

EPA may issue additional guidance to determine if work funded under existing IAs, not involving excepted or exempted activities, may continue.”

Homeland Security

<https://www.dhs.gov/sites/default/files/publications/DHS%20Procedure%20Related%20to%20a%20Lapse%20in%20Appropriations%20December%202018.pdf>.

“Grants and Other Forms of Financial Assistance

1. General Guidance. The “Department of Homeland Security Financial Assistance Contingency Plan” shall be maintained and, prior to a lapse in appropriations, distributed to the Heads of the Financial Assistance Activities with a list of frequently asked questions through a Grant Alert. Heads of the Financial Assistance Activities must work with their Component Heads to proactively survey and identify grants or other forms of financial assistance that, in whole or in part, funds activities that will continue to support exempt or excepted functions. This will serve two major purposes for DHS financial assistance activities:

- a. To identify and maintain a list of grants and other forms of financial assistance that may be awarded during a funding hiatus.
- b. To allow Heads of the Financial Assistance Activity to determine an effective distribution of Financial Assistance/Grant Officers to support an orderly shutdown and the management of grants and other forms of financial assistance supporting exempted functions.

2. No New Obligations. DHS may not incur a new obligation by signing a new grant or other form of financial assistance, by extending a grant or other form of financial assistance, or by exercising an option when the funding source for that obligation is a lapsed appropriation unless the obligation is required to support those functions defined as excepted for DHS, such as safeguarding human life or protecting property.

- a. The ADA prohibits agencies from incurring obligations that are in advance of, or that exceed, an appropriation. Except in limited circumstances, DHS may not incur obligations when the funding source for the obligation would be an appropriation that has lapsed unless the obligation is needed to support those functions defined as excepted for DHS. Even when a grant or other form of financial assistance may be awarded or modified in order to protect human life or property, DHS cannot pay the awardee until appropriations are enacted that provide the necessary funding.
- b. In addition to those grants or other forms of financial assistance directly supporting exempt or excepted functions, grant awards or option periods for continuation awards that have already

been awarded are fully funded. Those 18 awardees may continue to perform. In certain cases, existing grants and cooperative agreements require prior approvals or coordination with government non-exempt employees. In cases where the terms of the grant or cooperative agreement require prior approvals or coordination before the awardee proceeds, non-exempt employees will not be available to provide the required approvals or coordination. In those cases, the awardees work must cease per the terms of the award until the required approvals can be obtained or the required coordination can take place.

3. Federal Employees Supporting Financial Assistance Operations. If there is a lapse in the appropriation that funds the federal employees who supervise or support the performance of a financial assistance program, those federal employees cannot continue these activities during the funding lapse, unless these grants or other forms of financial assistance are necessary to support an excepted activity. Routine ongoing activities, related to a grant or other form of financial assistance administration, are not authorized to continue when there has been a lapse in the appropriation that funds the award administration activities. In other words, during a federal funding hiatus, the performance by financial assistance/grant officers, program officials, and financial assistance administration personnel of routine oversight, monitoring, accounting, administration, payment processing, and other financial assistance activity would generally not continue when there has been a lapse in the appropriation that funds these activities.

a. In the absence of federal oversight, DHS may, however, allow the awardee to continue performance during the lapse period if the continued oversight is not critical to the awardee's continued performance during that period. This is the case, for example, for all existing financial assistance awards that are fully funded at inception. DHS does not have to issue an affirmative direction to the awardee to continue performance. Instead, the awardee continues to perform work in accordance with the grant or other form of financial assistance. However, it is always prudent to communicate with the awardee to avoid potential misunderstandings.

b. Depending on the duration of a funding lapse, the absence of available federal employee oversight may make continued performance by the awardee of a grant or other financial assistance award practically impossible, depending on the terms of the award. In particular, if the continued oversight, during the lapse period, is required by the terms of the award to permit the awardee to perform, then performance must cease. For awards where this is likely to be the case, e.g. those that require prior approvals for certain activities or cooperative agreements that have required coordination with DHS, DHS should remind awardees of these requirements and advise them that they must not perform work without receiving the approvals required by the terms of their awards. 19 Financial Assistance staff will need to work closely with Component general counsel in making and implementing these decisions to minimize costs and liability to the Federal Government.”

Housing & Urban Development

<https://www.hud.gov/sites/documents/HUDCONTINGENCYPLANFINAL.PDF>

“Office of Community Planning and Development (CPD) will:

- Continue to provide for the delivery of essential housing and emergency services for homeless persons and persons with AIDS to protect against imminent threats to the safety of human life.

- Continue to disburse CDBG, HOME funds and other block grant funds in cases where failure to address issues result in a threat to safety of life and protection of property.
- Continue Disaster Recovery Assistance Programs funded through multi-year appropriations.
- Continue to maintain the CACI contract for the systems (e.g., IDIS, DRGR, eSNAPs) that support excepted activities.

Note: CPD grantees submit consolidated plans that are deemed approved if not disapproved within 45 days of submission. These are rolling submissions that are due 45 days prior to submission of the start of their program years. CPD grantees select the start dates of their program years. A long term shut down could result in the automatic approval of consolidated plans. The review of the consolidated plans does not fall under an excepted activity. Technical assistance providers may continue to carry out activities on previously approved work plans.”

“**Office of Public and Indian Housing (PIH)** will address emergency situations where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property. In addition, PIH will:

- Keep open the line of credit control system for the purposes of disbursing funds for public housing (operating subsidies and capital funds) that were appropriated in prior years or necessary to support an exempted activity. Funds that have already been obligated in the system and which can be drawn down without further action or review by HUD employees may also be accessed.
- Keep open the line of credit control system for section 8 tenant-based rental assistance, noting that funds are only available for payments through December. Obligated HAP funds (HUD-held reserves) are available for draw. Essential personnel at FMC in Kansas City will be available to assist.
- Manage property where HUD is the Administrative Receiver. Public housing agencies and other grantees continue operating in the event of a federal government lapse in appropriations and there are existing IT systems that will be available to public housing agencies so that they can draw down obligated funding from prior years which can be drawn down without further action or review by HUD employees.”

Interior

<https://www.doi.gov/shutdown>

Fish and Wildlife Service. “Exempt and Excepted Employees: Exempt personnel are those employees who perform activities that are funded by non-lapsing appropriations. These employees include those funded by the Service’s permanent funds, including Sportfish and Wildlife Restoration funds, and including funding for reimbursable agreements from non-federal agencies and from other federal agencies with non-lapsing appropriations, such as the Federal Highway Trust Fund.”

Justice

<https://www.justice.gov/jmd/page/file/1015676/download>

“Grant Programs (Office of Justice Programs, Office of Community Oriented Policing Services, Office on Violence Against Women): As Presidential Appointees, the OVW and COPS Directors, and the Assistant

Attorney General for OJP, are not subject to furlough. The grants awarded by the Department are funded from no-year appropriations, as are the employees who administer those grants. As a result, these activities may continue during a lapse as long as sufficient S&E carryover funds remain, and based upon input from Department leadership regarding mission requirements. However, for the sake of the FY 2019 contingency exercise and consistent with prior plans, OJP is reflecting the level of personnel who would be needed if they had to reduce the personnel to only those most critical during a shutdown, which is approximately 41 (or 6%). OVW and COPS anticipate sufficient carryover funding to support their full complement of employees on-board for some time during a lapse in appropriations, and display an excepted rate of 100% for planning purposes.”

Transportation

<https://www.transportation.gov/sites/dot.gov/files/docs/mission/budget/328471/consolidated-december-2018-shutdown-plan-final.pdf>

FHWA. “Summary of Continuing Operations: All operations continue as normal during a lapse in annual appropriations. Highway Trust Fund operations would continue during a lapse in annual appropriations. FHWA positions are primarily funded by authorized contract authority and paid out of the Highway Trust Fund.

Although FHWA positions are mostly funded from the Highway Trust Fund, FHWA employees working on certain projects and activities may be paid from non-Highway Trust Fund funding sources, including multi-year appropriations (allocations of BUILD Transportation Grants funding and advances from other agencies through the Miscellaneous Trust Funds account) and reimbursable authority.

Summary of Suspended Activities: None. Activities funded with contract authority, carryover multi-year appropriated budget authority, or reimbursable authority.

Assessment of Liquidating Cash: FHWA has sufficient liquidating cash to continue operations during a lapse in annual appropriations.

Special Circumstances: Not applicable.”

FTA. “Summary of Continuing Operations: In the absence of appropriations, limited functions funded from prior year appropriations would continue. These would include Hurricane Sandy activities funded from the 2013 Disaster Relief Appropriations Act (25 staff) program oversight (23 staff) authorized under 49 U.S.C. 5327 and 49 U.S.C 5338(f) funded with prior year contract authority, and activities in the Lower Manhattan Recovery Office (2 staff) funded by emergency supplemental appropriations after 9/11.

FTA would also have 15 excepted staff to perform life and safety activities authorized in MAP-21 and oversee the lawful continuation of other functions, including 7 available for Washington Metropolitan Area Transit Authority (WMATA) safety incident notification and response. FTA also has contract support funded from prior year appropriations for WMATA safety oversight.

Summary of Suspended Activities:

- FTA would not continue any of its unfunded core agency functions. No grants, cooperative agreements, contracts, purchase orders, travel authorizations, or other documents obligating funds would be executed.

- FTA would discontinue reimbursements to transit agencies for ongoing operations and construction projects to enable them to provide transit services and pay employees and contractors.
- FTA would not obligate grant funds for projects carried out by approximately 1,300 grantees throughout the country as FTA staff that perform these functions are not considered excepted employees. FTA grants primarily fund operating expenses and capital projects.
- For projects under development, FTA staff would not carry out environmental, legal, civil rights, and other reviews essential for advancing projects to the point of obligation, since these are not related to immediate issues of life and safety.
- FTA would not make grant payments using FTA's Financial Management Systems or vendor payments to contractors using the DELPHI accounting systems regardless of the fiscal year cited since appropriations would not be available to pay the Salaries of the staff certifying the payments.
- Program oversight activities would continue but only with funds provided by prior year appropriations. Most oversight activities are performed by contractors.
- FTA would also not obligate or outlay funds for research and technical assistance activities because appropriations would not be available to pay the salaries of the staff executing the payments.

Assessment of Liquidating Cash:

- FTA has sufficient liquidating cash to support several months. However, FTA would not outlay funds because appropriations would not be available to pay the salaries of staff executing payments.”

FAA. “FAA has sufficient liquidating cash to continue operations during a lapse in annual appropriations. AIP is the only FAA program that operates on Contract Authority.”

“In addition, certain activities that will not be affected by a lapse in annual appropriations (but would be affected by a lapse in authorization) include:

- National aviation research, engineering, and development (RE&D) funded by multi-year appropriations;
- Airport inspections;
- Existing airport development grants;
- Passenger facility charge approvals; and
- Airport planning and environmental services funded by Airport Improvement Plan (AIP) contract authority;
- Aircraft certification services (limited).”

FMCSA. “**Summary of Continuing Operations:** All operations continue as normal during a lapse in annual appropriations.

Summary of Suspended Activities: None. Activities funded with contract authority and offsetting collections.

Assessment of Liquidating Cash: FMCSA has sufficient balances of liquidating cash to operate for a limited period during a lapse of annual appropriations. FMCSA's fees (offsetting collections) are available during a lapse of annual appropriations."

NHTSA. "Summary of Continuing Operations: NHTSA Highway Safety Research & Development activities (e.g., occupant protection, alcohol, motorcycles) and grants managed under the Highway Traffic Grants account would continue. Additionally, NHTSA's cybersecurity functions are excepted to the extent necessary for the safety of life and preservation of property."