

NLWJC- Kagan

Counsel - Box 007 - Folder 004

Shutdown [4]

E X E C U T I V E O F F I C E O F T H E P R E S I D E

15-Sep-1995 03:03pm

TO: (See Below)

FROM: Charles S. Konigsberg
Office of Mgmt and Budget

SUBJECT: URGENT--AMR SHUTDOWN TESTIMONY

I'M PASSING THIS TESTIMONY ALONG TO LARRY FOR POLISHING; IT NEEDS TO GO TO AMR BY COB TODAY. THIS HAS BEEN SUBSTANTIALLY REVISED TO INCORPORATE AMR AND OTHER COMMENTS. IF ANYONE HAS ADDITIONAL COMMENTS, PLEASE GET THEM TO LARRY ASAP. THANKS.

PRELIMINARY STAFF DRAFT -- NOT FOR RELEASE -- \d

TESTIMONY OF
ALICE M. RIVLIN
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
BEFORE A JOINT HEARING OF THE
SENATE BUDGET COMMITTEE
and the
HOUSE BUDGET COMMITTEE

September 19, 1995

[LARRY: NOTE--I HAVE RUN THE TESTIMONY BY TREASURY; WE SHOULD LEAVE THE DEBT LIMIT LANGUAGE PRETTY MUCH INTACT]

Chairman Domenici and Chairman Kasich, Members of the two committees, I welcome the opportunity today to answer your questions on the implications of a hiatus in appropriations authority and reaching the statutory limit on the public debt.

There's been a lot of talk in recent days about a government shutdown in connection with the beginning of the new fiscal year, as well as the nearing of the debt ceiling. Let me say, at the outset, that the President strongly believes that a government shutdown of any kind would be bad for the country. We need to arrive at policy decisions on budgetary priorities in an orderly way -- not in a crisis atmosphere.

The President has urged Congress to complete action on all 13 appropriations bills by the October 1 start of fiscal 1996. If this cannot be done, I hope we can agree on a continuing resolution that does not contain controversial riders or

prejudice the outcome of the debate.

In addition, I hope the Congress will act responsibly and send the President an increase in the debt ceiling. Failure to do so could disrupt Treasury borrowing operations, cause market uncertainty as to the Government's fiscal operations, and impose significant additional costs on American taxpayers.

Appropriations hiatus vs. Debt Ceiling

Before addressing specific shutdown issues, it's worth taking a moment, to clarify the distinction between a lapse in appropriations authority and reaching the debt ceiling.

Lapse in appropriations authority. If any of the 13

appropriations bills have not been enacted by October 1 -- and a continuing resolution has also not been enacted -- affected departments and agencies will experience a lapse in legal

authority to enter into certain obligations. This includes the authority to provide important services and to employ Federal workers. As I will explain in a moment, any lapse in such authority is bad for the country and should be avoided.

Lapse in borrowing authority. By contrast, reaching the statutory limit on the public debt -- often called the debt ceiling -- is a very different scenario. If the debt ceiling is reached, the Treasury will lack the authority to borrow additional funds. The Treasury Department currently estimates the debt ceiling will be reached some time towards the end of October. When monthly tax receipts are not sufficient to cover outlays, the inability to borrow would result in a cash shortfall, leaving the Treasury without adequate cash to pay the government's bills.

The United States has never defaulted on its obligations in the more than 200 year history of the Republic. A default on the debt of the United States is unthinkable. The Administration trusts and expects that the Congress will protect the financial integrity of the United States, by raising the debt ceiling as the Secretary of the Treasury has requested.

The Secretary of the Treasury is happy to answer any particular questions you or other Members of Congress have about the debt ceiling. The one point I want to emphasize today is that the Administration, in the strongest possible terms, respectfully urges the Congress to de-couple the issues of the debt ceiling and balancing the budget. Using the debt ceiling to force a particular outcome in ongoing budget deliberations -- as some have suggested -- is irresponsible. It makes no sense to bring the country to the edge of default and financial chaos, in order to force the budget debate to a particular result.

Lapse in appropriations authority

The issue of immediate concern is the possibility of a lapse in appropriations authority.

Appropriations laws provide departments and agencies with legal authority to enter into obligations to provide services, employ workers, and enter into contracts. Some appropriations are annual, whereas others are multiyear, and others are permanent.

Where appropriations for government programs, projects and activities are made annually, A failure to pass appropriations by October 1 -- the start of the new fiscal year -- would cause a

lapse in legal authority to enter into obligations.

It is a violation of Federal law for any employee to obligate the government in advance of appropriations, except as authorized by law as, for example, in the case of "emergencies involving the safety of human life or the protection of property." (Other exceptions include: authority to enter into obligations which enable the President to perform constitutional duties; authority to employ workers involved in implementing a shutdown; and authority to employ workers to administer programs which have permanent or multi-year appropriations authority).

A lapse in appropriations authority on October 1 could have far-reaching and deleterious consequences. The particular implications would, of course, depend on which appropriations bills are not enacted by October 1. A few examples of the consequences of permitting appropriations authority for various agencies to lapse are:

? No food stamps would be issued after October 1;

? WIC would stop within days since no new money would be disbursed and the small existing balances would be depleted;

? The National Parks would have to close, as there would be no money to pay the Park Service Rangers and employees"; and

? Veterans compensation, pension, and survivors benefits checks would not be sent out on November 1.

Furloughing government employees

In addition to the government activities and services which would cease during a lapse in appropriations authority, agencies would lack authority to continue to employ Federal workers, except as authorized by law.

Substantial furloughs could therefore result if a lapse in appropriations authority occurs on October 1. The Administration is concerned about the disruptive effects that a government shutdown would have on federal employees and their families. These workers do the peoples' business every day and are in the forefront of our efforts to reinvent government. They should not be used as pawns as we try to work through the difficult budget decisions that lie before us.

Costs of a government shutdown

In addition to the deleterious impact on the users of Federal services and on Federal employees, a government shutdown of any size or duration would have a price tag. These costs include: the costs of closing and securing Federal buildings and facilities; and the payment of penalties and other charges associated with the unanticipated cessation of contractual liabilities. In addition, the productivity of Federal employees would undoubtedly be diminished even after a shutdown has ended as they have to perform the services that were not done during the shutdown.

A shutdown is unnecessary and should be avoided

The message here, for all of us, is that a lapse in appropriations authority is bad for everyone. It would cause a lapse in many important and vital services, would needlessly furlough Federal workers, and would needlessly cost the taxpayers money. A government shutdown of any size or duration would benefit no one and should be avoided.

That is why the Administration has been urging the Congress to complete action on all 13 appropriations bills by the October 1 start of fiscal 1996. If this cannot be done I hope we can agree on a continuing resolution --

(1) is "clean," i.e., does not contain controversial riders or extraneous language; and

(2) does not prejudice the outcome of the appropriations debate by attempting to lock new priorities into place or terminate existing programs.

Preparations

Despite our strong hope that a shutdown can be avoided, we must be prepared for all contingencies. Therefore, on August 22, 1995 I directed the heads of all executive departments and agencies to send to OMB updated contingency plans to deal with a funding hiatus.

At this time, I can tell you that all of the agencies have responded to our request that they update their existing shutdown plans. Completed plans have been received from all agencies except the Department of Defense which has provided us their

preliminary conclusions pending completion of their plan on September 25. As you can imagine, the Defense Department must deal with a wide range of activities in developing a final plan. OMB has reviewed the shutdown plans to insure that there is a consistent approach across the government, although the specific decisions are the responsibility of the agency heads. Other than the Department of Defense, we will have completed our analysis of all plans by the end of this week.

Conclusion

The Administration is fully prepared to handle a government shutdown on October 1 if that is made necessary by a lapse in appropriations for some departments and agencies. However, a government shutdown, of any size or duration, will needlessly deprive our citizens of important services, hurt Federal employees, and cost money. I strongly urge the Congress to complete action on all 13 appropriations bills by the October 1 start of fiscal 1996. If this cannot be done I hope we can agree on a continuing resolution that does not contain controversial riders or prejudice the outcome of the debate.

*

*

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~~Call ^{me} Kou 55069 / or Email~~

~~- Call Chris / Dennis re with g.~~

~~(also get debt ceiling stuff.~~



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FAX COVER SHEET

Number of pages 10
(excluding cover sheet)

Date 9/12/95

Urgent

Time 4:00 am pm

Confidential

DETERMINED TO BE AN
ADMINISTRATIVE MARKING
INITIALS: JGP DATE: 5/24/10
2009-1006-F

From: **Chuck Konigsberg**
Office of Management and Budget
Assistant Director for Legislative Affairs
Phone: **395-4790**
Fax: **395-3729**

To: Chris Schroeder / OMB
514-0539

Comments:



→ Elena Kagan / 61647

Comments?

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United States Senate

COMMITTEE ON THE BUDGET
 WASHINGTON, DC 20510-5100

G. WILLIAM HOAGLAND, STAFF DIRECTOR
 WILLIAM G. DALSTER, DEMOCRATIC CHIEF OF STAFF AND CHIEF COUNSEL

September 12, 1995

Dr. Alice M. Rivlin
 Director
 Office of Management and Budget
 252 Old Executive Office Building
 Washington, D.C. 20503

Dear Dr. Rivlin:

We would like to invite you to testify before a joint meeting of the Senate and House Budget Committees on Tuesday, September 19, 1995, at 9:30 a.m. You will appear on a panel with Mr. Walter Dellinger, the Assistant Attorney General. The hearing will be held in room 106 of the Dirksen Senate Office Building.

We would like you to discuss how the Executive Branch is planning for an extended appropriated funding hiatus in light of your August 22 memorandum on the subject. You should be prepared to discuss the following issues:

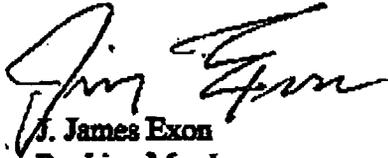
- o The legal authority under which the government intends to obligate funds in advance of appropriations;
- o The disbursement of funds from accounts with permanent spending authority, particularly when administrative expenses associated with these accounts are annually appropriated;
- o The potential for government-wide furloughs or other cost-saving actions involving federal employees; and
- o Costs or savings associated with a government shutdown.

In addition, you should expect questions of a similar nature with regard to the statutory limit on the public debt.

Committee rules require that a copy of your written testimony be submitted one day prior to the hearing. However, because of the interest in the subject matter, we request that you submit 250 copies of your testimony in advance of the hearing. To allow adequate time for discussion, it would be helpful to limit your prepared oral remarks to 15 minutes.

Thank you for your time and effort in this matter. Should you have any questions, please contact Bill Hoagland of Senator Domenici's staff (224-0769), Bill Dauster of Senator Exon's staff (224-3961), Rick May of Congressman Kasich's staff (226-7270), or Eileen Baumgartner of Congressman Sabo's staff (226-7200).

Sincerely,



J. James Exon
Ranking Member
Senate Budget Committee



Pete V. Domenici
Chairman
Senate Budget Committee



Martin O. Sabo
Ranking Member
House Budget Committee



John R. Kasich
Chairman
House Budget Committee

DRAFT

PRELIMINARY STAFF DRAFT -- NOT FOR RELEASE --
Tue Sep 12, 1995 4:02pm

TESTIMONY OF
ALICE M. RIVLIN
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
BEFORE A JOINT HEARING OF THE
SENATE BUDGET COMMITTEE
and the
HOUSE BUDGET COMMITTEE

September 19, 1995

Chairman Domenici and Chairman Kasich, Members of the two committees, I welcome the opportunity today to answer your questions on the implications of a hiatus in appropriations authority and reaching the statutory limit on the public debt.

Appropriations hiatus vs. Debt Ceiling

First, there's been a lot of talk about a government shutdown in connection with the beginning of the new fiscal year, as well as the nearing of the debt ceiling. It is very important that we clearly distinguish a lapse in appropriations authority, from reaching the debt ceiling. They are two very different scenarios.

Scenario #1: Lapse in appropriations authority. If all 13 appropriations bills are not enacted by October 1, and a continuing resolution has also not been enacted, affected departments and agencies will experience a lapse in legal authority to enter into certain obligations. This includes the authority to provide important services and to employ Federal workers. As I will explain in a moment, any lapse in such authority can be serious and costly. The Administration strongly urges the Congress to send the President a continuing resolution to prevent any lapse in appropriations authority.

Scenario #2: Lapse in borrowing authority. By contrast, reaching the statutory limit on the public debt -- often called the debt ceiling -- is a very different scenario. If the debt ceiling is reached, the Treasury will lack the authority to borrow additional funds. The Treasury Department currently estimates the debt ceiling will be reached some time in October (??). Because monthly tax receipts, do not cover outlays, this inability to borrow would cause a cash shortfall, leaving the Treasury without adequate cash to pay the government's bills.

Such a cash shortfall would place the United States in a

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which no Congress has ever permitted to happen because of the dire economic consequences. The Administration trusts and expects that the Congress will protect the financial integrity of the United States and the stability of the world economy, by raising the debt ceiling as the Secretary of the Treasury has requested.

The Secretary of the Treasury is happy to answer any particular questions you or other Members of Congress have about the expected timing on reaching the debt ceiling or questions you may have on cash management tools available to forestall a debt crisis. The one point I want to emphasize today is that the Administration, in the strongest possible terms, respectfully urges the Congress to de-couple the issues of the debt ceiling and balancing the budget. Using the debt ceiling to force a particular outcome in ongoing budget deliberations -- as some Members of the House have suggested -- is irresponsible. It simply makes no sense to bring the country to the edge of default and financial chaos, in the interest of achieving fiscal discipline.

Lapse in appropriations authority

The issue of immediate concern is the looming possibility of a lapse in appropriations authority. As I explained, if all 13 appropriations bills are not enacted by October 1, and a continuing resolution has also not been enacted, certain departments and agencies will experience a lapse in legal authority to enter into obligations.

Walter Dellinger will go into greater detail on the legal framework, but -- briefly -- appropriations laws provide legal authority to the departments and agencies to enter into obligations to provide services, employ workers, and enter into contracts. As you know, some appropriations are annual, some multiyear, and others are permanent.

Where government programs, projects and activities are annually appropriated, the failure to pass appropriations by October 1 -- the start of the new fiscal year -- causes a lapse in legal authority to enter into obligations. As Walter will explain, it is a violation of Federal criminal law for any employee to obligate the government in the absence of appropriations authority, except in the case of "emergencies involving the safety of human life or the protection of property."

A lapse in appropriations authority on October 1 could have far-reaching and deleterious consequences. The particular implications would, of course, depend on which appropriations bills are not enacted by October 1. But following are examples

human - there are other "exceptions" as well.
- for affs
- implement shutdown
- implement multi-yr approps

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of the consequences of permitting appropriations authority for various agencies to lapse:

[BARRY ANDERSON -- PLEASE PROVIDE 8-10 STRIKING EXAMPLES, IN BULLET FORM, OF GOVERNMENT ACTIVITIES WHICH WOULD CEASE; ALSO, MIGHT WANT TO MENTION THE GAO REPORT]

Furloughing government employees

In addition to the government activities which would cease during a lapse in appropriations authority, agencies would lack authority to continue to employ Federal workers, except in cases where workers are engaged in activities involving the safety of human life or the protection of property. Walter will address the issues of how departments and agencies will be making determinations on which workers are "essential".

see above

The point I wish to emphasize is that substantial furloughs will result if a lapse in appropriations authority occurs on October 1. For example,

- a lapse in appropriations for the department of _____ would result in a furlough of _____ employees.

[BARRY ANDERSON -- PLEASE PROVIDE SOME EXAMPLES OF HOW MANY FEDERAL EMPLOYEES WOULD BE FURLOUGHED IN PARTICULAR AGENCIES IN CASE OF A LAPSE IN APPROPRIATIONS AUTHORITY]

Costs of a government shutdown

In addition to the deleterious impact on the users of Federal services and on Federal employees, a government shutdown of any size or duration would have a price tag. In reviewing the 1990 government shutdown, the GAO concluded:

[BARRY ANDERSON -- PLEASE FILL IN]

With regard to a possible shutdown this Fall, OMB estimates that

[BARRY ANDERSON -- PLEASE PROVIDE COST INFO. TO FILL IN HERE]

A shutdown is unnecessary and should be avoided

The straightforward message here, for all of us, is that a

DRAFT

lapse in appropriations authority is bad for everyone. It would cause a lapse in many important and vital services, would needlessly furlough Federal workers, and would needlessly cost the taxpayers money. A government shutdown of any size or duration would benefit no one and should be avoided.

*assumes how long
when will be
paid.*

Consequently, the Administration is requesting that the Congress send to the President by September 30 a "clean" continuing resolution (CR) which permits agencies to continue making obligations in the absence of FY 1996 appropriations. We request that a CR extend funding for at least ___ weeks.
[LEW/KIEFFER: NEED GUIDANCE]

Let's be clear on what we mean by a "clean" CR. A clean CR is a simple, straightforward extension of budget authority -- at a mutually agreed upon level -- which:

- (1) does not attempt to lock new priorities into place or terminate existing programs; debates on priorities and terminations should take place within the context of individual appropriations bills -- not as part of a stopgap CR designed to prevent a government shutdown; and
- (2) does not contain riders or other language extraneous to the purpose of the CR.

Preparations

Despite our strong hope that a shutdown can be avoided, we must be prepared for all contingencies. Therefore, on August 22, 1995 I directed the heads of all executive departments and agencies to send to OMB updated contingency plans to deal with a funding hiatus. At this time, I can tell you that.....

[KOSKINEN/DAMUS/ANDERSON: PLEASE COORDINATE ON A PARAGRAPH TO INSERT HERE BRIEFLY SETTING FORTH THE STATUS OF OUR CONTINGENCY PLANNING.]

Conclusion

The Administration is fully prepared to handle a government shutdown on October 1 if that is made necessary by a lapse in appropriations for some departments and agencies. However, a government shutdown, of any size or duration, will needlessly deprive our citizens of important services, hurt Federal employees, and cost money. I strongly urge the Congress to avoid a shutdown by sending a straightforward, clean CR to the President by September 30.

*me
above*

DRAFT

Rivlin Qs and As:

1. What is the Administration position on paying back furloughed employees?

ANSWER: The Federal government has shut down ___ times due to a lapse in appropriations authority. In each case, employees furloughed during a shutdown always have been paid back for the wages lost during the involuntary furlough. It would be unconscionable for Members of Congress and others to be paid following a shutdown, but to deny pay to a GS-7 clerk who is living pay-check-to-pay-check trying to pay rent and feed her children.

True even if they're not paid, yes?

[ANDERSON: PLEASE FILL IN THE BLANK AND VERIFY THIS ANSWER.]

2. Since the Social Security Administration's administrative expenses are annually appropriated, would benefit checks continue to be sent out if funding for administrative expenses lapsed?

ANSWER: [DAMUS TO PROVIDE]

3. What is the general status of department and agency shutdown plans?

ANSWER: [KOSKINEN/ANDERSON/DAMUS to provide]

4. How would the White House handle its own shutdown?

ANSWER: Similar to each committee chairman and Member of Congress, the WH must determine which employees are essential under the standards just explained to you by Walter Dellinger. We expect that approximately ___% of White House would be furloughed, although current law does permit furloughed white house employees to volunteer, if they wish.

*Not just essential
Also: exec
auth -
may be many*

*have we
decided
this?
Ch w/ Cs + BD*

*where is this
coming from?*

DRAFT

5. Can you provide us with a complete list of programs which have authority to continue operating during a total government shutdown?

ANSWER: [ANDERSON TO PREPARE LIST]

6. What is the administration position on the Gekas bills? (The first bill provides that in the event the 13 appropriations bills, or any of them, are not enacted, activities that would be affected are continued at the current rate. The second bill provides that, in the event of an appropriations hiatus, all govt employees continue to be paid, and the government may make reasonable expenditures and obligations to avoid losses in revenue, i.e. IRS can continue.)

ANSWER: [DAMUS TO PROVIDE]

7. We all know that the Treasury Dept. always builds in a cushion in its estimates of when the debt ceiling is going to be reached. Isn't it the case that the debt ceiling will not be actually be reached until November? Also, what cash management devices and practices can Treasury use to further forestall reaching the debt ceiling.

ANSWER: [ANDERSON/MINARIK PLEASE REVIEW THIS ANSWER] The Treasury Department is currently estimating the debt ceiling could be reached in October (???). Any such estimates should be careful and on the conservative side, because the consequences of reaching the debt ceiling and defaulting on interest payments are so dire. With regard to cash management tools which can forestall reaching the debt ceiling, this is the Treasury Department's domain and I know Secretary Rubin would be very happy to answer your question.

8. Under a shutdown, how would the disbursement of funds from accounts with permanent spending authority -- such as social security -- be handed, since the administrative expenses are annually appropriated?

ANSWER: [DAMUS TO PROVIDE]

DRAFT**DELLINGER TESTIMONY**

1. Legal framework: constitution and antideficiency act
2. Civiletti memo
3. Explain exceptions to the antideficiency act
4. Explain the authority to enter into obligations for emergency services vs. the lack of authority to pay employees in emergency situations
5. Scope of emergencies permitted by the exception; 1990 amendment
6. Overview: the tremendous legal uncertainties arising in a shutdown add to the compelling reasons for avoiding shutdown.

Possible questions Dellinger may face:

1. What activities have, in the past, been considered emergencies?
2. Does the antideficiency act apply to Congress, and if so, how?
3. Authority to call Congress back into session during a funding hiatus?

Me & the shutdown 9/8/95

Hearing on Friday - WD/AR to testify

WH Staffing - Auth to create positions at 0 pay.

2 ways to do

1. Further than current paid post; create shadow post at 0 pay.

Look-back provision for furloughed people.

Looks shifty? No... not if all furloughed paid.

Paid if & only if all furloughed p. paid.

2. Have people waive compense.

But then people won't be paid.

3. Corps of people performing exempted functions.

Bush - 65 out of 383

Nat'l security - carrying on core responsibilities.

+ safety

+ managing shutdown.

Over total - 403

Congress - Members get paid - NOT defered.

Staffs? Nuclear as yet.

Judiciary -

Refund to drop anything. Rational - exercising jud power.

Ridiculous.

But ignore: helps us to have br out them in left held when p. accuse us of illegal ^{approve} continuances in all civil cases.

WH in writing to us on Mon

Nat sec / dr atts -

Case - 144 out of 188 - all vital

State's plan - major chunk - maintaining
basic functions.

Can't look all this under exemptions. -
threat has to be imminent

NS justify is persuasive

tho not much re P's core responsibls.

Jurisdiction - All criminal prosecutions (tho hard to justify)
FBI training programs.

No one else can waive compens.

because all other positions have minimums



U. S. Department of Justice

Office of Legal Counsel

Washington, D.C. 20530

DATE: _____

FACSIMILE TRANSMISSION SHEET

FROM: Neil Kinkopf

OFFICE PHONE: 514-3713

TO: Elena Kagan

OFFICE PHONE: _____

NUMBER OF PAGES: 5 PLUS COVER SHEET

FAX NUMBER: _____

REMARKS:

The President's authority to create positions ~~at~~ at 0 salary is in 38 USC 105(a)(2)(D). We opined that this provision so authorizes the President at 2 Op. OLC ~~223~~³²². We have reaffirmed this view a number of times since in unpublished opinions.

IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX, PLEASE CONTACT KATHLEEN MURPHY OF KEVIN SMITH ON 514-2057

OFFICE OF LEGAL COUNSEL FAX NUMBER: (202) 514-0563
FTS NUMBER: (202) 368-0563

THE PRESIDENT Ch. 2

Ch. 7 OFFICE AND COMPENSATION

3 § 105

et out as a note under section

in use of funds for fiscal year 1983, appropriated by any salary or pay of any individual executive, or judicial branch in to or above Level V of the schedule, see section 101(e) of Pub.L. 95-391, as amended, set out as a note under section 5318 of Title 5.

d. No. 12330, Oct. 15, 1981, which provided for the adjustment effective Oct. 1, 1981, was Ex.Ord. No. 12387, Oct. 8, 1981, set out as a note under section 5332 of Title 5.

on use of funds for fiscal year 1982, appropriated by any salary or pay of any individual executive, or judicial branch in to or above Level V of the schedule, see sections 101(g) and 97-92, set out as a note under section 5318 of Title 5.

rd. No. 12248, Oct. 16, 1981, which provided for the adjustment effective Oct. 1, 1980, was Ex.Ord. No. 12330, Oct. 15, 1981, 50921, formerly set out as a note under section 5332 of Title 5.

on use of funds for fiscal year 1981, appropriated by any salary or pay of any individual executive, or judicial branch in to or above Level V of the schedule, see section 101(e) of Pub.L. 95-391, as amended, set out as a note under section 5318 of Title 5.

rd. No. 12165, Oct. 9, 1979, 44 as amended by Ex.Ord. No. 2, 1980, 45 F.R. 16443, which provided for the adjustment of pay rates effective Oct. 1, 1979, was superseded by Ex.Ord. No. 12248, Oct. 16, 1981, 45 F.R. 16443, set out as a note under section 5318 of Title 5.

to funds appropriated by any fiscal year ending Sept. 30, 1980, of section 304 of Pub.L. 95-391 on pay the salary or pay of any legislative, executive, or judicial branch in to or above Level V of the Executive Schedule, see section 101 of Pub.L. 95-391, as amended, set out as a note under section 5318 of Title 5.

rd. No. 12087, Oct. 7, 1978, 43 which provided for the adjustment effective Oct. 1, 1978, was Ex.Ord. No. 12165, Oct. 9, 1979, set out as a note under section 5318 of Title 5.

1979, 44 F.R. 58671, formerly set out as a note under section 5332 of Title 5.

Limitations on use of funds for fiscal year ending Sept. 30, 1979, appropriated by any Act to pay the salary or pay of any individual in legislative, executive, or judicial branch in position equal to or above Level V of the Executive Schedule, see section 304 of Pub.L. 95-391 and section 613 of Pub.L. 95-429, set out as a note under section 5318 of Title 5.

1977—Salary of the Vice President of the United States increased to \$75,000 per annum per recommendation of the President of the United States, see note set out under section 5358 of Title 2, The Congress.

Pub.L. 95-66, § 1(1), July 11, 1977, 91 Stat. 270, set out as a note under section 5318 of Title 5, Government Organization and Employees, provided that the first adjustment which, but for the enactment of Pub.L. 95-66, would have been made in the annual rate of pay for the Vice President under the second sentence of this section after July 11, 1977, would not take effect.

1976—Ex.Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43899, as amended by Ex.Ord. No. 11943, Oct. 25, 1976, 41 F.R. 47213, which

provided for the adjustment of pay rates effective Oct. 1, 1976, was superseded by Ex.Ord. No. 12010, Sept. 28, 1977, 42 F.R. 52365, formerly set out as a note under section 5332 of Title 5.

1975—Ex.Ord. No. 11883, Oct. 6, 1975, 40 F.R. 47091, which provided for the adjustment of pay rates effective Oct. 1, 1975, was superseded by Ex.Ord. No. 11941, Oct. 1, 1976, 41 F.R. 43899, as amended by Ex.Ord. No. 11943, Oct. 25, 1976, 41 F.R. 47213, formerly set out as a note under section 5332 of Title 5.

Long-Distance Telephone Calls. Section 58 of Title 2, The Congress, relating to long-distance telephone calls for Senators is made applicable to the Vice President under the provisions of section 46d-1 of Title 2.

Legislative History. For legislative history and purpose of Act Jan. 14, 1949, see 1949 U.S.Code Cong.Service, p. 1083. See, also, Act Mar. 2, 1955, 1955 U.S.Code Cong. and Adm.News, p. 1762; Pub.L. 88-426, 1964 U.S.Code Cong. and Adm.News, p. 2730; Pub.L. 94-87, 1975 U.S.Code Cong. and Adm.News, p. 843.

Cross References

Claims for overpayment of pay or allowance to Vice President, see section 130c of Title 2, The Congress.

Library References

United States: 26, 39(2).
C.J.S.: United States: 58-17, 27-28, 44

§ 105. Assistance and services for the President.

(a) (1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized to appoint and fix the pay of employees in the White House Office without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Employees so appointed shall perform such official duties as the President may prescribe.

(2) The President may, under paragraph (1) of this subsection, appoint and fix the pay of not more than—

(A) 25 employees at rates not to exceed the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5, and in addition

(B) 25 employees at rates not to exceed the rate of basic pay then currently paid for level III of the Executive Schedule of section 5314 of title 5, and in addition

(C) 50 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5, and in addition

3 § 105

THE PRESIDENT CL 2

(D) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5.

(b) (1) Subject to the provisions of paragraph (2) of this subsection, the President is authorized to appoint and fix the pay of employees in the Executive Residence at the White House without regard to any other provision of law regulating the employment or compensation of persons in the Government service. Employees so appointed shall perform such official duties as the President may prescribe.

(2) The President may, under paragraph (1) of this subsection, appoint and fix the pay of not more than—

(A) 3 employees at rates not to exceed the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5; and in addition

(B) such number of other employees as he may determine to be appropriate at rates not to exceed the minimum rate of basic pay then currently paid for GS-16 of the General Schedule of section 5332 of title 5.

(c) The President is authorized to procure for the White House Office and the Executive Residence at the White House, as provided in appropriation Acts, temporary or intermittent services of experts and consultants, as described in and in accordance with the first two sentences of section 3109(b) of title 5—

(1) in the case of the White House Office, at respective daily rates of pay for individuals which are not more than the daily equivalent of the rate of basic pay then currently paid for level II of the Executive Schedule of section 5313 of title 5; and

(2) in the case of the Executive Residence, at respective daily rates of pay for individuals which are not more than the daily equivalent of the maximum rate of basic pay then currently paid for GS-18 of the General Schedule of section 5332 of title 5.

Notwithstanding such section 3109(b), temporary services of any expert or consultant described in such section 3109(b) may be procured for a period in excess of one year if the President determines such procurement is necessary.

(d) There are authorized to be appropriated each fiscal year to the President such sums as may be necessary for—

(1) the care, maintenance, repair, alteration, refurnishing, improvement, air conditioning, heating, and lighting (including electric power and fixtures) of the Executive Residence at the White House;

(2) the official expenses of the White House Office;

(3) the official entertainment expenses of the President;

(4) the official entertainment expenses for allocation within the Executive Office of the President; and

(5) the subsistence expenses of persons in the Government service while traveling on official business in connection with the travel of the President.

Ch. 2 OFFICIAL

Sums appropriated graphs (1), (3), and notwithstanding th accounted for sole respect to such exp books, documents, solely for the pur expenses in parag certify to Congress expenses not expen

(e) Assistance a President are auth connection with as discharge of the I does not have a s such purposes to a designates.

(June 25, 1948, c. 64 31, 1956, c. 804, Tit § 303(h), 75 Stat. 75 422; Dec. 23, 1967; Pub.L. 95-570, § 16

So in original. Pr

1978- Amendment, I provisions relating to determination of pay b ployees in the White Executive Residence at procurement by the Pr intermittent services of ants and the pay of six ants; the appropriation maintenance, etc., of th at the White House, t the White House Office ment expenses of the entertainment expense the Executive Office, s penses of Government ing on official business travel of the Preside sums by the President, cation and report by C troller General concern the allotment of assets spouse of the President President's family; de authorized the Preside tion of six administrative vative Secretaries of Council, the National Council, and the I Coast; and eight ad immediate staff seats

Ch. 2 OFFICE AND COMPENSATION

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Sums appropriated under this subsection for expenses described in paragraphs (1), (3), and (5) may be expended as the President may determine, notwithstanding the provisions of any other law. Such sums shall be accounted for solely on the certificate of the President, except that, with respect to such expenses, the Comptroller General may inspect all necessary books, documents, papers, and records relating to any such expenditures solely for the purpose of verifying that all such expenditures related to expenses in paragraph (1), (3), or (5). The Comptroller General shall certify to Congress the fact of such verification, and shall report any such expenses not expended for such purpose.

(e) Assistance and services authorized pursuant to this section to the President are authorized to be provided to the spouse of the President in connection with assistance provided by such spouse to the President in the discharge of the President's duties and responsibilities. If the President does not have a spouse, such assistance and services may be provided for such purposes to a member of the President's family whom the President designates.

(June 25, 1948, c. 644, 62 Stat. 678; Oct. 15, 1949, c. 695, § 2(a), 63 Stat. 880; July 31, 1956, c. 804, Title I, § 109, 70 Stat. 740; Oct. 4, 1961, Pub.L. 87-367, Title III, § 303(h), 75 Stat. 794; Aug. 14, 1964, Pub.L. 88-426, Title III, § 304(b), 78 Stat. 422; Dec. 23, 1967, Pub.L. 90-222, Title I, § 111(c), 81 Stat. 726; Nov. 2, 1978, Pub.L. 95-570, § 1(a), 92 Stat. 2445.)

So in original. Probably should be "provisions".

Historical Note

1978 Amendment. Pub.L. 95-570 inserted provisions relating to the appointment and determination of pay by the President of employees in the White House Office and the Executive Residence at the White House; the procurement by the President of temporary or intermittent services of experts and consultants and the pay of such experts and consultants; the appropriation of sums for the care, maintenance, etc., of the Executive Residence at the White House, the official expenses of the White House Office, the official entertainment expenses of the President, the official entertainment expenses for allocation within the Executive Office, and the subsistence expenses of Government personnel while traveling on official business in connection with the travel of the President; the accounting of sums by the President; the inspection, certification and report to Congress by the Comptroller General concerning expenditures; and the allotment of assistance and services to the spouse of the President or to a member of the President's family; deleted provisions which authorized the President to fix the compensation of his administrative assistants, the Executive Secretaries of the National Security Council, the National Aeronautics and Space Council, and the Economic Opportunity Council, and eight other secretaries or other immediate staff assistants in the White House

Office, at rates of basic pay not to exceed the rate of Executive level II.

1967 Amendment. Pub.L. 90-222 inserted the position of Executive Secretary of the Economic Opportunity Council.

1964 Amendment. Pub.L. 88-426 included the Executive Secretary of the National Aeronautics and Space Council, and substituted provisions permitting the President to fix the compensation of the enumerated personnel at rates of basic compensation not more than that of Level II of the Federal Executive Salary Schedule for provisions which limited the compensation of such personnel to two at rates not more than \$22,500, three at not more than \$21,000, and one at not more than \$20,000 and three at not more than \$18,300 per annum.

1961 Amendment. Pub.L. 87-367 authorized the President to increase the compensation of three assistants to the President from \$17,500 to \$18,300 per annum.

1956 Amendment. Act July 31, 1956 authorized the President to fix the compensation of an additional three secretaries or other immediate staff assistants, to increase compensation rates by substituting "\$22,500" for "\$20,000", "\$21,000" for "\$18,000", and to provide for

January 27, 1977

78-72 MEMORANDUM OPINION FOR THE DEPUTY COUNSEL TO THE PRESIDENT

The White House Office—Acceptance of Voluntary Service (31 U.S.C. § 665(b))

This is in response to your oral request for our views regarding the propriety of the acceptance of voluntary service in the White House. We understand that your immediate concern is with the receipt of such assistance in the processing of the many resumes and applications for employment now being received by the White House. But we also understand that the White House has utilized voluntary secretarial and clerical services in the past on an ongoing basis and that there is interest in continuing this practice if it is lawful. It is our opinion that the practice is lawful.

No officer or employee of the United States shall accept voluntary service for the United States or employ personal service in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property.

On its face, this statute appears to prohibit the acceptance of the kind of voluntary services you have described. However, a 1913 opinion of the Attorney General construing this provision concluded:

[I]t seems plain that the words "voluntary service" were not intended to be synonymous with "gratuitous service" and were not intended to cover services rendered in an official capacity under regular appointment to an office otherwise permitted by law to be nonsalaried. In their ordinary and normal meaning these words refer to service intruded by a private person as a "volunteer" and not rendered pursuant to any prior contract or obligation. 30 Op. A.G. 51, 52. [Emphasis added.]

See also, *J. Weinstein, A Part-Time Clerkship Program in Federal Courts for Law Students*, 68 F.R.D. 265, 269-73 (1975). Thus, 31 U.S.C. § 665(b) does not prohibit a person from serving without compensation in a position that is "otherwise permitted by law to be nonsalaried."

When Congress has established a minimum salary for a position, either directly or by including it under the General Schedule or some comparable

salary schedule, i established salary *MacMath v. Uni* 161 Ct. Cl. 634, *Manual*. Chapter nature is general rates of pay for ci Act for positions i Labor Standards / 1974, see 29 U.S less than the mini 29 U.S.C. § 206.

However, we d \$16,530,000 app Office Appropriat appropriated

... for serv rates for indi services wit employment service. ...

We interpret the Labor Standards Classification Ac appropriation to minimum salary f appropriation may

To insure tech House administra be accepted to the Office. Also, bec General's opinion and the employee 7 Comp. Gen. appointment or expressly provide

*Even if the Fair La appropriation for the require a person to be expectation of compen v. *Portland Terminal*

January 27, 1977

**THE DEPUTY
ATTORNEY GENERAL**

**Statement of
§ 665(b)**

... regarding the propriety of the White House. We understand that the White House has utilized the arrangement on an ongoing basis and that it is lawful. It is our opinion

... shall accept voluntary service in excess of the agency involving the propriety.

... acceptance of the kind of service, a 1913 opinion of the Attorney General:

... "were not intended and were not intended to be paid under regular law to be nonsalaried. The words refer to service rendered and not rendered under Op. A.G. 51, 52.

... program in Federal Courts, 31 U.S.C. § 665(b) compensation in a position that

... salary for a position, either schedule or some comparable

salary schedule. it is unlawful for the employing agency to pay less than the established salary. See, e.g., *Glavey v. United States*, 182 U.S. 595 (1901); *MacMath v. United States*, 248 U.S. 151 (1918); *Saltzman v. United States*, 161 Ct. Cl. 634, 639 (1963); 26 Comp. Gen. 956 (1947); *Federal Personnel Manual*, Chapter 311, Subchapter 1-4.d. Work of a secretarial or clerical nature is generally covered by the Classification Act, which establishes the rates of pay for civil service positions, and there is no express exception in that Act for positions in the White House. See 5 U.S.C. § 5102. Also, under the Fair Labor Standards Act, which was made applicable to the Federal Government in 1974, see 29 U.S.C. §§ 203(d) and (e)(2) (1975 Supp.), it is unlawful to pay less than the minimum wage to an employee of the United States Government. 29 U.S.C. § 206.

However, we do not believe that these restrictions are applicable here. Of the \$16,530,000 appropriated to the White House Office under the Executive Office Appropriations Act of 1977, 90 Stat. 966, not to exceed \$3,850,000 is appropriated

... for services as authorized by 5 U.S.C. 3109, at such per diem rates for individuals as the President may specify and other personal services without regard to the provisions of law regulating the employment and compensation of persons in the Government service. . . . [Emphasis added.]

We interpret the underscored language to be an express exception to the Fair Labor Standards Act and to provide that the salary requirements of the Classification Act are inapplicable to positions covered by this portion of the appropriation to the White House Office.* Since Congress has mandated no minimum salary for these positions, it is our view that positions covered by this appropriation may carry a nominal compensation or no compensation at all.

To insure technical compliance with the law, we suggest that the White House administratively allocate the positions for which voluntary services will be accepted to the \$3,850,000 portion of the appropriation for the White House Office. Also, because of the emphasis in the above passage from the Attorney General's opinion quoted above on a prior agreement between the United States and the employee that the employee will serve without compensation, see also 7 Comp. Gen. 810, 811 (1928), we suggest that papers relating to the appointment or employment of persons whose services will be voluntary expressly provide that they will serve without compensation.

LEON ULMAN
Deputy Assistant Attorney General
Office of Legal Counsel

*Even if the Fair Labor Standards Act were thought to be applicable despite the language in the appropriation for the White House Office quoted in the text, that Act has been construed not to require a person to be paid where it is clear he has donated his services as a volunteer without any expectation of compensation. See *Rogers v. Schenkel*, 162 F. (2d) 596 (2d Cir. 1947); cf., *Walling v. Portland Terminal Co.*, 330 U.S. 148, 152 (1947).

Elana:

Bob is out for the rest of the week.

Walter and I are meeting later today to discuss the agenda for Friday's meeting, but after that meeting I have several others that will run into the evening. I'd like to arrange to talk by phone with you sometime tomorrow. If you get this message before 7 pm Wednesday, please call me at 514-3714. Otherwise, can you leave a message at my Duke office, 919 613 7096, indicating what would be a good time to try to reach you Thursday?

Thanks, Chris.

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GAO

United States General Accounting Office

Report to the Chairman, Subcommittee
on the Civil Service, Committee on Post
Office and Civil Service, House of
Representatives

June 1991

GOVERNMENT SHUTDOWN

Permanent Funding Lapse Legislation Needed



GAO/GGD-91-76

GAO/GGD-91-76

General Government Division

B-241730

June 6, 1991

The Honorable Gerry Sikorski
Chairman, Subcommittee on the
Civil Service, Committee on
Post Office and Civil Service
House of Representatives

Dear Mr. Chairman:

In the absence of a continuing resolution to provide funds after October 5, 1990, federal agencies were directed by the Office of Management and Budget (OMB) to implement plans to close down operations over the Columbus Day weekend (October 6-8, 1990). This action was the result of the President's veto of a continuing resolution that would have provided funding through October 12, 1990, and was a reflection of the President's dissatisfaction with progress on the fiscal year 1991 budget.

This report responds to your November 1990 request that we follow up on the results of a questionnaire we sent to government agencies in October 1990 on effects of a partial shutdown of the government over the Columbus Day weekend and the potential effects of any future shutdowns. We summarized these results in a fact sheet to the Subcommittee.¹ The Subcommittee recognized that much of the information was based on rough estimates because we could give agencies only 2 days to respond. It asked that we give the executive branch agencies additional time to provide actual data, where available, or more precise estimates of costs and effects.

On April 3, 1991, we briefed the Subcommittee on the results of our follow-up work. Beyond providing an update of the questionnaire results, we advised the Subcommittee of our prior recommendation to Congress concerning funding lapses and noted that the updated findings of our questionnaire lent further support to the need for Congress to act on the recommendation. As requested, this report summarizes information provided at that briefing and reiterates our prior recommendation to Congress.

¹Government Shutdown: Data on Effects of 1990 Columbus Day Weekend Funding Lapse (GAO/ GGD-91-17FS, Oct. 19, 1990).

Results in Brief

The shutdown of some government operations over the Columbus Day weekend was financially counterproductive and disrupted several agencies' operations. For example, of 22 executive branch agencies reporting to us, 6 agencies estimated that they authorized about \$843,000 in compensation to employees who were regularly scheduled to work but were sent home or told not to report to work. Overall, 7 of the 22 agencies reported some shutdown costs, which totaled about \$3.4 million. Disruptions in operations included the closing of the national parks and Smithsonian museums to visitors over the holiday weekend.

Agencies reported that the costs and disruptions would have been much more severe if the government were to shut down for a comparable 3-day period during a normal workweek. For example, 6 of the 22 agencies reported that, altogether, an average of 2,900 employees each day were sent home or told not to report to work during the Columbus Day weekend. However, if a shutdown became necessary during a normal workweek, 20 of the 22 agencies estimated that, altogether, an average of 506,500 employees would be furloughed daily.

After this hypothetical 3-day workweek shutdown, Congress would probably enact legislation to pay furloughed employees for hours not worked, as it has consistently done since 1984. The total cost of such a 3-day workweek shutdown would range from about \$244.6 million to \$607.3 million, depending upon the extent to which estimates of \$362.7 million in revenue losses from 10 agencies are accurate and could be recovered.² If these employees were not paid, they would lose about \$189.2 million in salaries over the 3 days through no fault of their own.

The Columbus Day weekend shutdown was the latest response to delays in enactment of annual agency funding legislation. In the last 10 fiscal years, there have been nine appropriations funding gaps. At least four of the gaps resulted in some disruptions in government services and included some agencies sending employees home or telling them not to report to work. As a means to avoid such disruptions, we continue to support our prior recommendation that Congress enact permanent legislation that authorizes agencies to incur obligations, but not expend funds, when agency appropriations expire. Such legislation would have avoided the disruptions of the last 10 years and preserved the funding

²Included in these estimates were \$330 million in uncollected IRS tax revenues reported by Treasury. Although we did not validate the estimates provided to us, as discussed in app. IX, we have reason to believe that the IRS lost revenue estimate is overstated and that a considerable portion could be recovered by the agency following a 3-day shutdown.

authority and discretion of Congress. Accordingly, we are repeating the recommendation in this report.

Background

The Antideficiency Act (31 U.S.C. 1341) generally prohibits government officials from incurring obligations or authorizing expenditures and contracts in excess or advance of appropriations unless authorized by law. The act (31 U.S.C. 1342) also prohibits the federal government from accepting voluntary services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property.

The Attorney General has inferred from the act that agencies do have the authority to fulfill the minimal obligations connected with terminating operations. OMB has determined that certain types of activities are authorized to continue during a funding lapse, among them (1) providing for national security; (2) providing benefit payments and performing contract obligations under no-year, multiyear, or other funds remaining available for these purposes; and (3) conducting activities that protect life and property.³ Although agencies may incur obligations when continuing such excepted activities, they do not have the authority to pay employee salaries or other expenses until an appropriation has been enacted.

Congress recently amended section 1342 dealing with voluntary services by stating that "the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."⁴ The legislative history of the amendment states that the change was meant to

"guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress."⁵

³OMB Memorandum dated Nov. 17, 1981.

⁴Omnibus Budget Reconciliation Act of 1990, P.L. 101-508, section 13213, 104 Stat. 1388 (1990).

⁵H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 1170 (1990).

To avoid improper obligations of funds during a lapse in appropriations, agencies' plans call for employee furloughs. Under federal personnel law, a "furlough" is defined as an official personnel action that places an employee in a temporary nonpay status without duties because of a lack of work or funds or other nondisciplinary reasons. Employees not engaged in excepted activities are generally considered "nonessential" employees and would be furloughed during a shutdown of the government. Table 1 shows, in descending order, the percentage of employees that would be furloughed by major executive branch departments and independent agencies during a lapse in appropriations.

Table 1: Executive Branch Plans to Furlough Federal Employees During a Lapse in Appropriations

Department/ agency	Last date of approved shutdown plan	Employees subject to furlough	Percent of total employees
HUD	10/05/90	13,600	100.0
SBA	10/19/90	4,659	99.9
Education	10/17/88	4,613	99.2
EPA	09/28/87	16,860	96.1
NASA	09/24/82	23,445	95.0
Smithsonian	09/26/84	5,780	89.0
OPM	10/18/90	5,893	88.8
Interior	bureau level ^a	60,029	84.0
Commerce	11/30/89	29,539	82.6
Treasury	bureau level ^a	122,886	79.8
State	10/18/90	6,932	78.0
Labor	09/30/90	13,588	74.2
HHS	10/06/90	86,770	68.2
USIA	10/04/90	1,408	67.3
Agriculture	05/04/84	73,912	67.0
GSA	06/02/86	11,722	57.7
Transportation	09/28/90	18,201	27.5
Justice	09/90 ^b	14,485	18.6
Veterans Affairs	10/17/86	31,303	12.8
Voice of America	10/04/90	90	4.4
Energy	09/06/85	549	3.2
Defense	none submitted ^c	unknown ^c	unknown ^c

^aInterior and Treasury submitted plans approved by bureau heads.

^bJustice submitted a summary of contingency plans of its component organizations dated September 1990.

^cDOD's response to us did not include (1) any documentation of its shutdown plans or (2) estimates of employees subject to furlough during a lapse in appropriations.

Objective, Scope, and Methodology

To respond to the Subcommittee's request that we give agencies additional time to respond to our October questionnaire, we asked executive branch departments or agencies in early December 1990 to review their initial responses and make whatever changes or updates were appropriate no later than January 25, 1991. As also requested by the Subcommittee, we asked for information from 2 executive agencies (Agriculture and National Aeronautics and Space Administration) that did not respond to our first request, and we asked 3 additional agencies with 5,000 or more employees (from OPM data as of June 1990) to complete the original questionnaire. These were the Small Business Administration (SBA), Smithsonian, and U.S. Information Agency (USIA).

Agencies responded to our December request between December 1990 and February 1991. The first 13 appendixes of this report provide an update to the questionnaire results in the same format as our October 1990 fact sheet. The initial questionnaire was delivered to the 14 executive departments and 4 judgmentally selected independent agencies with more than 5,000 full-time employees. Each of the appendixes gives a detailed summary of major changes made to the October results, thus presenting a clear "crosswalk" between the results of our initial and follow-up work. In addition, Appendix XIV summarizes the major differences in cost estimates between the initial and updated questionnaire results.

By February 22, 1991, we received updated or new responses from 22 executive branch departments and agencies: 16 were updates of initial questionnaire responses; 2 were from Agriculture and NASA, which did not respond to the initial questionnaire; and 4 were first-time questionnaire responses from SBA, Smithsonian, USIA, and the Voice of America (VOA). VOA sent us a separate response to our request of USIA. To facilitate description of the 22 responses in the appendixes, we considered the responses of the initial 16 executive agencies as "updated" responses and considered all other responses as "new" responses. Appendix XV summarizes key questionnaire results as reflected in the agencies' latest responses and detailed in the other appendixes. The results reported for the funding lapse that occurred over Columbus Day weekend are contrasted to comparable results for a hypothetical 3-day period during a normal workweek.

In assessing the financial impact of the Columbus Day weekend shutdown and a hypothetical 3-day shutdown during a normal workweek, we considered as costs agency estimates of lost revenues, administrative costs, and salary costs of nonessential employees for any hours worked

during the shutdown. These salaries were considered costs because, under OMB guidance, such nonessential employees are authorized to perform only activities related to the orderly suspension or termination of operations. After the Columbus Day weekend shutdown, legislation was enacted that authorized agencies to compensate employees for hours they were furloughed, thus, we considered agency estimates of such salaries a cost in updating estimates of the holiday shutdown. We considered the salaries of nonessential employees estimated to be furloughed during a hypothetical 3-day shutdown in a normal workweek as savings. If these employees were eventually reimbursed, as was done for employees over the Columbus Day weekend, the amount of reimbursement would have to be considered a cost.

While we gave agencies additional time to provide actual data or more precise estimates, much of the data are based on estimates by agency officials and should still be considered as a rough estimate of the magnitude of the costs and effects of agencies shutting down because of delays in enactment of funding legislation. In some cases, agencies still did not complete all parts of the questionnaire or were not able to provide information for the entire department or agency. We did not verify the accuracy of the information reported to us by the agencies, and we did not validate the methodology they used to make estimates. However, we did not accept all of the estimates unconditionally. For example, we questioned the validity of Treasury's lost revenue estimate (see app. IX) and dropped some other revenue loss estimates when other information in the submission to us indicated they were erroneously made (see app. III and app. IX).

We relied upon information from the Congressional Research Service to summarize recent periods of appropriations funding gaps. Our prior work concerning funding lapses, coupled with our recent questionnaire results, formed the basis for our conclusions and recommendations. Accordingly, we did not seek agency comments on this report.

Our work was done in accordance with generally accepted government auditing standards.

Need for Permanent Funding Lapse Legislation

The Columbus Day weekend shutdown had significant adverse effects. Overall, 7 of 22 agencies surveyed reported shutting down some operations at a total cost of about \$3.4 million. This amount consisted of (1) lost revenue (\$1.4 million or 42 percent); (2) administrative costs for things such as developing shutdown plans and processing personnel

actions (\$1 million or 30 percent); (3) compensation for the time nonessential employees did not work but were later authorized to be paid (\$843,000 or 25 percent); and (4) salaries of nonessential employees for time spent at work devoted to the orderly suspension or termination of operations (\$124,500 or 4 percent). The greatest disruption in government operations appeared to occur in the Department of the Interior and the Smithsonian. Interior reported its national parks and visitor centers were closed, and the Smithsonian reported that its museums were closed. Other types of adverse impact that agencies reported were lowered employee morale and productivity in planning for furloughs and/or an agency shutdown, inequities in the treatment or payment of agency employees scheduled to work during the holiday period, and an adverse effect on agency recruitment efforts.

If the government had to shut down for a comparable 3-day period during a normal workweek, the agencies reported that the costs and disruptions would have been much more severe. For example, 6 of the 22 agencies reported a total of about \$1 million in administrative costs for the Columbus Day weekend shutdown; but, 15 agencies estimated such costs at about \$12.8 million for a 3-day shutdown during a normal workweek. Appendix XV contrasts key results reported for the funding lapse that occurred over the Columbus Day weekend to comparable results for a hypothetical 3-day shutdown during a normal workweek.

The problems of funding gaps are not new. In March 1981, we completed a study of the shutdown issue that, among other things, analyzed a funding hiatus that occurred during fiscal years 1980 and 1981 and provided a historical analysis of the problem.⁶ Later, in December 1981 we reported on a partial shutdown of government offices ordered by the President as a result of an impasse over a fiscal year 1982 continuing resolution.⁷ Since fiscal year 1982, there have been nine periods when appropriations funding gaps of 1 to 3 days have occurred, as shown in table 2.

⁶Funding Gaps Jeopardize Federal Government Operations (PAD-81-31, Mar. 3, 1981).

⁷Cost to the Government of the Recent Partial Shutdown of Government Offices (PAD-82-24, Dec. 10, 1981).

Table 2: Appropriations Funding Gaps From October 1981 Through October 1990

Fiscal year	Date gap started^a	Full day(s) of gaps	Date gap ended^b
1982	Friday, 11/20/81	Saturday, Sunday	Monday, 11/23/81
1983	Thursday, 9/30/82 Friday, 12/17/82	Friday Saturday, Sunday, Monday	Saturday, 10/02/82 Tuesday, 12/21/82
1984	Thursday, 11/10/83	Friday, Saturday, Sunday	Monday, 11/14/83
1985	Sunday, 9/30/84 Wednesday, 10/03/84	Monday, Tuesday Thursday	Wednesday, 10/03/84 Friday, 10/05/84
1987	Thursday, 10/16/86	Friday	Saturday, 10/18/86
1988	Friday, 12/18/87	Saturday	Sunday, 12/20/87
1991	Friday, 10/05/90	Saturday, Sunday, Monday	Tuesday, 10/09/90

^aGap began at midnight of date indicated.

^bGap terminated during the date indicated because of enactment of a full-year continuing resolution or another short-term continuing resolution.

Source: Congressional Research Service.

Prior to 1980, agencies had continued to operate and incur obligations for necessary operations pending approval of a continuing resolution or an appropriations act. While recognizing that this was a violation of the Antideficiency Act, agencies also believed that Congress did not intend that they close down while waiting for new appropriations authority. An opinion of the Comptroller General (March 3, 1980) supported this interpretation, noting that Congress had retroactively approved obligations incurred during gaps in funding. However, opinions of the Attorney General of April 25, 1980, and January 16, 1981, generally concluded that the Antideficiency Act precluded agencies from continuing to incur obligations in the absence of appropriations, and an agency whose appropriations had expired had no general authority to employ the services of their employees.

Our March 1981 report reviewed how the Attorney General's strict interpretation of the Antideficiency Act, coupled with a threat to enforce criminal penalties in cases of future willful violations by federal officials, caused significant confusion and disruption of government operations during a lapse in appropriations at the start of fiscal year 1981. After developing criteria to evaluate approaches to the problem of funding gaps, we recommended that Congress enact permanent legislation to allow all agencies to incur obligations, but not expend funds, when appropriations expire. Exceptions would be applicable only where program authorization has expired or Congress has expressly stated that a program should be suspended during a funding hiatus pending

further legislative action. Congress, however, has not yet acted to provide agencies authority to obligate funds during a lapse in appropriations, as we recommended.⁸

Conclusions

The Columbus Day weekend shutdown had significant adverse effects and did not convey to the public an image of a well-managed government. On the basis of responses from 22 executive branch agencies, the shutdown cost the taxpayers an estimated \$3.4 million, disrupted government operations, and adversely affected employee morale. Agencies also reported that the costs and disruptions would have been much more severe if the government were to shut down for a comparable 3-day period during a normal workweek.

There have been nine appropriations funding gaps in the last 10 years and at least four of these gaps resulted in some disruption of government services, which included some agencies sending employees home or telling them not to report to work. At the time of these personnel actions, the employees were reported as being furloughed by their agencies; however, beginning in 1984 Congress subsequently enacted legislation to retroactively pay furloughed federal employees following funding gaps. Thus, some of these shutdowns were clearly counterproductive because the employees were paid for time not worked.

In our opinion, shutting down the government during temporary funding gaps is an inappropriate way to encourage compromise on the budget. Beyond being counterproductive from a financial standpoint, a shutdown disrupts government services. In addition, forcing agency managers to choose who will and will not be furloughed during these temporary funding lapses severely tests agency management's ability to treat its employees fairly. While agencies estimated that over 500,000 federal employees would be subject to a furlough during the first day of a normal workweek, the vast majority of federal employees would not be subject to furloughs under a wide variety of exemptions.

⁸As we were preparing this report, a bill was introduced in the House (H.R. 804, 102nd Cong.) to provide new authority for an automatic continuing resolution that, although broader in scope than our recommendation, is aimed at preventing government shutdowns. The bill proposes to provide agencies continuing authority to incur obligations and make expenditures during a funding lapse, whereas our recommendation would limit agencies to incurring obligations, with no authority to expend until new appropriation authority is granted.

To address the problem of temporary funding lapses, we continue to support our March 1981 recommendation that Congress enact permanent legislation that would authorize agencies to incur obligations, but not expend funds, when agency appropriations expire. Such legislation would have avoided the disruptions of the last 10 years and preserved the funding authority and discretion of Congress. Such legislation would also provide an across-the-board automatic approach and require no annual action by Congress. It would not allow agencies to pay employee, contractor, or other expenses until an appropriation is enacted. Thus, the legislation would still provide considerable incentive to pass some form of appropriations measure within a short period of time. Further, it would eliminate the uncertainty of whether employees should report to work if appropriations have not been enacted.

While we believe the above recommendation would resolve the immediate crisis of agency shutdowns when appropriations expire, Congress has not yet acted upon it. Given that Congress began in the 1980s to enact special legislation annually to retroactively pay federal employees furloughed during funding gaps, we believe Congress should, at a minimum, enact permanent legislation to allow agencies to incur an obligation to compensate employees during temporary funding lapses, but not pay them until an appropriation bill is passed. Because this action would be limited to employee compensation it would not provide a comprehensive solution to the problem. Nonetheless, such legislation should help avoid many of the adverse effects of future temporary funding lapses.

Recommendations to Congress

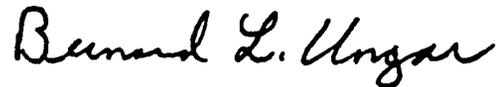
We recommend that Congress enact permanent legislation that authorizes agencies to incur obligations, but not expend funds, when agency appropriations expire. The only exception Congress should grant is when program authorization has expired or Congress has expressly stated that a program should be suspended during a funding hiatus pending further legislative action. (Appendix XVI contains specific legislative language for implementing this recommendation.)

If Congress views the above recommendation as too broad or as unacceptable for any other reason, we recommend that Congress, at a minimum, enact permanent legislation to allow agencies to incur obligations to compensate employees during temporary funding lapses but not pay them until an appropriation bill is passed.

As arranged with the Subcommittee, we plan no further distribution of this report until 30 days from its issue date unless you release its contents earlier. At that time, we will send it to the Directors of OMB and OPM and make copies available to other interested parties upon request.

John Tavares, Project Manager, Federal Human Resource Management Issues, was the principal contributor to this report. Please contact me on (202) 275-5074 if you have any questions concerning the report.

Sincerely yours,



Bernard L. Ungar
Director, Federal Human
Resource Management Issues

FEDERAL APPROPS? NO

Andrea Rutledge

~~OFFICE~~

Office of Admin has some no-yr \$
Arms buying resolution?
Electronic mail - purpose

ONDCP - drug trafficking grant \$

No others in EOP w/ no-yr \$?

Ch: FY 96 Budget appendix -

WTO - all year by year.



~~Ret. #~~
~~SEP 20 1995~~

U. S. Department of Justice

Office of Legal Counsel

OVERHEAD ISSUE

↓
electricity - other overhead costs.
variable costs as roc w/ emp?
not raising issue in memo.

Washington, D.C. 20530

DATE: September 13, 1995

FACSIMILE TRANSMISSION SHEET

FROM: Chris Schroeder OFFICE (202) 514-3714
PHONE: _____

TO: Elena Kagan OFFICE
PHONE: _____

NUMBER OF PAGES: _____ PLUS COVER SHEET

FAX NUMBER: (202) 456-1647

REMARKS:

Let's discuss after you've had a chance to review

IF YOU HAVE ANY QUESTIONS REGARDING THIS FAX, PLEASE CONTACT KATHLEEN MURPHY OR KEVIN SMITH ON 514-2057

OFFICE OF LEGAL COUNSEL FAX NUMBER: (202) 514-0563
FTS NUMBER: (202) 368-0563

obliq



DRAFT

U. S. Department of Justice

Office of Legal Counsel

Office of the Assistant Attorney General

Washington, D. C. 20530

September 12, 1995

MEMORANDUM FOR THE HONORABLE ABNER J. MIKVA, COUNSEL TO THE PRESIDENT

From: Walter Dellinger Assistant Attorney General

Re: Authority to Employ the Services of White House Office Employees during an Appropriations Lapse

You have asked us to survey the authority available to the White House office to employ the services of White House employees during a lapse in appropriations. As you know, no salaries can be paid to any government employee, including those in the White House office, without an appropriation; so no White House employee could receive salary or other compensation payments during such a lapse. The Antideficiency Act further prevents federal officials from incurring financial obligations, such as the obligation to pay salaries, in advance of appropriations except as authorized by law. 31 U.S.C. § 1341. The Antideficiency Act and the organic statutes providing for the White House office and staff create three different authorizations under which certain White House employees may continue to work during a lapse in appropriations.

1. Excepted Functions. The Antideficiency Act permits the White House to employ personnel who perform functions that are excepted from the Antideficiency Act's general prohibition. The Act itself expressly excepts from its coverage functions relating to emergencies involving an imminent threat to the safety of human life or protection of property. It also acknowledges that there may be authorization provided by other law. We identified three categories of such authorizations in our August 16, 1995, memorandum for Office of Management and Budget Director Alice Rivlin: those functions as to which express statutory authority to incur obligations in advance of appropriations has been granted; those functions for which such authority arises by necessary implication; and certain functions necessary to the discharge of the President's constitutional duties and powers. These three categories are discussed more fully in the August memorandum as well as in a 1981 opinion by Attorney General Benjamin Civiletti.

More specific? Power does we to cost that we family policy? implement shut down any others?

To reiterate, employees who perform excepted functions may not be paid until appropriations are enacted. Because, however, the Antideficiency Act permits incurring obligations in advance of appropriations and "employ[ing] personal services" for excepted

DRAFT

functions, the appropriate White House administrative official may obligate the federal government to pay the salaries of employees who perform such functions in advance of the enactment of appropriations.

2. Nonsalaried Positions. The President has statutory authority to "appoint and fix the pay of . . . such number of . . . employees as he may determine to be appropriate . . ." 3 U.S.C. § 105(a)(2)(D). This office has consistently taken the position that the quoted portion of § 105 authorizes the President to create nonsalaried positions in the White House office. See, e.g., The White House Office -- Acceptance of Voluntary Service, 2 Op. O.L.C. 322 (1978). We have also concluded that the Antideficiency Act's prohibition on acceptance of voluntary services "does not prohibit a person from serving without compensation in a position that is otherwise permitted by law to be nonsalaried." *Id.* at 322.

The President may use this authority to create and fill nonsalaried positions in the White House office during an appropriations lapse. By definition, the President does not incur an obligation on behalf of the federal government where he employs the services of persons in nonsalaried positions -- there is no obligation to pay those who hold such positions. Then, § 1341 is not violated.

The President may appoint White House office employees who have been furloughed from their salaried positions to work in newly created, nonsalaried positions. This office has previously opined that White House employees may simultaneously occupy two different positions within the White House office, one salaried and one nonsalaried, as long as the two positions are compatible. The positions will typically be compatible as long as one is not subordinate to the other. See Memorandum for Arnold Intrater, General Counsel, Office of White House Administration, from John McGinnis, Deputy Assistant Attorney General, Office of Legal Counsel, re: Dual Office of Executive Secretary of National Security Council and Special Assistant [to the President] (March 1, 1988).

This is what the statute w/ allows right or? Great

Unlike those employees who perform excepted functions, employees who occupy nonsalaried positions cannot receive an obligation for payment for the services they perform in that capacity. If, however, Congress enacts a "lookback" appropriation -- one that pays the salary of furloughed employees for the period when they were on furlough status -- White House office employees who were furloughed from their salaried position during the period of appropriations lapse may be paid for that position even though they held a nonsalaried position during the period of lapse.

Ask to see exactly who is a 105 employee.

3. Waiver of Salary. As to positions for which compensation is fixed by law -- that is, where a statute establishes either a fixed salary or a minimum salary for a position -- the holder may not waive the salary in whole or in part. On the other hand, it is the position of the Comptroller General that compensation may be waived where the compensation is not fixed by law. (Those positions on the White House office staff that are appointed pursuant to § 105 do not bear compensation that is fixed by law, as § 105 only sets forth maximum salaries.

all? same? which?

Most under 105 Not -
- 2 -

*Council of Econ Advisors
Dir, OMB.*

Bruce Overton - Deputy Nelson Christensen

DRAFT

Under the Comptroller General's approach, then, White House employees appointed under § 105 may waive their compensation. If they do so, their services may be accepted because doing so would not create any obligation to compensate them, let alone an obligation in advance of appropriations. By virtue of having waived any claim to compensation, however, it is highly unlikely that such White House employees would receive compensation even if a lookback appropriation is eventually enacted.

We have urged that, if the President decides to appoint employees to nonsalaried positions, "the papers relating to the appointment or employment of [such] persons . . . expressly provide that they will serve ~~will serve~~ without compensation." 2 Op. O.L.C. at 323. Similarly, any employee who voluntarily waives his or her salary or compensation should do so in writing.

delete

To ATM

1. Some uncertainty whether can
fulfill/ create a new pos.
such that can be paid in end.
Perhaps only way to do is to resign/
go to new pos or waive pay
(in which case no pay)
2. Q of how Ri-lin should respond to 2. of what
WH will do (Resign is next ~~to~~ Tues)
Will we have decision - as to accepted?
as to creating new positions?
If so, what is it?
3. Gen'l why we getting agencies in line - consistent

When are WH decisions being made?

By whom?

Should I talk to Tarkenton?

THE WHITE HOUSE

WASHINGTON

EXECUTIVE OFFICE OF THE PRESIDENT

12-Sep-1995 07:12pm

TO: Charles S. Konigsberg

FROM: Elena Kagan
Office of Communications

SUBJECT: Testimony

This looks great. Here are just a couple of comments.

1. On several occasions, you suggest that the "emergency exception" is the only exception to the general rule against obligating the govt in the absence of an appropriation. But as I understand it, there are a couple of others. Most important, activities essential to the President's constitutional role (principally foreign affairs and national security) can go on, even if there is no emergency. In addition, employees responsible for implementing the shutdown and maintaining activities that have multi-year or permanent appropriations may work, again even if there is no emergency situation under the standard used in the OLC memo. This comes up in the last full para on p.3, the first full para on p.4, and the answer to question 4 (although there your phrasing is broader). With respect to the last, sa substantial number of White House employees could be exempt from furlough not because of the emergency exception but because of the executive function exception.
2. Bob Damus, Chris Schrader, and I still have to talk about whether "current law permits furloughed white house employees to volunteer." I take it there is currently some disagreement on the subject.
3. Much less important, the estimates of cost on p.5 implicitly assume that furloughed employees will eventually be paid. Perhaps we should assume that; I just note the assumption.
4. And finally, I take it our answer to question 1 is the same even if Members don't get paid? I have to believe that Members will waive their pay, so that we eventually won't have this line of argument open to us.

c 2)



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FAX COVER SHEET

Number of pages ~~8~~ 9
(excluding cover sheet)

Date 9/12/95

Urgent

Time 5:30 am / pm

Confidential

From: Chuck Konigsberg
Office of Management and Budget
Assistant Director for Legislative Affairs
Phone: 395-4790
Fax: 395-3729

To: Chris Schroeder DOJ/OLC 514-0539
Elena Kagan w/terminal 61647

Comments:

The draft you received
earlier may have been missing
a page.

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United States Senate

COMMITTEE ON THE BUDGET
 WASHINGTON, DC 20510-5100

G. WILLIAM HOAGLAND, STAFF DIRECTOR
 WILLIAM C. DALZIEL, DEMOCRATIC CHIEF OF STAFF AND CHIEF COUNSEL

September 12, 1995

Dr. Alice M. Rivlin
 Director
 Office of Management and Budget
 252 Old Executive Office Building
 Washington, D.C. 20503

Dear Dr. Rivlin:

We would like to invite you to testify before a joint meeting of the Senate and House Budget Committees on Tuesday, September 19, 1995, at 9:30 a.m. You will appear on a panel with Mr. Walter Dellinger, the Assistant Attorney General. The hearing will be held in room 106 of the Dirksen Senate Office Building.

We would like you to discuss how the Executive Branch is planning for an extended appropriated funding hiatus in light of your August 22 memorandum on the subject. You should be prepared to discuss the following issues:

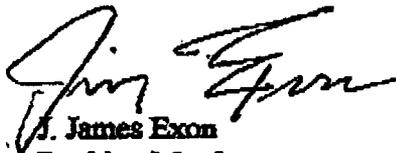
- o The legal authority under which the government intends to obligate funds in advance of appropriations;
- o The disbursement of funds from accounts with permanent spending authority, particularly when administrative expenses associated with these accounts are annually appropriated;
- o The potential for government-wide furloughs or other cost-saving actions involving federal employees; and
- o Costs or savings associated with a government shutdown.

In addition, you should expect questions of a similar nature with regard to the statutory limit on the public debt.

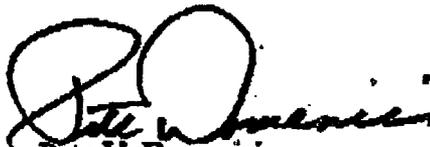
Committee rules require that a copy of your written testimony be submitted one day prior to the hearing. However, because of the interest in the subject matter, we request that you submit 250 copies of your testimony in advance of the hearing. To allow adequate time for discussion, it would be helpful to limit your prepared oral remarks to 15 minutes.

Thank you for your time and effort in this matter. Should you have any questions, please contact Bill Hoagland of Senator Domenici's staff (224-0769), Bill Dauster of Senator Exon's staff (224-3961), Rick May of Congressman Kasich's staff (226-7270), or Eileen Baumgartner of Congressman Sabo's staff (226-7200).

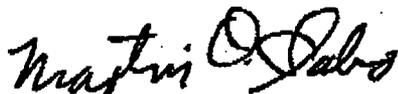
Sincerely,



J. James Exon
Ranking Member
Senate Budget Committee



Pete V. Domenici
Chairman
Senate Budget Committee



Martin O. Sabo
Ranking Member
House Budget Committee



John R. Kasich
Chairman
House Budget Committee

PRELIMINARY STAFF DRAFT -- NOT FOR RELEASE --
Tue Sep 12, 1995 5:47pm

TESTIMONY OF
ALICE M. RIVLIN
DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET
BEFORE A JOINT HEARING OF THE
SENATE BUDGET COMMITTEE
and the
HOUSE BUDGET COMMITTEE

September 19, 1995

Chairman Domenici and Chairman Kasich, Members of the two committees, I welcome the opportunity today to answer your questions on the implications of a hiatus in appropriations authority and reaching the statutory limit on the public debt.

Appropriations hiatus vs. Debt Ceiling

First, there's been a lot of talk about a government shutdown in connection with the beginning of the new fiscal year, as well as the nearing of the debt ceiling. It is very important that we clearly distinguish a lapse in appropriations authority, from reaching the debt ceiling. They are two very different scenarios.

Scenario #1: Lapse in appropriations authority. If all 13 appropriations bills are not enacted by October 1, and a continuing resolution has also not been enacted, affected departments and agencies will experience a lapse in legal authority to enter into certain obligations. This includes the authority to provide important services and to employ Federal workers. As I will explain in a moment, any lapse in such authority can be serious and costly. The Administration strongly urges the Congress to send the President a continuing resolution to prevent any lapse in appropriations authority.

Scenario #2: Lapse in borrowing authority. By contrast, reaching the statutory limit on the public debt -- often called the debt ceiling -- is a very different scenario. If the debt ceiling is reached, the Treasury will lack the authority to borrow additional funds. The Treasury Department currently estimates the debt ceiling will be reached some time in October (??). Because monthly tax receipts, do not cover outlays, this inability to borrow would cause a cash shortfall, leaving the Treasury without adequate cash to pay the government's bills.

Such a cash shortfall would place the United States in a position of defaulting on its interest payments -- a scenario which no Congress has ever permitted to happen because of the dire economic consequences. The Administration trusts and expects that the Congress will protect the financial integrity of the United States and the stability of the world economy, by raising the debt ceiling as the Secretary of the Treasury has requested.

The Secretary of the Treasury is happy to answer any particular questions you or other Members of Congress have about the expected timing on reaching the debt ceiling or questions you may have on cash management tools available to forestall a debt crisis. The one point I want to emphasize today is that the Administration, in the strongest possible terms, respectfully urges the Congress to de-couple the issues of the debt ceiling and balancing the budget. Using the debt ceiling to force a particular outcome in ongoing budget deliberations -- as some Members of the House have suggested -- is irresponsible. It simply makes no sense to bring the country to the edge of default and financial chaos, in the interest of achieving fiscal discipline.

Lapse in appropriations authority

The issue of immediate concern is the looming possibility of a lapse in appropriations authority. As I explained, if all 13 appropriations bills are not enacted by October 1, and a continuing resolution has also not been enacted, certain departments and agencies will experience a lapse in legal authority to enter into obligations.

Walter Dellinger will go into greater detail on the legal framework, but -- briefly -- appropriations laws provide legal authority to the departments and agencies to enter into obligations to provide services, employ workers, and enter into contracts. As you know, some appropriations are annual, some multiyear, and others are permanent.

Where government programs, projects and activities are annually appropriated, the failure to pass appropriations by October 1 -- the start of the new fiscal year -- causes a lapse in legal authority to enter into obligations. As Walter will explain, it is a violation of Federal criminal law for any employee to obligate the government in the absence of appropriations authority, except in the case of "emergencies involving the safety of human life or the protection of property."

A lapse in appropriations authority on October 1 could have far-reaching and deleterious consequences. The particular

implications would, of course, depend on which appropriations bills are not enacted by October 1. But following are examples of the consequences of permitting appropriations authority for various agencies to lapse:

[BARRY ANDERSON -- PLEASE PROVIDE 8-10 STRIKING EXAMPLES, IN BULLET FORM, OF GOVERNMENT ACTIVITIES WHICH WOULD CEASE; ALSO, MIGHT WANT TO MENTION THE GAO REPORT]

Furloughing government employees

In addition to the government activities which would cease during a lapse in appropriations authority, agencies would lack authority to continue to employ Federal workers, except in cases where workers are engaged in activities involving the safety of human life or the protection of property. Walter will address the issues of how departments and agencies will be making determinations on which workers are "essential".

The point I wish to emphasize is that substantial furloughs will result if a lapse in appropriations authority occurs on October 1. For example,

- a lapse in appropriations for the department of _____ would result in a furlough of _____ employees.

[BARRY ANDERSON -- PLEASE PROVIDE SOME EXAMPLES OF HOW MANY FEDERAL EMPLOYEES WOULD BE FURLOUGHED IN PARTICULAR AGENCIES IN CASE OF A LAPSE IN APPROPRIATIONS AUTHORITY]

Costs of a government shutdown

In addition to the deleterious impact on the users of Federal services and on Federal employees, a government shutdown of any size or duration would have a price tag. In reviewing the 1990 government shutdown, the GAO concluded:

[BARRY ANDERSON -- PLEASE FILL IN]

With regard to a possible shutdown this Fall, OMB estimates that

[BARRY ANDERSON -- PLEASE PROVIDE COST INFO. TO FILL IN HERE]

A shutdown is unnecessary and should be avoided

The straightforward message here, for all of us, is that a lapse in appropriations authority is bad for everyone. It would cause a lapse in many important and vital services, would needlessly furlough Federal workers, and would needlessly cost the taxpayers money. A government shutdown of any size or duration would benefit no one and should be avoided.

Consequently, the Administration is requesting that the Congress send to the President by September 30 a "clean" continuing resolution (CR) which permits agencies to continue making obligations in the absence of FY 1996 appropriations. We request that a CR extend funding for at least ___ weeks.
[LEW/KIEFFER: NEED GUIDANCE]

Let's be clear on what we mean by a "clean" CR. A clean CR is a simple, straightforward extension of budget authority -- at a mutually agreed upon level -- which:

(1) does not attempt to lock new priorities into place or terminate existing programs; debates on priorities and terminations should take place within the context of individual appropriations bills -- not as part of a stopgap CR designed to prevent a government shutdown; and

(2) does not contain riders or other language extraneous to the purpose of the CR.

Preparations

Despite our strong hope that a shutdown can be avoided, we must be prepared for all contingencies. Therefore, on August 22, 1995 I directed the heads of all executive departments and agencies to send to OMB updated contingency plans to deal with a funding hiatus. At this time, I can tell you that.....

[KOSKINEN/DAMUS/ANDERSON: PLEASE COORDINATE ON A PARAGRAPH TO INSERT HERE BRIEFLY SETTING FORTH THE STATUS OF OUR CONTINGENCY PLANNING.]

Conclusion

The Administration is fully prepared to handle a government shutdown on October 1 if that is made necessary by a lapse in appropriations for some departments and agencies. However, a government shutdown, of any size or duration, will needlessly deprive our citizens of important services, hurt Federal employees, and cost money. I strongly urge the Congress to avoid

a shutdown by sending a straightforward, clean CR to the President by September 30.

*

*

Rivlin Qs and As:

1. What is the Administration position on paying back furloughed employees?

ANSWER: The Federal government has shut down ___ times due to a lapse in appropriations authority. In each case, employees furloughed during a shutdown always have been paid back for the wages lost during the involuntary furlough. It would be unconscionable for Members of Congress and others to be paid following a shutdown, but to deny pay to a GS-7 clerk who is living pay-check-to-pay-check trying to pay rent and feed her children.

[ANDERSON: PLEASE FILL IN THE BLANK AND VERIFY THIS ANSWER.]

2. Since the Social Security Administration's administrative expenses are annually appropriated, would benefit checks continue to be sent out if funding for administrative expenses lapsed?

ANSWER: [DAMUS TO PROVIDE]

3. What is the general status of department and agency shutdown plans?

ANSWER: [KOSKINEN/ANDERSON/DAMUS to provide]

4. How would the White House handle its own shutdown?

ANSWER: Similar to each committee chairman and Member of Congress, the WH must determine which employees are essential under the standards just explained to you by Walter Dellinger. We expect that approximately ___% of White House would be furloughed, although current law does permit furloughed white house employees to volunteer, if they wish.

5. Can you provide us with a complete list of programs which have authority to continue operating during a total government shutdown?

ANSWER: [ANDERSON TO PREPARE LIST]

6. What is the administration position on the Gekas bills? (The first bill provides that in the event the 13 appropriations bills, or any of them, are not enacted, activities that would be affected are continued at the current rate. The second bill provides that, in the event of an appropriations hiatus, all govt employees continue to be paid, and the government may make reasonable expenditures and obligations to avoid losses in revenue, i.e. IRS can continue.)

ANSWER: [DAMUS TO PROVIDE]

7. We all know that the Treasury Dept. always builds in a cushion in its estimates of when the debt ceiling is going to be reached. Isn't it the case that the debt ceiling will not be actually be reached until November? Also, what cash management devices and practices can Treasury use to further forestall reaching the debt ceiling.

ANSWER: [ANDERSON/MINARIK PLEASE REVIEW THIS ANSWER] The Treasury Department is currently estimating the debt ceiling could be reached in October (???). Any such estimates should be careful and on the conservative side, because the consequences of reaching the debt ceiling and defaulting on interest payments are so dire. With regard to cash management tools which can forestall reaching the debt ceiling, this is the Treasury

Department's domain and I know Secretary Rubin would be very happy to answer your question.

8. Under a shutdown, how would the disbursement of funds from accounts with permanent spending authority -- such as social security -- be handed, since the administrative expenses are annually appropriated?

ANSWER: [DAMUS TO PROVIDE]

DELLINGER TESTIMONY

1. Legal framework: constitution and antideficiency act
2. Civiletti memo
3. Explain exceptions to the antideficiency act
4. Explain the authority to enter into obligations for emergency services vs. the lack of authority to pay employees in emergency situations
5. Scope of emergencies permitted by the exception; 1990 amendment
6. Overview: the tremendous legal uncertainties arising in a shutdown add to the compelling reasons for avoiding shutdown.

Possible questions Dellinger may face:

1. What activities have, in the past, been considered emergencies?
2. Does the antideficiency act apply to Congress, and if so, how?
3. Authority to call Congress back into session during a funding hiatus?

Examines inconsistency in plans (see chart)

WD - lots of complex issues

mitigating costs a factor?

(eg - State Dept - what to do w/ AST for implied employees abroad)

run
2:00 - 2:48 mtg

GAO - 91 - lookback at shutdown

No criticism of state.

Over weekend - not demonstrative of anything

Ought to have automatic CR

WD -

proceed in p.f.

make best judgments we can
but ADA - uncertain

Even given st, operating w/ pt

uncert → in shadow of criminality!

Legal matters offer little help

BD - invites VR which includes what core seems essential. Removes uncertainty.

JL - Building on accepted interpretations of the law.

Reliance on prior admin practice

of ^{uncert}

Problem is really problem if this is long term. Then -

implement the shutdown
resolve " "

emerg
inc. to reg auth
with-type power?

face cat of Σ never faced before.

No discussion re debt limit -
different wk.

Shouldn't tech by as responses to
this.

Not shutdown \rightarrow default

Doesn't trigger ADA

Activs are lawful - just a cash
flow problem.



How to respond to Σ re
what WH will do?

How many people etc.?

Decision clear by Tuesday?

CP decided - 40-some?

Talk at
function - WH - mirror whatever ~~total~~ funds are ongoing

Start re who some to pay these people at some
point.

1. Ag - food stamps?

payments going out end of this month - partly for next fiscal yr

(May be true of other depts / other checks too)

2. Farmer benefits - funded from perm approps. Staff - from discretionary.

Like SS - pay for p. nec. to spend checks.
(Not very much - most of checks have been cut)

2.5 How much time does it take to shut down an agency?

Assume some people aren't essential, but it takes a few days to make them non-essential

Discussion re how ags used diff assump. abt cost wanted - e.g. to shut down or to keep going as much as poss?

Dis - compare / contrast - get back to ags who were using the wrong assump.

Right assump - straight down the middle.

3. Keep issuing ^{ecm} stats?

Keep field ops that gather info / data?

Katzen says NO to both.

Minimal level of stats? otherwise, uncertainty → im loss of property.

Fed needs min level of ecm indicators.

Katzen wins!

⇒

Prop - govt prop or prop which govt has respons for (what prop govt has undertaken to protect)

DOD - Not in. Draft over 400 pp.

Prob not this wk

HHS - Pub Health Service Comm Corps?

↳ They say entire - incl bureaucrat types.

Counted in past

Indian Health Service - tougher to fight cr.

Some to process Medicare

Lots of people for 1 day - just to shut down.

Q Medicare - Part B - 70% non-approp.

Operate at 100% or 80%

Becomes an issue if long-term.

Q FDA inspectors? (ONAA inspectors)

complaints re life threatening situation

vs.

everything else?

Ref ^{alarming} stuff (generally) should shut down.

HUD

Credit programs - can't make new guarantees

But "admin side is diff." (?)

Justice -

basic training for FBI agents etc.

(DOD - b.t. hard to justify)

Pipeline arg - may be valid over long period, but not

should ~~be~~ short.

Subj to review if longer shutdown.

Antitrust / FTC

Q

Appointments issue - much like Medicare

State wants to keep almost all foreign employees

Pres func - carrying on diplo. rels. - OK even if not
emergency.

Treasury - also training issue.

Last time - 90% shutdown!

Have to look carefully - better call over.

VA - hospitals - new review

long term / short term -

DOD - all elective surgery - forget.

Only like threatening.

OPM v CSA #5

2) ~~what's the point!~~

NSP

Americorps - everyone thru a wh.

Darius - no good - can't have Admin favored prop doing
Able to volunteer (just like WH employees) this.

⇒

Q - as to whether person can be furloughed + take
another position at same time - do you have
(crucial for WH employees) to resign?

When to notify employees?

Damus - want flexibility / keep options open

Kliver letter - wants a preview of plans + Rivkin testimony
by FRIDAY.

Request - major agencies - what's going to be shut down.
(major programs)

~~MEETINGS ~~on~~ Monday 2:00~~

FRI AFT 4:00

September 11, 1995

BUDGET DATA REQUEST NO. 95-XX

DRAFT

MEMORANDUM FOR: DEPUTY DIRECTOR
DEPUTY DIRECTOR FOR MANAGEMENT
PROGRAM ASSOCIATE DIRECTORS
PROGRAM DEPUTY ASSOCIATE DIRECTORS
ASSISTANT DIRECTOR FOR LEGISLATIVE REFERENCE

FROM: Richard P. Emery, Jr.
Deputy Assistant Director for
Budget Review and Concepts Division

SUBJECT: Estimating the cost of a partial Government
shutdown due to a temporary hiatus in
appropriations funding

Due Date: XXXXday, September X, 1995.

Affected Divisions: All

Contacts: Bing Bradshaw (Room 6236, Extension 5-3146),
Chris Fairhall (Room 6236, Extension 5-4836)

Purpose: To estimate the cost of a partial Government shutdown due to a temporary hiatus in appropriations funding. We expect that responses to this BDR will be used to help formulate responses to Congressional inquiries concerning the cost of a shutdown.

For the purpose of responding to this BDR, costs associated with a government shutdown are categorized as:

- Salaries paid to employees who are
 1. exempt from furlough, and who continue to perform and be paid for their normal duties (this includes employees paid from non-appropriated funds, or who are involved in safety of human life or protection of property);
 2. engaged in shutdown activities, and who are not otherwise exempt from furlough, and who do not perform their normal duties; or,
 3. furloughed (this assumes that employees are subsequently paid once appropriations action has been enacted).
- Rental payments for non-GSA building space that is not occupied by employees who are furloughed.
- Interest penalties that the federal government would

pay to state and local governments under the auspices of the Cash Management Improvement Act.

- Unemployment benefits paid to federal employees who are furloughed.
- Costs that are specifically attributable to planning for a shutdown that would not be absorbed as part of normal agency operations.
- Any other costs, such as forgone collection of park entry fees.

Action Required:

Six actions are required:

- 1) RMOs should review Attachment 1, a spreadsheet that computes the cost of a 1-day hiatus for each agency. This attachment uses FY 1995 Object Class data on personnel costs as well as agency/RMO responses regarding the number of FTEs that would be furloughed due to a hiatus in appropriations funding.

RMOs should mark revisions to, and/or provide numbers for, the following columns on the spreadsheet:

Average Daily FTE Cost
FTEs exempt from Furlough
FTEs working on shutdown activities
FTEs to be on Furlough

In addition, a basis for estimates should be provided on the spreadsheet.

- 2) RMOs should review Attachment 2, a spreadsheet that computes non-GSA rental costs for agencies that spend more than \$10 million per year in rent. RMOs should provide an estimate for the cost of office space that is not used by furloughed employees. In addition, a basis for estimates should be provided on the spreadsheet.
- 3) Attachment 3, provided from the Department of the Treasury, is an estimate of interest payments that several federal agencies would pay to state and local governments under the auspices of the Cash Management Improvement Act. RMOs should review the attachment, and provide interest penalty costs (on a daily basis) for each of their agencies that would expect to pay more than \$10,000 per day in interest penalties. Responses should include the following:

RMO Contact/Phone
Agency

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Daily Interest penalty
Basis for estimate

- 4) Using Attachment 4, a document prepared by the Department of Labor in conjunction with the Labor Branch that describes the rules for calculating unemployment benefits for federal employees, RMOs should provide an estimate of unemployment benefits that would be paid for each of their agencies that has more than 500 FTEs who would be furloughed. Responses should include the following:

RMO Contact/Phone
Agency
Daily Unemployment Benefit Cost
Basis for estimate

- 5) RMOs should provide an estimate of the cost to develop shutdown plans that would not be absorbed as part of normal agency operations. For example, if an agency hired legal counsel or contractors to help develop shutdown plans, the cost for these persons would be included in this category. Responses should include the following:

RMO Contact/Phone
Agency
Cost to Develop Shutdown Plan
Explanation of Cost

- 6) RMOs should identify any other costs, such as forgone collection of park entry fees, resulting from a shutdown. Response should include the following:

RMO Contact/Phone
Agency
Daily Other Cost
Basis for Estimate

All materials should be delivered to room 6236 by COB, XXXXXXday, September X.

Background: OMB Memorandum for the Heads of Executive Departments and Agencies M-95-18 (August 22, 1995) affirmed the requirement of OMB Bulletin 80-14 (August 28, 1980) that all agencies maintain contingency plans to deal with a possible appropriations hiatus, and forwarded a copy of an opinion of The Office of Legal Counsel of the Department of Justice on that subject dated August 16, 1995. The Memorandum asked that agencies send a copy of their updated plans to their OMB program examiner no later than September 5, 1995.

As a follow-up to BDR 95-93 that was used to collect information on agency shutdown contingency plans, this BDR will be used to estimate the cost of a partial shutdown.

Assumptions Used to Compute Daily Compensation Costs

The FY 1995 FTE numbers in the attached spreadsheet were published in the Budget, and have not been revised based on actual data received. These FT represent straight-time hours, and explicitly exclude over-time.

FY 1995 FTE Obligations are taken from Object Class data lines that represent Full-time permanent (11.1), Other than full-time permanent (11.3), and Civilian personnel benefits (12.1).

Average annual FTE costs are computed by dividing FTE Obligations by FTEs.

Average daily FTE costs are computed by dividing average annual FTE costs by 261, which is the compensable work days for FY 1996.

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FTE Cost Associated with a 1-Day Hiatus in Appropriations Funding

BDR 95 - x
ATTACHMENT 1

09/09/95
08:07 PM
BR:CF, NL
Hiatus1.wk3

Agency	FY 1995 FTEs	FY 95 FTE Obligations (\$M)	Average Annual FTE Cost (\$)	Average Daily FTE Cost (\$)	FTEs Exempt from Furlo	FTEs Working on shutdown	FTEs To Be On Furlough	Percent Exempt from Furlough	Cost (\$M) 1-Day Hiatus
Agriculture	108,894	4,821	44,272	170					
Commerce.....	36,000	1,883	52,302	200					
DOD--Military.....	834,105	37,587	45,063	173					
Corps of Engineers.....	27,739	1,327	47,838	183			22,739	82	4
Education	5,131	309	60,131	230			4,583	89	1
Energy.....	20,549	1,352	65,801	252			Exp 9/25		
HHS.....	62,735	3,574	56,977	218			34,570	55	8
HUD.....	12,883	733	56,911	218					
Interior.....	76,340	3,659	47,929	184			56,000	73	10
Justice	101,963	5,989	58,732	225			37,248	37	8
Labor	17,632	1,084	61,480	236					
State	25,006	1,420	56,804	218			6,360	25	1
Transportation.....	65,154	4,402	67,558	259					
Treasury.....	161,402	8,068	49,984	192					
Veterans Affairs	229,902	10,376	45,134	173			34,516	15	6
Environmental Protection Agency	18,879	1,195	63,294	243					
General Services Administration	16,936	939	55,445	212					
NASA.....	23,285	1,613	69,280	265			21,422	92	
Office of Personnel Management	5,472	7,879	39,908	153			2,564	47	0
Small Business Administration.....	6,090	214	35,138	135					
Social Security Administration.....	64,930	3,111	47,907	184			61,415	95	11
Armed Forces Retirement Home.....	1,020	39	38,248	147					
American Battle Monuments Comm.....	371	15	39,997	153					
Arms Control and Disarmament Agency.....	251	17	68,426	262			207	82	0
Cemeterial Expenses, Army	133	5	38,511	148					
Commission on Civil Rights	105	6	59,867	229			90	86	0
Commodity Futures Trading Comm.....	545	36	65,739	252			521	96	0
Consumer Product Safety Comm.....	487	30	62,489	239			438	90	0
Corporation for Natl/Comm Service.....	603	42	69,561	267					
Defense Nuclear Facilities Safety Board.....	150	12	76,813	294					

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2

FTE Cost Associated with a 1-Day Hiatus in Appropriations Funding

BDR 95 - x
ATTACHMENT 1

09/09/95
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BR:CF, NL
Hiatus1.w3

Agency	FY 1995 FTEs	FY 95 FTE Obligations (\$M)	Average Annual FTE Cost (\$)	Average Daily FTE Cost (\$)	FTEs Exempt from Furlo	FTEs Working on shutdown	FTEs To Be On Furlough	Percent Exempt from Furlough	Cost (\$M) 1-Day Hiatus
Equal Employment Opportunity Comm.....	2,860	160	55,973	214			2,860	100	1
Export-Import Bank	448	32	70,391	270					
Federal Communications Commission.....	2,271	141	62,236	238			2,171	96	1
Federal Election Commission.....	327	19	57,930	222					
FEMA.....	3,944	193	48,822	187					
Federal Labor Relations Authority.....	232	17	71,728	275			228	98	0
Federal Maritime Commission.....	205	13	64,990	249			182	89	0
Federal Mediation and Conciliation Service	302	23	75,056	288					
Federal Trade Commission	979	71	72,941	279					
International Trade Commission	454	31	68,892	264					
Interstate Commerce Commission	428	27	63,911	245			428	100	0
Intell comm management account.....	241	20	83,622	320					
Merit Systems Protection Board	286	21	73,759	283			277	97	0
National Archives and Records Admin.....	2,486	97	38,925	149					
National Credit Union Administration	944	65	68,685	263			0	0	
NEA.....	273	16	59,136	227			234	86	0
NEH.....	262	16	59,760	229			261	100	0
National Labor Relations Board	2,054	135	65,649	252			2,038	99	1
National Science Foundation.....	1,267	86	67,878	260			1,247	98	0
NTSB.....	350	26	75,674	290					
Nuclear Regulatory Commission.....	3,218	310	96,299	369					
Panama Canal Commission.....	8,772	274	31,240	120			0	0	
Railroad Retirement Board.....	1,638	67	41,189	158			1,308	80	
Securities and Exchange Commission	2,944	201	68,338	262			2,878	98	1
Selective Service System	228	10	43,061	165					
Smithsonian Institution.....	5,544	255	46,064	176			4,990	90	1
Tennessee Valley Authority.....	16,609	1,060	63,797	244					
US Holocaust Memorial Council.....	218	11	48,601	186					
US Information Agency.....	8,028	414	51,615	198					

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FTE Cost Associated with a 1-Day Hiatus in Appropriations Funding

BDR 95 - x
ATTACHMENT 1

09/09/95
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Hiatus1.wk3

<u>Agency</u>	<u>FY 1995 FTEs</u>	<u>FY 95 FTE Obligations (\$M)</u>	<u>Average Annual FTE Cost (\$)</u>	<u>Average Daily FTE Cost (\$)</u>	<u>FTEs Exempt from Furlo</u>	<u>FTEs Working on shutdown</u>	<u>FTEs To Be On Furlough</u>	<u>Percent Exempt from Furlough</u>	<u>Cost (\$M) 1-Day Hiatus</u>
Executive Office of the President									
The White House Office.....	400	26	66,133	253					
Office of Administration.....	192	11	58,427	224					
Office of Management and Budget	557	44	78,282	300					
U.S. Trade Representative.....	168	14	85,304	327					
Funds Appropriated to the President									
AID.....	3,838	282	73,546	282					
Peace Corps	1,233	89	72,208	277					
OPIC.....	182	15	81,890	314					
Total.....	1,999,074	106,030					301,775		55

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4

**Status of Appropriations Hiatus Contingency Plans
Rent**
(obligations, in millions of dollars)

BDR 95 - x
ATTACHMENT 2

09/09/95
08:15 PM
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hiatus2.wk3

DRAFT
Daily Furlough Cost

<u>Agency</u>	<u>Annual Non-GSA Rentals</u>	<u>Daily Rental</u>
Agriculture.....	96	0.7
Commerce	27	0.6
Defense--Military.....	1,259	4.7
Corps of Engineers	6	0.1
Energy	9	0.3
HHS.....	16	0.6
Interior	39	0.8
Justice.....	134	2.9
Labor.....	10	0.4
State.....	145	0.6
Transportation	118	0.8
Treasury	46	1.9
Veterans Affairs.....	70	0.5
Environmental Protection Agency.....	14	0.4
General Services Administration.....	2,303	6.6
NASA.....	59	0.2
Federal Deposit Insurance Corporation	28	0.1
Federal Emergency Management Agency	12	0.1
Resolution Trust Corporation.....	15	0.0
Securities and Exchange Commission.....	27	0.1
Tennessee Valley Authority.....	95	0.3
United States Information Agency.....	34	0.2
Funds Appropriated to the President		
Agency for International Development.....	43	0.1
Peace Corps	9	0.0
Total.....	4,560	22.7

Note: The daily rental cost is computed by dividing the annual non-GSA rental cost by 365.

③

ATTACHMENT #3
p. 1 of 2**POTENTIAL IMPACT OF SHUTDOWN ON THE
CASH MANAGEMENT IMPROVEMENT PROGRAM****DRAFT**

Under the Cash Management Improvement Act (CMIA), if a State pays out its own funds for program purposes due to delay in passage of a Federal appropriations act, the Federal Government will incur an interest liability if an appropriations act, as enacted, covers the period of the State's expenditure and permits payment for expenses already incurred by the State (31 CFR 205.11(b))

We have informally contacted the five largest Federal Program Agencies to seek information regarding the expected impact on their CMIA programs if a shutdown of the Federal Government occurs. The agencies contacted were: Health and Human Services, Transportation, Education, Agriculture, and Labor. In some instances, such as the Federal Highways Program or the Unemployment Insurance Trust Fund, funds will be available as these programs are not impacted by the appropriation process. Additionally, many programs may have FY 95 monies available for States to draw even if there is no 96 appropriation; however, it is unclear whether there will be personnel available in the Federal program agencies to process the payment requests.

Based on the information obtained, we have prepared two possible scenarios to estimate the potential interest liability that may be incurred by the Federal Government on a daily basis due to a lack of appropriations and/or a shutdown of the Federal Government on October 2, 1995. All amounts are very rough estimates of grant funds paid out on a daily basis for CMIA covered programs provided by the Federal Program agencies. A number of assumptions have also been made in each of the scenarios.

It should be noted that any interest incurred beginning with the October 1, 1995 date will not be reported by the States until December 31, 1996 when Annual Reports for State Fiscal Year 1996 are due. The net exchange of interest for this period will not occur until March 1, 1997.

The CMIA interest rate is the annualized rate equal to the average equivalent yields of 13-week Treasury Bills auctioned during a State's Fiscal Year. For Fiscal Year 1994, the annual rate was 3.43%; for Fiscal Year 1995, the annual rate was 5.46%. For purposes of this exercise, we have assumed an interest rate of 5%.

DRAFT

Since the Agencies contacted jointly disburse about 80% of the total grant payments to the states and their average daily grant payments is \$532.2 million, the total average daily grant payments to the states for all Federal Agencies is \$665.3 million ($\$532.2 / .80$). The following options depict the interest liability that the Government will incur:

Option 1 - Worst Case Scenario

Assumptions:

- Payment systems will not be in operation nor personnel will be available to authorize disbursements.
- The total average daily grant payments for all programs is \$665.3 million.
- Appropriations will be retroactive
- Average annual interest rate of 5.0% or a .0137% rate per day.

Daily Federal Interest Liability	\$91,146	($\$665.3 \times .0137\%$)
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Option 2 - Only Some programs will be affected

Assumption:

- Payment systems will not be shutdown and personnel will be available to authorize disbursements.
- Trust Funds will not be impacted by appropriations.
- Forward funded programs will not be impacted.
- Appropriations will be retroactive.
- Average annual interest rate of 5.0% or a .0137% rate per day.

Daily Federal Interest Liability	\$29,962	($\$218.7 \times .0137\%$)
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9-11-95
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ATTACHMENT # 61

DRAFT

Not Available at This time

Ensuring Consistency Across Agencies' Shutdown Plans

- **Level of Exempt Operations**
 - **Administrative**
 - Inspectors General
 - Public Affairs
 - Congressional Affairs
 - Personnel Operations
 - Contractor Oversight
 - Compliance with Court Orders
 - Building Operations and Security
 - **Operational**
 - Health
 - Law Enforcement
 - Regulatory
 - Grants - Direct
 - Grants - State and local
 - Loans
 - Overseas Operations
- **Shutdown Procedures**
 - Travel back from assignments
 - Number of days required for orderly shutdown
 - Contractor oversight
- **Communication with Stakeholders**
 - **General Public**
 - Notice to public of government operations which will be effected
 - Interim communications contacts e.g. hotlines, emergency numbers
 - **Government Workers**
 - Timetable for notification of employees of their "exempt/non-exempt" status
 - Timetable for notification/interaction with employees' representatives
 - Communications mechanisms, e.g. hotlines, public announcements
 - Notification of effects on Employee Benefits
 - Guidance on Unemployment Benefits and other sources of financial relief
 - Return to work procedures

**Fall Working Group Meeting
September 11, 1995**

- OMB evaluation of Agency Plans
 - Current Status (Anderson)
 - Schedule for review and deadline
 - Develop List of Activities Terminated in Shutdown and Activities which Continue
 - Ensuring Consistency Across Agencies (see handout)

- Draft BDR on estimating costs of shutdown (Anderson)

- Preparations for Budget Committee hearing on September 19
 - Drafting Testimony
 - Potential Q&A's