

NLWJC- Kagan

Counsel - Box 007 - Folder 008

Shutdown II [1]

Shutdown meeting

DoJ - 60% of pers. w/in "equipment" funded

FBI, INS

AUSA - defensive litigation except for

After 26th

3 cats of EEs -

almost 100%
of DOJ

included 60%

working under ADA - excepted
back pay

w/ta 40% - tax enforcement

defensive civil litig.

hate crimes enf. // civil vts
environment

Basically left cut main Justice

excepted

but no paycheck / vendors
traffic

can't pay

Asked ags for:

1) Memos

2) Behind Shutdown plans

One Hundred Fourth Congress of the United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Wednesday,
the third day of January, one thousand nine hundred and ninety-six*

An Act

Making appropriations for certain activities for the fiscal year 1996, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

SEC. 101. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995 for continuing the following projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this Act) which were conducted in the fiscal year 1995:

All nutrition services for the elderly under the account heading "Aging services programs" under the Administration on Aging in the Department of Health and Human Services;

All grants to States for child welfare services, authorized by title IV, part B, subpart 1, of the Social Security Act, under the account heading "Children and families services programs" under the Administration for Children and Families in the Department of Health and Human Services;

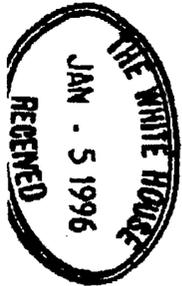
All Federal Parent Locator Service activities, as authorized by section 453 of the Social Security Act, under the account heading "Children and families services programs" under the Administration for Children and Families in the Department of Health and Human Services;

All State unemployment insurance administration activities under the account heading "State unemployment insurance and employment service operations" under the Employment and Training Administration in the Department of Labor;

All general welfare assistance payments and foster care payments, as authorized by law, funded under the account heading "Operation of Indian programs" under the Bureau of Indian Affairs in the Department of the Interior;

All projects and activities funded under the account heading "Family support payments to States" under the Administration For Children and Families in the Department of Health and Human Services;

All projects and activities funded under the account heading "Payments to States for foster care and adoption assistance" under the Administration For Children and Families in the Department of Health and Human Services;



Specific funding through 2/30 per following programs -

H. R. 1643—2

All administrative activities necessary to carry out the projects and activities in the preceding two paragraphs;

All projects and activities funded under the account headings "Dual benefits payments account", "Limitation on administration" and "Limitation on railroad unemployment insurance administration fund" under the Railroad Retirement Board;

All projects and activities necessary to accommodate visitors and to provide for visitor services in the National Park System, the National Wildlife Refuges, the National Forests, the facilities operated by the Smithsonian Institution, the National Gallery of Art, the John F. Kennedy Center for the Performing Arts, and the United States Holocaust Memorial; and

All projects and activities necessary to process visas and passports and to provide for American citizen services, notwithstanding section 15 of the State Department Basic Authorities Act of 1956: *Provided*, That whenever the amount which would be made available or the authority which would be granted under an Act which included funding for fiscal year 1996 for the projects and activities listed in this section is greater than that which would be available or granted under current operations, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate.

(b) Whenever the amount which would be made available or the authority which would be granted under the Act which included funding for fiscal year 1996 for the projects and activities listed in this section as passed by the House as of the date of enactment of this Act, is different from that which would be available or granted under such Act as passed by the Senate as of the date of enactment of this Act, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate or the rate permitted by the action of the House or the Senate, whichever is lower, under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

(c) Whenever an Act which included funding for fiscal year 1996 for the projects and activities listed in this section has been passed by only the House or only the Senate as of the date of enactment of this Act, the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the one House at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

SEC. 102. Appropriations made by section 101 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 103. No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

SEC. 104. No provision which is included in the appropriations Act enumerated in section 101 but which was not included in the applicable appropriations Act for fiscal year 1995 and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this Act.

Lower of H passed,
S passed, or
current.

H. R. 1643—3

SEC. 105. Appropriations made and authority granted pursuant to this title of this Act shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this Act.

SEC. 106. Unless otherwise provided for in this title of this Act or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this title of this Act shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this title of this Act, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) September 30, 1996, except for the projects and activities under the headings "Family support payments to States" and "Payments to States for foster care and adoption assistance", for which date shall be March 15, 1996, whichever first occurs.

SEC. 107. Expenditures made pursuant to this title of this Act shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 108. No provision in the appropriations Act for the fiscal year 1996 referred to in section 101 of this Act that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 106(c) of this Act.

SEC. 109. Appropriations and funds made available by or authority granted pursuant to this title of this Act may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 110. For the purposes of this title of this Act, the time covered by this title of this Act shall be considered to have begun on December 16, 1995.

SEC. 111. Notwithstanding any other provision of this Act, except section 106, funds appropriated under section 101 for the payment of vested dual benefits under the Railroad Retirement Act shall be made available so as to fully fund the payments made on January 1, 1996, and the payments to be made within the period covered by this Act including those payments to be made on the first day of each month within the period covered by this Act. In addition to the funds appropriated under section 101 of this Act, \$12,800,000 is appropriated to restore full funding for payments made for the period prior to January 1, 1996.

SEC. 112. Notwithstanding any other provision of this Act, except section 106, the authorities provided under subsection (a) of section 140 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236) shall remain in effect during the period of this Act, notwithstanding paragraph (3) of said subsection.

TITLE II

VETERANS AFFAIRS

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable

Until Sept 30-
(March 15 for
Foster care in
AFDC)

Can
you
verify?
?

corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

SEC. 201. ENSURED PAYMENT DURING FISCAL YEAR 1996 OF VETERANS' BENEFITS IN EVENT OF LACK OF APPROPRIATIONS.—(a) PAYMENTS REQUIRED.—In any case during fiscal year 1996 in which appropriations are not otherwise available for programs, projects, and activities of the Department of Veterans Affairs, the Secretary of Veterans Affairs shall nevertheless ensure that—

Funds vet. benefits through Sept 30

(1) payments of existing veterans benefits are made in accordance with regular procedures and schedules and in accordance with eligibility requirements for such benefits; and

(2) payments to contractors of the Veterans Health Administration of the Department of Veterans Affairs are made when due in the case of services provided that directly relate to patient health and safety.

(b) FUNDING.—There is hereby appropriated such sums as may be necessary for the payments pursuant to subsection (a), including such amounts as may be necessary for the costs of administration of such payments.

(c) CHARGING OF ACCOUNTS WHEN APPROPRIATIONS MADE.—In any case in which the Secretary uses the authority of subsection (a) to make payments, applicable accounts shall be charged for amounts so paid, and for the costs of administration of such payments, when regular appropriations become available for those purposes.

(d) EXISTING BENEFITS SPECIFIED.—For purposes of this section, existing veterans benefits are benefits under laws administered by the Secretary of Veterans Affairs that have been adjudicated and authorized for payment as of—

(1) December 15, 1995; or

(2) if appropriations for such benefits are available (other than pursuant to subsection (b)) after December 15, 1995, the last day on which appropriations for payment of such benefits are available (other than pursuant to subsection (b)).

SEC. 202. Section 201 shall cease to be effective on September 30, 1996.

SEC. 203. For the purposes of this title of this Act, the time covered by this title of this Act shall be considered to have begun on January 4, 1996.

TITLE III

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

Funds salaries for exempted employees

SEC. 301. Such amounts as may be necessary under the authority and conditions provided in applicable appropriations Acts for the fiscal year 1995 for paying salaries of Federal employees excepted from the provisions of the Antideficiency Act (31 U.S.C. 1341 et seq.) who are continuing projects and activities conducted in fiscal year 1995 who work during periods when there is otherwise no funding authority for their salaries.

SEC. 302. Appropriations made by section 301 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 303. No appropriation or funds made available or authority granted pursuant to section 301 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

SEC. 304. No provision which is included in the appropriations Act enumerated in section 301 but which was not included in the applicable appropriations Act for fiscal year 1995 and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this Act.

SEC. 305. Appropriations made and authority granted pursuant to this title of this Act shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this Act.

SEC. 306. Unless otherwise provided for in this title of this Act or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this title of this Act shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this title of this Act, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) January 26, 1996, whichever first occurs.

SEC. 307. Expenditures made pursuant to this title of this Act shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 308. No provision in the appropriations Act for the fiscal year 1996 referred to in section 301 of this Act that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 306(c) of this Act.

SEC. 309. Appropriations and funds made available by or authority granted pursuant to this title of this Act may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 310. ALL FEDERAL EMPLOYEES DEEMED TO BE EXCEPTED EMPLOYEES.—(a) IN GENERAL.—Section 1342 of title 31, United States Code, is amended for the period December 15, 1995 through January 26, 1996—

(1) by inserting after the first sentence "All officers and employees of the United States Government or the District of Columbia government shall be deemed to be performing services relating to emergencies involving the safety of human life or the protection of property."; and

(2) by striking out the last sentence.

SEC. 311. EXCEPTED EMPLOYEES UNDER NORMAL LEAVE POLICY.—Federal employees considered excepted from furlough during any period in which there is a lapse in appropriations with respect to the agency activity in which the employee is engaged shall not be considered to be furloughed when on leave and shall be

*Amk 1
January
26*

*All employees
deemed
excepted
Mr. Thuyk
Jan 26*

subject to the same leave regulations as if no lapse in appropriations had occurred.

SEC. 312. ELIGIBILITY FOR UNEMPLOYMENT COMPENSATION.— Notwithstanding any other provisions of law, beginning on January 2, 1996, any Federal employee who is excepted from furlough and is not being paid due to a lapse in appropriations shall be deemed to be totally separated from Federal service and eligible for unemployment compensation benefits under subchapter I of chapter 85 of title 5 of the United States Code with no waiting period for such eligibility to accrue.

SEC. 313. For the purposes of this title, Federal employees returning to work under the provisions of section 310 shall be deemed to have returned to work at the first regularly scheduled opportunity after December 15, 1995.

SEC. 314. Appropriations made pursuant to section 301 are made notwithstanding section 15 of the State Department Basic Authorities Act of 1956, section 701 of the United States Information and Educational Exchange Act of 1948, section 313 of the Foreign Relations Authorization Act, Fiscal Years 1994 and 1995 (Public Law 103-236), section 53 of the Arms Control and Disarmament Act, and section 10 of Public Law 91-672.

TITLE IV

The following sums are hereby appropriated, out of the general fund and enterprise funds of the District of Columbia for the District of Columbia for the fiscal year 1996, and for other purposes, namely:

DC funds

SEC. 401. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1996 for continuing projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this title of this Act) which were conducted in the fiscal year 1995 and for which appropriations, funds, or other authority would be available in the following appropriations Act:

The District of Columbia Appropriations Act, 1996:

Provided, That whenever the amount which would be made available or the authority which would be granted in this Act is greater than that which would be available or granted under current operations, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate.

lower of House and Senate, or current

(b) Whenever the amount which would be made available or the authority which would be granted under the Act listed in this section as passed by the House as of the date of enactment of this Act, is different from that which would be available or granted under such Act as passed by the Senate as of the date of enactment of this Act, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate or the rate permitted by the action of the House or the Senate, whichever is lower, under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995: *Provided*, That where an item is not included in either version or where an item is included in only one version of the Act as passed by both Houses as of the date of enactment of this Act, the pertinent project or activity shall not be continued except as provided for in section 411 or 412 under the appropriation, fund, or authority granted by the applicable appropriations Act for the

fiscal year 1995 and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

SEC. 402. Appropriations made by section 401 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 403. No appropriation or funds made available or authority granted pursuant to section 401 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

SEC. 404. No provision which is included in the appropriations Act enumerated in section 401 but which was not included in the applicable appropriations Act for fiscal year 1995 and which by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this title of this Act.

SEC. 405. Appropriations made and authority granted pursuant to this title of this Act shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this title of this Act.

SEC. 406. Unless otherwise provided for in this title of this Act or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this title of this Act shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this title of this Act, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) September 30, 1996, whichever first occurs.

SEC. 407. Notwithstanding any other provision of this title of this Act, except section 406, none of the funds appropriated under this title of this Act shall be expended for any abortion except where the life of the mother would be endangered if the fetus were carried to term or where the pregnancy is the result of an act of rape or incest.

SEC. 408. Expenditures made pursuant to this title of this Act shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 409. No provision in the appropriations Act for the fiscal year 1996 referred to in section 401 of this title of this Act that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 408(c) of this Act.

SEC. 410. Appropriations and funds made available by or authority granted pursuant to this title of this Act may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 411. Notwithstanding any other provision of this title of this Act, except section 406, whenever the Act listed in section 401 as passed by both the House and Senate as of the date of enactment of this Act does not include funding for an ongoing project or activity for which there is a budget request, or whenever the rate for operations for an ongoing project or activity provided by section 401 for which there is a budget request would result

Until
SEP 30

abortion
provision

in the project or activity being significantly reduced, the pertinent project or activity may be continued under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995 by increasing the rate for operations provided by section 401 to a rate for operations not to exceed one that provides the minimal level that would enable existing activities to continue. No new contracts or grants shall be awarded in excess of an amount that bears the same ratio to the rate for operations provided by this section as the number of days covered by this Act bears to 366. For the purposes of this title of this Act the minimal level means a rate for operations that is reduced from the current rate by 25 percent.

SEC. 412. Notwithstanding any other provision of this title of this Act, except section 406, whenever the rate for operations for any continuing project or activity provided by section 401 or section 411 for which there is a budget request would result in a furlough of Government employees, that rate for operations may be increased to the minimum level that would enable the furlough to be avoided. No new contracts or grants shall be awarded in excess of an amount that bears the same ratio to the rate for operations provided by this section as the number of days covered by this Act bears to 366.

SEC. 413. Notwithstanding any other provision of this title of this Act, except sections 406, 411, and 412, for those programs that had high initial rates of operation or complete distribution of funding at the beginning of the fiscal year in fiscal year 1996 because of distributions of funding to States, foreign countries, grantees, or others, similar distributions of funds for fiscal year 1996 shall not be made and no grants shall be awarded for such programs funded by this title of this Act that would impinge on final funding prerogatives.

SEC. 414. This title of this Act shall be implemented so that only the most limited funding action of that permitted in this title of this Act shall be taken in order to provide for continuation of projects and activities.

SEC. 415. The provisions of section 132 of the District of Columbia Appropriations Act, 1988, Public Law 100-202, shall not apply for this title of this Act.

SEC. 416. Notwithstanding any other provision of this title of this Act, except section 406, none of the funds appropriated under this title of this Act shall be used to implement or enforce any system or registration of unmarried, cohabiting couples whether they are homosexual, lesbian, heterosexual, including but not limited to registration for the purpose of extending employment, health, or governmental benefits to such couples on the same basis that such benefits are extended to legally married couples; nor shall any funds made available pursuant to any provision of this title of this Act otherwise be used to implement or enforce D.C. Act 9-188, signed by the Mayor of the District of Columbia on April 15, 1992.

cohabiting couples provision

TITLE V

CLARIFICATION OF CERTAIN REIMBURSEMENTS

SEC. 501. CLARIFICATION OF REIMBURSEMENT TO STATES FOR FEDERALLY FUNDED EMPLOYEES.—(a) If a State used State funds

Reimbursement of state funds

H. R. 1643—9

to continue carrying out a Federal program or furloughed State employees whose compensation is advanced or reimbursed in whole or in part by the Federal Government—

(1) such furloughed employees shall be compensated at their standard rate of compensation for such period;

(2) the State shall be reimbursed for expenses that would have been paid by the Federal Government during such period had appropriations been available, including the cost of compensating such furloughed employees, together with interest thereon due under section 6503(d) of title 31, United States Code; and

(3) the State may use funds available to the State under such Federal program to reimburse such State, together with interest thereon due under section 6503(d) of title 31, United States Code.

(b) For purposes of this subsection, the term "State" shall have the meaning as such term is defined under the applicable Federal program under subsection (a).

(c) The authority under this section applies with respect to any period in fiscal year 1996 (not limited to periods beginning or ending after the date of the enactment of this Act) during which there occurs a lapse in appropriations with respect to any department or agency of the Federal Government which, but for such lapse in appropriations, would have paid, or made reimbursement relating to, any of the expenses referred to in subsection (a) with respect to the program involved. Payments and reimbursements under this authority shall be made only to the extent and in amounts provided in advance in appropriations Acts.

Bill Emerson
Speaker of the House of Representatives *pro tempore*

Strom Thurmond

~~Vice President of the United States and~~
President of the Senate. *pro tempore.*

APPROVED

JAN - 6 1996

William J. Clinton



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

THE DIRECTOR

January 10, 1996

M-96-12

MEMORANDUM FOR THE HEADS OF DEPARTMENTS AND AGENCIES

FROM: Alice M. Rivlin *AMR*
Director

SUBJECT: Effect of Three Continuing Resolutions

Over the weekend, the President signed three CRs, the sixth, seventh and eighth. They are H.R. 1643, H.R. 1358, and H.J. Res. 134.

The following provides a brief summary of each CR and guidance on their effect for those agencies whose regular appropriations bill has not yet been enacted.

H.J. Res. 134

Extends the third CR (P.L. 104-56) from December 15th through January 26th, thus providing funds at the rate provided in the third CR, which is the lower of House-passed, Senate-passed or 1995 enacted ("current") rate with the 75% floor and the furlough protection language.

H.R. 1643

Funds D.C. (local funds only) from Jan. 6 through Sept. 30.

Funds Veterans benefits and medical contractors from Jan. 4 through Sept. 30.

Funds employee salaries, and requires payment of salaries for furloughed employees as well as excepted staff, from December 15 through January 26.

Requires reimbursement of States (with interest) for costs they

incur on behalf of the Federal government (as well as for furloughed State workers who are paid with federal funds) during any shutdown in fiscal 1996.

Funds Foster care and AFDC through March 15.

Provides specific funding from December 16 through Sept. 30 for:

- Meals on Wheels
- Child welfare grants
- Parent Locator
- Unemployment administration
- Indian welfare and foster care
- Railroad Retirement
- National parks, forests, wildlife refuges
- Smithsonian, National Gallery, J.F.K. Center, Holocaust Memorial
- Visa, passport and American citizen services

Specific funding is at lower of House-passed, Senate-passed or current rate under FY 1995 terms and conditions.

H.R. 1358

Provides funding for a list of programs from December 16 through September 30th, at lower of House-passed, Senate-passed or current rate (except where otherwise noted below) for discretionary programs, and at current services for mandatory programs (under FY 1995 terms and conditions):

- Peace Corps allowances
- FHA single family (conference level)
- Security at diplomatic posts abroad
- FEMA emergency food and shelter (\$46 million)
- PHS retirement and other benefits
- Justice law enforcement functions
- Judicial Branch (conference)
- HCFA state surveys and certifications
- TAA and NAFTA assistance
- Payments to Medicare trust funds
- Payments to Medicare contractors
- Medicaid grants to States
- NIH (House level)

SBA loans and surety bonds (conference)
Visitor services on BLM lands
CDC disease control, research and training (\$2.114 billion)
Certain BIA Indian programs (conference)
Gallaudet Univ., two pilot programs
Black Lung and Special Benefits for Disabled Coal Miners

Relationship of the Three Bills

- o All three bills were signed on January 6.
- o The three bills provide separate and independent authority.
- o If a program is specifically funded in H.R. 1358 or H.R. 1643, then the program is continued at the level specifically provided. If a program is not specifically funded in either of those bills, then the program is continued at the level provided in H.J. Res. 134.
- o Appropriations are provided for all activities for which the regular appropriations bill has not been enacted (with a very few exceptions), so there is no shutdown from January 6 through 26, and all employees are returned to work.
- o For the same reason, guidance issued on Saturday, January 6 that agencies should incur only a "minimum level of obligations for services" does not apply for the period from December 15, 1995 through January 26, 1996. (That guidance was issued before enactment of H.J. Res. 134.)
- o H.J. Res. 134 reaches back to December 15th, so there is no "gap" between CRs and obligations validly made during the shutdown may be paid; however, if agencies used carry-over balances to stay open during the shutdown period, those balances may not be "replaced" or "replenished" with funds from the CR.
- o Backpay is provided for all formerly excepted and furloughed staff who were not being paid during the shutdown.

One Hundred Fourth Congress of the United States of America

AT THE SECOND SESSION

*Began and held at the City of Washington on Wednesday,
the third day of January, one thousand nine hundred and ninety-six*

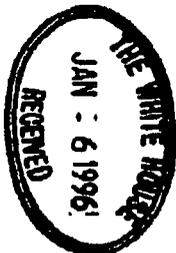
Joint Resolution

Making further continuing appropriations for the fiscal year 1996, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 1. Section 106(c) of Public Law 104-56 is amended by striking "December 15, 1995" and inserting in lieu thereof January 26, 1996.

SEC. 2. The transmission of this joint resolution to the President shall be in accordance with the requirements of the concurrent resolution (H. Con. Res. 131) that establishes procedures making such transmission contingent upon the submission by the President of a seven-year balanced budget using the economic and technical assumptions specified in or consistent with the Congressional Budget Office Memorandum entitled "The Economic and Budget Outlook: December 1995 Update".



extends 3rd CR
to 1/26

Newt Gingrich
Speaker of the House of Representatives.

Al Gore
Vice President of the United States and
President of the Senate.

APPROVED

JAN - 6 1996

William D. Clinton

**One Hundred Fourth Congress
of the
United States of America**

AT THE SECOND SESSION

*Begun and held at the City of Washington on Wednesday,
the third day of January, one thousand nine hundred and ninety-six*

An Act

To require the Secretary of Commerce to convey to the Commonwealth of Massachusetts the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, Massachusetts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONVEYANCES.

(a) NATIONAL MARINE FISHERIES SERVICE LABORATORY AT GLOUCESTER, MASSACHUSETTS.—

(1) **IN GENERAL.**—The Secretary of Commerce shall convey to the Commonwealth of Massachusetts, all right, title, and interest of the United States in and to the property comprising the National Marine Fisheries Service laboratory located on Emerson Avenue in Gloucester, Massachusetts.

(2) **TERMS.**—A conveyance of property under paragraph (1) shall be made—

(A) without payment of consideration; and

(B) subject to the terms and conditions specified under paragraphs (3) and (4).

(3) **CONDITIONS FOR TRANSFER.—**

(A) **IN GENERAL.**—As a condition of any conveyance of property under this subsection, the Commonwealth of Massachusetts shall assume full responsibility for maintenance of the property for as long as the Commonwealth retains the right and title to that property.

(B) **CONTINUED USE OF PROPERTY BY NMFS.**—The Secretary may enter into a memorandum of understanding with the Commonwealth of Massachusetts under which the National Marine Fisheries Service is authorized to occupy existing laboratory space on the property conveyed under this subsection, if—

(i) the term of the memorandum of understanding is for a period of not longer than 5 years beginning on the date of enactment of this Act; and

(ii) the square footage of the space to be occupied by the National Marine Fisheries Service does not conflict with the needs of, and is agreeable to, the Commonwealth of Massachusetts.

(4) **REVERSIONARY INTEREST.**—All right, title, and interest in and to all property conveyed under this subsection shall revert to the United States on the date on which the Commonwealth of Massachusetts uses any of the property for any purpose other than the Commonwealth of Massachusetts Division of Marine Fisheries resource management program.



H. R. 1358—2

(5) RESTRICTION.—Amounts provided by the South Essex Sewage District may not be used by the Commonwealth of Massachusetts to transfer existing activities to, or conduct activities at, property conveyed under this section.

(b) PIER IN CHARLESTON, SOUTH CAROLINA.—Section 22(a) of the Marine Mammal Protection Act Amendments of 1994 (Public Law 103-238; 108 Stat. 561) is amended—

(1) by inserting “(1)” before “Not”; and

(2) by adding at the end thereof the following:

“(2) Not later than December 31, 1996, the Secretary of the Navy may convey, without payment or other consideration, to the Secretary of Commerce, all right, title, and interest to the property comprising that portion of the Naval Base, Charleston, South Carolina, bounded by Hobson Avenue, the Cooper River, the landward extension of the property line located 70 feet northwest of and parallel to the centerline of Pier Q, and the northwest property line of the parking area associated with Pier R. The property shall include Pier Q, all towers and outbuildings on that property, and walkways and parking areas associated with those buildings and Pier Q.”

SEC. 2. FISHERIES RESEARCH FACILITIES.

(a) FORT JOHNSON.—The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct on land to be leased from the State of South Carolina, a facility at Fort Johnson, South Carolina, provided that the annual cost of leasing the required lands does not exceed one dollar.

(b) AUKE CAPE.—The Secretary of Commerce, through the Under Secretary of Commerce for Oceans and Atmosphere, is authorized to construct a facility on Auke Cape near Juneau, Alaska, to provide consolidated office and laboratory space for National Oceanic and Atmospheric Administration personnel in Juneau, provided that the property for such facility is transferred to the National Oceanic and Atmospheric Administration from the United States Coast Guard or the City of Juneau.

(c) COMPLETION DATE FOR FUNDED WORK.—The Secretary of Commerce shall complete the architectural and engineering work for the facilities described in subsections (a) and (b) by not later than May 1, 1996, using funds that have been previously appropriated for that work.

(d) AVAILABILITY OF APPROPRIATIONS.—The authorizations contained in subsections (a) and (b) are subject to the availability of appropriations provided for the purpose stated in this section.

SEC. 3. PRIBILOF ISLANDS.

(a) IN GENERAL.—The Secretary of Commerce shall, subject to the availability of appropriations provided for the purposes of this section, clean up landfills, wastes, dumps, debris, storage tanks, property, hazardous or unsafe conditions, and contaminants, including petroleum products and their derivatives, left by the National Oceanic and Atmospheric Administration on lands which it and its predecessor agencies abandoned, quitclaimed, or otherwise transferred or are obligated to transfer, to local entities or residents on the Pribilof Islands, Alaska, pursuant to the Fur Seal Act of 1966 (16 U.S.C. 1151 et seq.), as amended, or other applicable law.

(b) OBLIGATIONS OF SECRETARY.—In carrying out cleanup activities under subsection (a), the Secretary of Commerce shall—

(1) to the maximum extent practicable, execute agreements with the State of Alaska, and affected local governments, entities, and residents eligible to receive conveyance of lands under the Fur Seal Act of 1966 (16 U.S.C. 1161 et seq.) or other applicable law;

(2) manage such activities with the minimum possible overhead, delay, and duplication of State and local planning and design work;

(3) receive approval from the State of Alaska for agreements described in paragraph (1) where such activities are required by State law;

(4) receive approval from affected local entities or residents before conducting such activities on their property; and

(5) not seek or require financial contributions by or from local entities or landowners.

(c) RESOLUTION OF FEDERAL RESPONSIBILITIES.—(1) Within 9 months after the date of enactment of this section, and after consultation with the Secretary of the Interior, the State of Alaska, and local entities and residents of the Pribilof Islands, the Secretary of Commerce shall submit to the Committee on Commerce, Science, and Transportation of the Senate, and the Committee on Resources of the House of Representatives, a report proposing necessary actions by the Secretary of Commerce and Congress to resolve all claims with respect to, and permit the final implementation, fulfillment and completion of—

(A) title II of the Fur Seal Act Amendments of 1983 (16 U.S.C. 1161 et seq.);

(B) the land conveyance entitlements of local entities and residents of the Pribilof Islands under the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.);

(C) the provisions of this section; and

(D) any other matters which the Secretary deems appropriate.

(2) The report required under paragraph (1) shall include the estimated costs of all actions, and shall contain the statements of the Secretary of Commerce, the Secretary of the Interior, any statement submitted by the State of Alaska, and any statements of claims or recommendations submitted by local entities and residents of the Pribilof Islands.

(d) USE OF LOCAL ENTITIES.—Notwithstanding any other law to the contrary, the Secretary of Commerce shall, to the maximum extent practicable, carry out activities under subsection (a) and fulfill other obligations under Federal and State law relating to the Pribilof Islands, through grants or other agreements with local entities and residents of the Pribilof Islands, unless specialized skills are needed for an activity, and the Secretary specifies in writing that such skills are not available through local entities and residents of the Pribilof Islands.

(e) DEFINITION.—For the purposes of this section, the term “clean up” means the planning and execution of remediation actions for lands described in subsection (a) and the redevelopment of landfills to meet statutory requirements.

(f) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated not to exceed \$10,000,000 in each of fiscal

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years 1996, 1997, and 1998 for the purposes of carrying out this section.

TITLE I

The following sums are hereby appropriated, out of any money in the Treasury not otherwise appropriated, and out of applicable corporate or other revenues, receipts, and funds, for the several departments, agencies, corporations, and other organizational units of Government for the fiscal year 1996, and for other purposes, namely:

SEC. 101. (a) Such amounts as may be necessary under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995 for continuing the following projects or activities including the costs of direct loans and loan guarantees (not otherwise specifically provided for in this Act) which were conducted in the fiscal year 1995:

All allowances paid under section 5(b) of the Peace Corps Act, 22 U.S.C. section 2504, notwithstanding section 10 of Public Law 91-672, at a rate for operations, notwithstanding any other provision of this Act, provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-295) on the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1996 (H.R. 1868), as passed by the House of Representatives on October 31, 1995;

All activities, including administrative expenses, necessary to process single-family mortgage loans and refinancing for low-income and moderate-income families funded under the Federal Housing Administration's "FHA-mutual mortgage insurance program account" and "FHA-general and special risk program account" in the Department of Housing and Urban Development at a rate for operations, notwithstanding any other provision of this Act, provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-384) on the Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (H.R. 2099), as passed by the House of Representatives on December 7, 1995;

All projects and activities directly related to the security of United States diplomatic posts and facilities abroad, notwithstanding section 15 of the State Department Basic Authorities Act of 1956 at a rate for operations, notwithstanding any other provision of this Act, provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-378) on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (H.R. 2076), as passed by the House of Representatives on December 6, 1995;

Activities funded under the account heading "Emergency food and shelter program" in the Federal Emergency Management Agency: *Provided*, That, notwithstanding any other provision of this Act, the amount made available by this Act shall not exceed \$46,000,000: *Provided further*, That not to exceed three and one-half per centum of the amount made available shall be for administrative costs;

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All retirement pay and medical benefits for Public Health Services Commissioned Officers as authorized by law, and for payments under the Retired Serviceman's Family Protection Plan and Survivor Benefit Plan and for medical care of dependents and retired personnel under the Dependent's Medical Care Act (10 U.S.C. ch. 55) and for payments pursuant to section 229(b) of the Social Security Act (42 U.S.C. 429(b)) at a rate for operations, notwithstanding any other provision of this Act, provided for in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1996 (H.R. 2127), as passed by the House of Representatives on August 4, 1995;

All projects and activities of the Federal Bureau of Investigation, Drug Enforcement Administration, Interagency Crime and Drug Enforcement, Federal Prison System, United States Attorneys, United States Marshals Service, Federal Prisoner Detention, Fees and Expenses of Witnesses, Immigration and Naturalization Service, and the Executive Office for Immigration Review, necessary for the investigation and prosecution of criminal and civil offenses; national security; the apprehension, detention and removal of illegal and criminal aliens; the incarceration, detention, and movement of Federal prisoners and detainees; and the protection of the Federal judiciary at a rate for operations, notwithstanding any other provision of this Act, provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-378) on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (H.R. 2076), as passed by the House of Representatives on December 6, 1995;

All projects and activities of the Judiciary to the extent and in the manner and at a rate for operations, notwithstanding any other provision of this Act, provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-378) on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (H.R. 2076), as passed by the House of Representatives on December 6, 1995;

All projects and activities necessary to provide for the expenses of State surveys and certifications under the account heading "Program Management" under the Health Care Financing Administration in the Department of Health and Human Services;

Trade adjustment assistance benefits and North American Free Trade Act benefits funded under the account heading "Federal Unemployment Benefits and Allowances" under the Employment and Training Administration in the Department of Labor;

Payments to the Federal Hospital Insurance and the Federal Supplementary Medical Insurance Trust Funds under the account heading "Payments to Health Care Trust Funds" under the Health Care Financing Administration in the Department of Health and Human Services;

All projects and activities necessary to provide for the expenses of Medicare contractors under title XVIII of the Social Security Act under the account heading "Program Management"

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under the Health Care Financing Administration in the Department of Health and Human Services;

All projects and activities funded under the account heading "Grants to States for Medicaid" under the Health Care Financing Administration in the Department of Health and Human Services;

All projects and activities of the National Institutes of Health in the Department of Health and Human Services at a rate for operations, notwithstanding any other provision of this Act, provided for in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1996 (H.R. 2127), as passed by the House of Representatives on August 4, 1995;

All projects and activities necessary to carry out the section 7(a) General Business Loan Guaranty Program and the section 504 Certified Development Company Program, as authorized by law, under the Small Business Administration at a rate for operations, notwithstanding any other provision of this Act, provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-378) on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (H.R. 2076), as passed by the House of Representatives on December 6, 1995;

All projects and activities funded under the account heading "Surety Bond Guarantees Revolving Fund" under the Small Business Administration at a rate for operations, notwithstanding any other provision of this Act, provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-378) on the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1996 (H.R. 2076), as passed by the House of Representatives on December 6, 1995;

All projects and activities necessary to accommodate visitors and to provide for visitors services on the public lands managed by the Bureau of Land Management at a rate for operations, notwithstanding any other provision of this Act, provided for in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-402) on the Department of the Interior and Related Agencies Appropriations Act, 1996 (H.R. 1977), as passed by the House of Representatives on December 13, 1995;

All projects and activities funded under the account heading "Disease Control, Research, and Training" under the Centers for Disease Control and Prevention in the Department of Health and Human Services at a rate for operations, notwithstanding any other provision of this Act, not to exceed an annual rate for new obligational authority of \$2,114,693,000;

All Self-Determination and Self-Governance projects and activities of tribes or tribal organizations (as that term is defined in Public Law 93-638) that are authorized by Public Law 93-638 under the account heading "Operation of Indian Programs" under the Bureau of Indian Affairs in the Department of the Interior or under the account heading "Indian Health Services" under the Indian Health Service in the Department of Health and Human Services at a rate for operations, notwithstanding any other provision of this Act, provided for

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in the conference report and joint explanatory statement of the Committee of Conference (House Report 104-402) on the Department of the Interior and Related Agencies Appropriations Act, 1996 (H.R. 1977), as passed by the House of Representatives on December 13, 1995;

All projects and activities necessary to provide for the expenses of the Kendall Demonstration Elementary School and the Model Secondary School for the Deaf under the account heading "Gallaudet University" in the Department of Education;

Payments for benefits and interest on advances, together with expenses of operation and administration, under the account heading "Black Lung Disability Trust Fund" under the Employment Standards Administration in the Department of Labor; and

Payments for benefits, together with expenses of operation and administration, under the account heading "Special Benefits for Disabled Coal Miners" in the Social Security Administration:

Provided, That whenever the amount which would be made available or the authority which would be granted under an Act which included funding for fiscal year 1996 for the projects and activities listed in this section is greater than that which would be available or granted under current operations, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate.

(b) Whenever the amount which would be made available or the authority which would be granted under the Act which included funding for fiscal year 1996 for the projects and activities listed in this section as passed by the House as of the date of enactment of this Act, is different from that which would be available or granted under such Act as passed by the Senate as of the date of enactment of this Act, the pertinent project or activity shall be continued at a rate for operations not exceeding the current rate or the rate permitted by the action of the House or the Senate, whichever is lower, under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

(c) Whenever an Act which included funding for fiscal year 1996 for the projects and activities listed in this section has been passed by only the House or only the Senate as of the date of enactment of this Act, the pertinent project or activity shall be continued under the appropriation, fund, or authority granted by the one House at a rate for operations not exceeding the current rate or the rate permitted by the action of the one House, whichever is lower, and under the authority and conditions provided in the applicable appropriations Act for the fiscal year 1995.

SEC. 102. Appropriations made by section 101 shall be available to the extent and in the manner which would be provided by the pertinent appropriations Act.

SEC. 103. No appropriation or funds made available or authority granted pursuant to section 101 shall be used to initiate or resume any project or activity for which appropriations, funds, or other authority were not available during the fiscal year 1995.

SEC. 104. No provision which is included in the appropriations Act enumerated in section 101 but which was not included in the applicable appropriations Act for fiscal year 1995 and which

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by its terms is applicable to more than one appropriation, fund, or authority shall be applicable to any appropriation, fund, or authority provided in this Act.

SEC. 105. Appropriations made and authority granted pursuant to this title of this Act shall cover all obligations or expenditures incurred for any program, project, or activity during the period for which funds or authority for such project or activity are available under this Act.

SEC. 106. Unless otherwise provided for in this title of this Act or in the applicable appropriations Act, appropriations and funds made available and authority granted pursuant to this title of this Act shall be available until (a) enactment into law of an appropriation for any project or activity provided for in this title of this Act, or (b) the enactment into law of the applicable appropriations Act by both Houses without any provision for such project or activity, or (c) ~~September 30, 1996~~, whichever first occurs.

SEC. 107. Expenditures made pursuant to this title of this Act shall be charged to the applicable appropriation, fund, or authorization whenever a bill in which such applicable appropriation, fund, or authorization is contained is enacted into law.

SEC. 108. No provision in the appropriations Act for the fiscal year 1996 referred to in section 101 of this Act that makes the availability of any appropriation provided therein dependent upon the enactment of additional authorizing or other legislation shall be effective before the date set forth in section 106(c) of this Act.

SEC. 109. Appropriations and funds made available by or authority granted pursuant to this title of this Act may be used without regard to the time limitations for submission and approval of apportionments set forth in section 1513 of title 31, United States Code, but nothing herein shall be construed to waive any other provision of law governing the apportionment of funds.

SEC. 110. For the purposes of this title of this Act, the time covered by this title of this Act shall be considered to have begun on December 16, 1995.

TITLE II

SECTION 201. YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 1994.

(a) EXTENSION.—Section 112(b) of the Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994 (108 Stat. 4532) is amended by striking "December 31, 1995" and inserting "June 30, 1996".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as of December 31, 1995, and with the consent of Prescott, Arizona, the contract referred to in such section 112(b) is revived.

SEC. 202. SAN CARLOS APACHE TRIBE WATER RIGHTS SETTLEMENT ACT OF 1992.

(a) EXTENSION.—Section 3711(b)(1) of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (title XXXVII of Public Law 102-575) is amended by striking "December 31, 1995" and inserting "December 31, 1996".

(b) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall take effect as of December 31, 1995.

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(2) LAPSED PROVISIONS OF LAW AND CONTRACTS.—The provisions of subsections (c) and (d) of section 3704, subsections (a) and (b) of section 3705, section 3706, subsections (a)(2), (c), (d), and (f) of section 3707, subsections (b) and (c) of section 3708, and subsections (a), (b), (c), (d), (e), (g), (h), (j), and (l) of section 3710 of such Act, together with each contract entered into pursuant to any such section or subsection (with the consent of the non-Federal parties thereto), shall be effective on and after the date of enactment of this Act, subject to the December 31, 1996, deadline specified in such section 3711(b)(1), as amended by subsection (a) of this section.

Bill Emerson

Speaker of the House of Representatives

pro-temp

John W. Warner

Was President of the United States and

Acting

President of the Senate

pro-temp

APPROVED

JAN - 6 1996

William J. Clinton



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D. C. 20530

January 5, 1996

The Honorable Jack Quinn
Counsel to the President
The White House

Dear Jack:

You have asked whether Congress may make funds available to the executive branch on the condition that the President submit a budget that the Congressional Budget Office ("CBO") "scores" as being balanced. To the extent that "scoring" the President's submission entails the exercise of discretion and judgment, the constitutional doctrine of separation of powers would prohibit the CBO from being accorded such a role. Legislation permitting or requiring the CBO to exercise such discretion would transcend the limits on the constitutional authority of Congress and would empower the CBO, an agency of the legislative branch, to "exercise judgment concerning facts that affect the application of the" legislation. See Bowsher v. Synar, 478 U.S. 714, 733 (1986). Under Bowsher, such legislation would entrust CBO with part of the President's authority to execute the laws. "The structure of the Constitution does not permit Congress to execute the laws; it follows that Congress cannot grant to an [office] under its control what it does not possess." Id. at 726.

You have also asked whether the constitutional problems would be solved if Congress instead required the Clerk of the House or Secretary of the Senate to hold the resolution until the CBO certified that the President had submitted a balanced budget, at which time the resolution would be forwarded to the President for his signature. Such legislation would also be invalid. In addition to the problem noted above of assigning unconstitutional functions to the CBO, such legislation would also vary the constitutionally ordained legislative process. The Constitution creates "a single, finely wrought and exhaustively considered, procedure" for the enactment, including presentment, of legislation. INS v. Chadha, 462 U.S. 919, 951 (1983). The process you describe is unconstitutional under Chadha.

Sincerely,

A handwritten signature in black ink that reads "Walter Dellinger" followed by a stylized flourish.

Walter Dellinger
Assistant Attorney General

January 6, 1995

MEMORANDUM FOR DIRECTORS OF PERSONNEL (CPM 96-1)

FROM: ALLAN D. HEUERMAN
ASSOCIATE DIRECTOR
FOR HUMAN RESOURCES SYSTEMS

SUBJECT: Pay and Benefits for Employees Affected by
the Lapse in Appropriations

Congress has passed and the President has signed legislation authorizing the immediate return to duty in a pay status of all Federal civilian employees who have been affected by the lapse in appropriations that began on December 16, 1995. In addition, the legislation provides compensation for both excepted and furloughed employees retroactively from December 16, 1995, until the date of enactment (January 6, 1996).

The following guidance has been prepared by the Office of Personnel Management in consultation with the Office of Management and Budget. It is intended to assist affected agencies in administering pay and benefits for affected employees. As used below, the term "excepted employees" refers to employees who are excepted from a furlough because they are performing functions related to national security, protection of life or property, or the orderly suspension of agency operations.

1. Pay

All employees returning to work are deemed by this legislation to be "excepted employees" and are deemed to have returned to work at "the first regularly scheduled opportunity after December 15, 1995"--i.e., at the beginning of the next regularly scheduled tour of duty for each individual employee. From that time until January 6, 1996, all affected employees will be compensated as though they had performed work for the agency during all periods of regularly scheduled duty. Therefore--

- o Employees are entitled to receive their rate of basic pay for all periods of time during which they would have been in a pay status but for the lapse in appropriations;
- o In the case of a within-grade increase that was delayed because of time in a non-pay status for which the employee will now be compensated, the within-grade increase must be made effective on the date it was

originally due (assuming all statutory and regulatory requirements for within-grade advancement have been satisfied);

- o Employees who were regularly scheduled to perform overtime work or to perform work at night or during a period for which any other form of premium pay would otherwise be payable on a regular basis are entitled to receive overtime pay, night pay, or other premium pay as if the work had been performed;
- o Allowances, differentials, and other payments otherwise payable on a regular basis must be paid as if the employee actually continued to work; and
- o All periods of time from December 16, 1995, until January 6, 1996, during which employees would, but for the lapse in appropriations, have been in a pay status (including regularly scheduled overtime hours and periods of standby duty) must be considered "hours of work" for pay administration purposes under the Fair Labor Standards Act.

2. Excused Absences and Leave

- o Except as provided below, absences from December 16, 1995, until January 6, 1996, must be recorded as excused absences and may not be charged to any form of paid leave (i.e., annual leave, sick leave, or other paid leave), compensatory time off, or credit hours under a flexible work schedule.
- o In the case of employees who were on approved leave without pay (LWOP) during the lapse in appropriations, absences from December 16, 1995, until January 6, 1996, must continue to be charged to LWOP for the duration of the period of approved LWOP.
- o Employees who were on approved paid leave (or compensatory time off or credit hours) on the first workday after December 15, 1995, should be charged only for the approximate period of time from the beginning of each individual employee's normal workday until the time other similarly situated employees departed from work after receiving furlough notices. The remaining period of time in the employee's regularly scheduled tour of duty must be recorded as an excused absence.
- o All employees affected by the lapse in appropriations that began on December 16, 1995, must now be deemed to have been in a pay status from December 16, 1995, until January 6, 1996, and agencies must therefore

recredit any sick or annual leave that may have been deducted from an employee's leave account because the employee was considered at the time to be in a non-pay status.

3. Restoration of Forfeited Annual Leave

- o Excess annual leave (i.e., "use or lose" leave) that is not used before the beginning of the new leave year (January 7, 1996, for most employees) will be forfeited. However, forfeited annual leave that was scheduled in advance (before the deadline specified in OPM regulations) must be restored if there is an "exigency of the public business." OPM's regulations delegate to the head of each agency the authority to determine that an "exigency of the public business" existed.
- o OPM advises agencies to restore forfeited annual leave in a separate leave account to each affected employee who performed work on a day during the period from December 16, 1995, until January 6, 1996, on which annual leave had been scheduled in advance for that employee in accordance with OPM regulations. This guidance is based on the conclusion that the "exigency of the public business" in this case is the requirement to report for work in order to perform activities that were excepted at the time under the terms of the Antideficiency Act.
- o Annual leave restored because leave was forfeited as a result of the lapse in appropriations that began on December 16, 1995, must be scheduled and used not later than the end of the leave year ending 2 years after the date fixed by the agency head (or his or her designee) as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave. Because the exigency in this case ended before the beginning of leave year 1996, affected employees will have until the end of leave year 1997 to schedule and use their restored annual leave.

4. Leave for Employees Who Return to Work

- o The legislation authorizing return to work provides that all excepted employees will be covered by the normal leave policies as if no lapse in appropriations had occurred. Therefore, beginning on January 6, 1996, absences from duty must be charged to the appropriate category of paid or unpaid leave.

5. Holidays

- o Except as provided below, all employees affected by the lapse in appropriations will receive their regular holiday pay for the Christmas Day and New Year's Day holidays (and, if applicable, holiday premium pay for work performed by or scheduled for an employee during his or her normal hours of duty on one or both of these holidays, plus overtime pay for work in excess of the normal hours of duty on the holiday).
- o As indicated in paragraph 2., above, employees who were on approved leave without pay (LWOP) at any time from December 16, 1995, until January 6, 1996, must continue to be charged LWOP for the duration of the period of approved LWOP. Therefore, if such an employee was on LWOP on both the last workday before the Christmas Day or New Year's Day holiday and the first workday after the holiday, he or she will not be paid for the holiday. (This policy is consistent with the normal rules governing entitlement to pay for a holiday when an employee is on LWOP. See 56 Comp. Gen. 393 (1977).)

6. Alternative Work Schedules (AWS)

- o Each agency should have a policy specifying when flexible work schedules must be established and when they may be changed. Normally, such schedules are established in advance of the pay period involved. Under such a policy, an AWS nonworkday cannot be changed after the pay period begins.

7. Retirement Deductions and Actions

- o Retirement deductions under the Civil Service Retirement System or the Federal Employees Retirement System must be deducted from the employee's retroactive basic pay for the period from December 16, 1995, until January 6, 1996. The employing agency must also contribute to the Retirement Fund its corresponding share for the retroactive payment. The total retirement deductions and agency contributions for each employee should equal the amount that would have been withheld and contributed had the employee not been affected by the lapse in appropriations. These amounts should be remitted to OPM using the normal procedures for retroactive adjustments.
- o The period of retroactive pay is fully creditable for retirement purposes and is not considered LWOP.
- o Agencies should process retirement actions effective during the period from December 16, 1995, until January 6, 1996, as follows--

For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, agencies should make the retirement effective as of the date requested (probably December 31, 1995, or January 1-3, 1996). The retirement request may be informal (such as a letter requesting retirement) and can be either mailed or personally submitted to the agency (even if put under the door). Any additional required paperwork, such as the formal retirement application form, may be completed after the date of enactment. No time periods after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the agency.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General has issued guidance permitting retroactive personnel actions (including retirements) only under limited enumerated circumstances--i.e., "where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or

(3) has deprived the employee of a right granted by statute or regulation." (See 58 Comp. Gen. 51, at 53 (1978).) It will be up to the employing agency to determine in each case whether the Comptroller General's criteria have been met.

- 0 If any retirement application has been delayed because of the lapse in appropriations, it should be quickly processed and submitted to OPM so that OPM will be able to begin annuity payments as soon as possible.

8. **Thrift Savings Plan**

- 0 Agencies with questions concerning the Thrift Savings Plan should contact the Federal Retirement Thrift Investment Board at (202) 942-1450.

9. **Health Benefits**

- 0 Some agencies were unable to process the open season enrollments because the personnel and payroll staffs were furloughed. The enrollments and enrollment changes that the employing offices received during the open season period are effective on the first day of the first pay period beginning on or after January 1, 1996, regardless of whether they were processed.

- Some employees may be eligible to enroll or change enrollment because of an event that occurred during the period from December 16, 1995, until January 6, 1996. In cases where the effective date would normally be the first day of the first pay period following the day the employing office receives the enrollment form, agencies should be flexible about approving earlier effective dates (as if the employee had submitted the enrollment form immediately following the event).
- Health benefits deductions and contributions for each enrolled employee should equal the amount that would have been deducted and contributed had the employee not been affected by the lapse in appropriations. These amounts should be remitted to OPM using the normal procedures for retroactive adjustments.

10. Life Insurance

- Because all affected employees will be paid for the period from December 16, 1995, until January 6, 1996, life insurance deductions and contributions for each enrolled employee should equal the amount that would have been deducted and contributed had the employee not been affected by the lapse in appropriations. These amounts should be remitted to OPM using the normal procedures for retroactive adjustments.

11. Unemployment Insurance

- Employees who are paid retroactively for the period from December 16, 1995, until January 6, 1996, and who received unemployment insurance (UI) benefits for that period of unemployment will be required to repay the UI benefits they received. The procedures for repayment of UI overpayments to furloughed employees will be coordinated between the employing agency, the affected employee, and the applicable State Employment Security agency.

12. Documentation of Personnel Actions

- Agencies should not process SF 50's to document a furlough resulting from the lapse in appropriations that began on December 16, 1995, and SF 50's that were processed must be canceled using Nature of Action Code "001." Do not record the furlough with any document designated for long-term filing in the Official Personnel Folder.
- Agencies need not provide a furlough notice to an employee who did not receive a notice from December 16,

1995, until January 6, 1996.

13. OPM Contacts

- o Questions on pay and leave entitlements may be directed to the Office of Compensation Policy on (202) 606-2858.
- o Questions on health benefits, life insurance, and retirement should be directed to the Insurance Officer or Retirement Counselor of your agency. Retirement Counselors may contact the Agency Advisory Services Division on (202) 606-0788. Insurance officers may contact the Office of Insurance Programs, Insurance Policy and Information Division, on (202) 606-0191.
- o Questions on furlough procedures may be directed to the Office of Labor Relations and Workforce Performance on (202) 606-2920.
- o Questions on the documentation of personnel actions may be directed to the Office of Workforce Information on (202) 606-4415.

I. POSSIBLE WAYS TO KEEP KEY GOVERNMENT FUNCTIONS GOING

1. Declare all federal employees "excepted" under Anti-Deficiency Act.
2. Direct each agency to reexamine, in light of changed circumstances, its judgment about who is "excepted."
3. Declare functions of government unmanageable without funding, and send everyone home. (action forcing mechanism)
4. Decide Anti-deficiency act doesn't apply in these circumstances, and bring all employees back on a volunteer basis.
5. Find funding for key functions, e.g. meals on wheels. This would require an agency by agency review of available funds, including, e.g., carryover funds, as well as a legal analysis of restrictions on their use.
6. Redeploy personnel from the military and/or other agencies to perform key functions, e.g., drive meals-on-wheels trucks.
7. Call Congress back if it goes on recess.

II. ALLEVIATING BURDENS ON FURLOUGHED EMPLOYEES

1. Tap judgment fund.
2. Instruct OPM to waive or suspend any regulations governing personnel consequences of lengthy furloughs, e.g., loss of use-or-lose leave; also instruct OPM to assure continuation of health and life insurance premiums.
3. Issue directive to all agencies to suspend payment obligations of affected federal employees. Examples: direct student loans (Education); FHA Mortgages; home improvement loans; public housing rent (HUD).

**Nelson A. Díaz***General Counsel***U.S. Department of Housing and Urban Development****451 Seventh Street, S.W., Room 10214****Washington, D.C. 20410-0500****(202) 708-2244****(202) 708-3389 (Fax)**

FACSIMILE TRANSMISSION COVER SHEET

Date: January 4, 1996

To: Chris Cerf, The White House

PLEASE DELIVER IMMEDIATELY!!

Phone: 202 456 - 6229

Fax: 202 456 - 2146

Number of Pages (including cover): 17

Comments:

Enclosed are Talking Points on the impact of the Shutdown, as well as, specific FHA and Ginnie Mae relief for Federal employees.

Person Transmitting this Fax: Gwen Curry

PLEASE NOTE: The information contained in this facsimile message may be privileged and confidential and is intended only for the use of the individual or entity named above and others who have been specifically authorized to receive it. If you are not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error, or if you have questions or problems with this transmission, please call the above phone number. Thank you.



U. S. Department of Housing and Urban Development
Washington, D.C. 20410-4000

OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AFFAIRS

Press Conference
Impact of Government Shutdown on Homebuyers and Taxpayers

Thursday, January 4, 1996
Secretary Henry G. Cisneros

IMPACT ON ACTUAL AND POTENTIAL HOMEBUYERS

- Every day that the government is shut down, the hopes and dreams of hard-working Americans are put in jeopardy.
- Each day that the government is shutdown, FHA is unable to insure mortgage loans for 2,500 working families -- over two-thirds of whom are first-time homebuyers. That translates into 30,000 families potentially denied the opportunity to close on and move into their new home during the current 12 business days of the government shutdown.
- Let me make clear, this impact is traumatic even beyond these numbers. For families, the home of their dreams may be lost. People who have given their landlords notice in anticipation of a home purchase may find themselves without a place to live.
- There is a domino effect. The person who is trying to sell their home to an FHA borrower may not be able to move up to their next home.
- In another impact, FHA sells about 1,000 HUD-owned homes each week. The shutdown means these homes cannot be purchased by people pursuing their homeownership dreams -- primarily first-time, low- and moderate-income homebuyers -- and that HUD continues to incur costs holding the property and the houses remain vacant ... often a blight to the neighborhood.
- For the merchants, all the things that help make that house a home -- the furniture, appliances, wallpaper, carpets -- will remain unsold. It's a personal loss, a community loss, an economic loss.

COST TO THE TAXPAYER

- The American taxpayer is paying for the shutdown, too.

(These talking points were prepared for delivery by Secretary Henry G. Cisneros, whose actual remarks may have departed from this text.)

- Because FHA cannot actively collect payments on HUD-held notes, nor send out new bills for payments that are due, we estimate that \$5 million dollars has not been collected that would have been from the start of the shutdown to date.
- FHA cannot review applications for the program which assists FHA borrowers in danger of default. This is disastrous for borrowers who may have been able to work out their problems with a little help, but instead are falling further behind and at greater risk of foreclosure. And, on the other side of the issue, lenders must delay foreclosure. These delays increase the amount in default and the amount of the ultimate FHA claim for those loans that fall into default. The cost of these delays thus far is estimated at \$1 million, a cost that will continue to grow until the shutdown ends and the backlog is cleared.
- Approximately 20-30 high-risk lenders would have been reviewed so far during the shutdown. This means we're not catching bad loans and imposing sanctions for program violations. And, the absence of these reviews could result in lenders indemnifying FHA for as much as \$500,000 for improperly made loans.
- Unfortunately, some owners and lenders feel immune to requirements for property maintenance, physical and financial security, often making residents and borrowers often the victims of their neglect. FHA established SWAT teams to help solve physical, financial, and ownership problems. SWAT team work on more than 250 rental complexes has ground to a halt during the shutdown, and the residents suffer.
- Because FHA cannot pay claims during the shutdown, interest totaling about \$1 million has been incurred and will continue to grow until the shutdown ends and the backlog of claims is cleared.
- During the shutdown, FHA cannot make tax, assessment, and insurance payments from its escrow account of borrower's funds. Approximately \$2 million was due in December and January, producing an estimated \$200,000 in penalties, and putting FHA's secured interest at risk.
- The FHA Comptroller's office alone anticipates an additional workload of 2,500 hours to clear backlogs to date and estimates these costs at \$100,000.

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U. S. Department of Housing and Urban Development
Washington, D.C. 20410-4000

OFFICE OF THE ASSISTANT SECRETARY
FOR PUBLIC AFFAIRS

COST OF GOVERNMENT SHUTDOWN TO TAXPAYERS

FHA runs a public insurance company with \$380 billion in insurance-in-force. No private sector insurance company would ever shut down most functions temporarily as FHA has, because the costs are enormous. Examples of additional costs FHA is incurring include:

- **30,000 mortgage loans awaiting insurance.** FHA is unable to insure 2,500 mortgage loans today and each working day. FHA insurance allows lenders to make loans to homebuyers who would not qualify for conventional loans -- primarily first-time buyers and low- and moderate-income families. For these families, this can mean losing a dream home, higher costs, or at least a delay in moving into a new home.
- **More than 2,000 HUD-owned homes unsold.** FHA sells about 1,000 HUD-owned homes each week. The shutdown means these homes cannot be purchased by people pursuing their homeownership dreams -- primarily first-time, low- and moderate-income homebuyers -- and that HUD continues to incur costs as we hold the property.
- **\$5 million in payments uncollected.** FHA has not been able to seek payments on HUD-held notes, nor send out new bills for payments that are due. We estimate that \$5 million dollars has not been collected that would have been from the start of the shutdown to date.
- **Cannot crack down on bad landlords or help fix financially troubled projects.** To combat a culture in which owners and lenders felt immune to requirements, with residents and borrowers often the victims, FHA established SWAT teams to help solve physical, financial, and ownership problems. Work on more than 250 rental complexes has ground to a halt during the shutdown, including nine here in the District of Columbia, 21 in New York City, 11 in Hartford, and six in Cleveland.
- **Inability to pay claims costs \$1 million to date.** Because FHA cannot pay claims during the shutdown, interest totaling about \$1 million has been incurred and will continue to grow until the shutdown ends and the backlog of claims is cleared.

- **\$1 million lost in delayed mortgage foreclosures.** Because FHA cannot review applications for its forbearance program from defaulted FHA borrowers, lenders must delay foreclosure. These delays increase the amount in default and the amount of the ultimate FHA claim. The cost of these delays thus far is estimated at \$1 million, which will continue to grow until the shutdown ends and the backlog is cleared.
- **High-risk lenders make loans without scrutiny.** Approximately 20-30 high-risk lenders would have been reviewed so far during the shutdown. Besides deterring bad loans and imposing sanctions for program violations, the absence of these review could result in lenders indemnifying FHA for as much as \$500,000 for improperly made loans.
- **\$200,000 in interest and penalties for unmet tax payments.** FHA is unable to make payment of taxes, assessments, and insurance from its escrow accounts of borrower's funds. Approximately \$2 million was due in December and January, producing an estimated \$200,000 in penalties, and putting FHA's secured interest at risk.
- **Additional \$100,000 personnel and contractor cost for processing backlogs.** The FHA Comptroller's office alone anticipates an additional workload of 2,500 hours to clear backlogs to date and estimates these costs at \$100,000.
- **GNMA shutdown slows circulation of mortgage funds.** The shutdown prevents lenders from getting money from Wall Street to lend to first-time homebuyers and moderate-income families. Lenders get allocations of Ginnie Mae commitment authority to guarantee mortgage-backed securities sold to investors, providing lenders with fresh capital to make more loans. Many lenders are exhausting their on-hand commitment authority and Ginnie Mae will have no new authority until an Appropriations bill is passed.

THE WASHINGTON POST

THURSDAY, JANUARY 4, 1996

THE GOVERNMENT SHUTDOWN

Home Buyers Caught in the Door

Disruption of U.S. Lending Programs Ripples Through Housing Market

By Hamil R. Harris
Washington Post Staff Writer

Griffin Day, a disabled Vietnam veteran, was ready to move his family into a new four-bedroom house in Adelphi last month. The government-backed loan was approved. The contract was signed. The closing date was set.

But the former Army captain, whose hand and knee were shattered by shrapnel, is now pinned down in the cross-fire of the budget debate between President Clinton and Congress.

"I am a little disappointed, because we planned to be in the house by Christmas," said Day, 54, a Prince George's County resident.

Like thousands of families across the country, the Days are locked out because home-buying programs run by both the Department of Veterans Affairs and the Federal Housing Administration are basically closed. Day, for instance, was unable to get some VA paperwork that he needed to close on his house.

The FHA, which handles an average of 2,500 mortgage insurance applications a day, has been a mainstay for first-time home buyers with modest incomes. In most cases, the FHA doesn't make loans. Rather, the agency insures the loan against default, reducing the down payment and easing other credit terms for the borrower. Veterans Affairs, which processes an average of 1,000 loans a day, provides similar services for veterans.

Both agencies and dozens of other federal departments have been shuttered since Dec. 16 because of the budget impasse between the president and congressional Republicans.

"Clearly, there are thousands of people being affected by the government shutdown," said Sara Rosen, special assistant to the FHA commissioner. "Some people may not be able to close FHA loans . . . and some are unable to get loan forbearances."

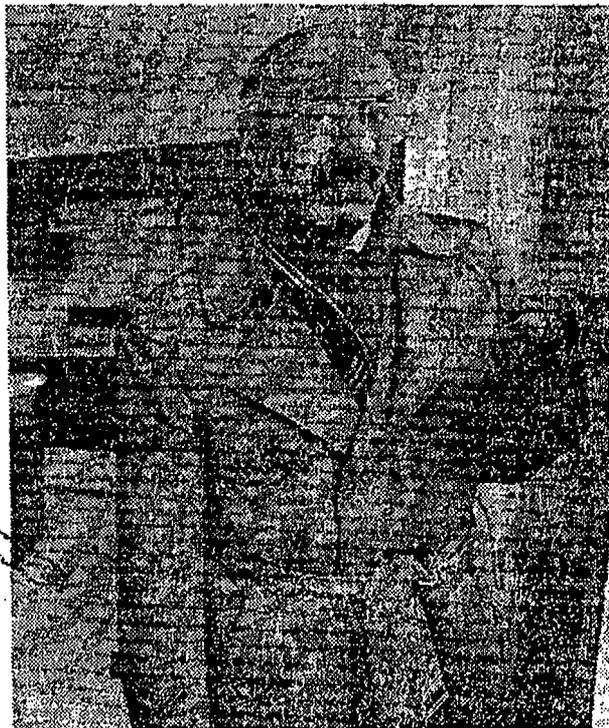
Fannie Mae, the largest source of home mortgage money in the country, announced yesterday that it was establishing temporary guidelines for lenders to help government workers who are having trouble making their mortgage payments. Borrowers can call 1-800-7FANNIE for information.

Virgil Newkirk wanted to refinance the \$80,000 FHA loan on his house in Capitol Heights. His wife delivered their fifth child six months ago, and Newkirk, 38, needs extra cash because his wife isn't working.

"I was really looking forward to making the closing date and lowering my monthly payments," Newkirk said.

Instead, on Dec. 20, the day he was supposed to get the loan, he got a telephone call notifying him that the FHA was closed.

"Every penny helps," said Newkirk, a program manager.



BY JUAN ARIAS—THE WASHINGTON POST

Griffin Day's purchase of a house in Adelphi has been delayed by the shutdown of Veterans Affairs Department programs that help veterans buy homes.

market underserved by the private sector, which is not in a position to take the risk associated with these loans."

Day applied for a loan through a VA program that serves about 400 veterans nationwide a year. But VA officials said many more people are affected by the disruption of other home loan programs.

An agency program that was providing help to 102,000 veterans who are delinquent on their mortgages has been cut back significantly during the shutdown, said Keith Pedigo, director of the VA Loan Guarantee Service.

"I have been inundated with telephone calls from veterans who have not been able to get their loans processed or have concerns about foreclosures of their VA loans," Pedigo said. "We try to assist as many as we can, but until the VA reopens we are limited in the assistance that it can provide."

Pedigo said Veterans Affairs approved 11,726 home loans in the Washington area in fiscal 1995, averaging about \$137,400 a loan.

In the Washington area, families can take out FHA mortgages of as much as \$152,250 with a down payment of only 3 percent of the price of the house. Conventional

"Every penny helps," said Newkirk, a program manager at an Arlington company that employs disabled people. "The decision-makers are not taking into consideration the guys down here who are really struggling to make it every day. They have got to look out for the people a little bit more."

Rob Mercer, Greenbelt branch manager for Columbia National Mortgage Co., said, "We are seriously affected, because in Prince George's County, the majority of our home buyers are first-time home buyers and the majority of our loans are government-insured loans."

"We are steering people toward conventional loans, but conventional loans are for the better borrower," Mercer said. "In a conventional loan, you have to put down more money."

Brian Chappelle, vice president of Mortgage Bankers Association of America, said the FHA plays a vital role in the housing industry. "The agency serves a segment of the

of only 3 percent of the price of the house. Conventional loans require people to put down greater amounts.

The FHA's Rosen said most large lenders are not affected by the shutdown as much as smaller lenders because they still can obtain by computer the information needed to close some loans.

But Michael Nester, of CTX Mortgage in Fairfax, said big companies are affected, as well, because FHA and VA computer transactions often have problems, and there is a need to talk to someone.

"This is creating a consumer nightmare," said Nester, who tried for three days to get a VA appraiser through the agency's on-line system. "They assigned us an appraiser not licensed in the State of Maryland. We went back into the system and the same thing happened again."

"Trying to do things by computer is great when things are going well," Nester said. "My business is off because none of us get paid until the borrowers go to settlement."



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
THE SECRETARY
WASHINGTON, D.C. 20410-0001

Honorable Rick Lazio
Chairman, Subcommittee on Housing and
Community Opportunity
Committee on Banking and Financial Services
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Lazio:

Thank you for your letter of December 28, 1995, regarding the impact of the budget impasse on Federal employees and contractors. As you note in your letter, the Department is greatly concerned about the negative impact the shutdown is having on its employees and contractors.

With regards to providing assistance to the affected employees and contractors, the Department has already undertaken steps to implement forbearance relief as it does in similar emergency situations. Specifically, Ginnie Mae has issued an All Participants Memorandum 96-1 (APM) that provides low interest rate loan assistance to any issuer of mortgage-backed securities that has a significant number of mortgagors (both Federal employees and contractors) affected by the shutdown. Ginnie Mae will lend to mortgagees an amount sufficient to cover the delinquent principal and interest due from the affected mortgagors that must be passed on to securities holders. This loan reduces the burden on the issuer to pass through uncollected principal and interest payments to securities holders that the issuer would otherwise be required to pay from its own funds. This relief, coupled with FHA's request to lenders to forebear on delinquent mortgagors, should ease the situation significantly for both affected mortgagors and mortgagees. A copy of Ginnie Mae's APM is enclosed for your information. Also, we have enclosed a copy of the FHA mortgagee letter that will provide this important relief.

The Department appreciates your concern and request, and is hopeful that the budget situation will be resolved soon, so as to minimize the negative impacts on all homeowners, and our own Federal employees and contractors.

Sincerely,

A handwritten signature in dark ink, appearing to read "Henry G. Cisneros".

Henry G. Cisneros

Enclosures



U. S. Department of Housing and Urban Development
Washington, D.C. 20410-8000

January 4, 1996

OFFICE OF THE ASSISTANT SECRETARY
FOR HOUSING-FEDERAL HOUSING COMMISSIONER

MORTGAGEE LETTER 96-1

TO: ALL APPROVED MORTGAGEES

ATTENTION: SERVICING MANAGERS (SINGLE FAMILY)

SUBJECT: Mortgagors Affected by the Federal Budget Impasse

The Department is encouraging all approved mortgagees servicing insured mortgages to provide relief to mortgagors who have been affected by the budget impasse. Many individuals will experience substantial economic hardships due to the absence of an approved federal budget or a continuing resolution. In this regard, the Department strongly encourages the following servicing actions to be used:

- Special written forbearance agreement which can result in reduced payments,
- Waiving all late charges beginning with the January 1995 installment,
- Suspension of reporting delinquencies to credit bureaus.

Mortgagees should follow outstanding instructions with regard to the processing of assignment requests. Mortgagors with FHA insured mortgages must call or write the local HUD office within 15 days upon receipt of the required "Second Notice to Mortgagor" (ref. HUD Handbook 4530.2, Mortgage Assignment and Processing Secretary Held Servicing). HUD's reply to these requests cannot be prepared and sent to mortgagors until after the Department reopens. Accordingly, foreclosure should not be pursued in such situations until HUD becomes operational, and the mortgagor receives a HUD determination.

Ginnie Mae approved issuers should review Ginnie Mae All Participants Letters 96-1, dated January 2, 1996.

Your cooperation, understanding and patience regarding this matter are certainly appreciated.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Nicolas P. Retsinas".

Nicolas P. Retsinas
Assistant Secretary for Housing-
Federal Housing Commissioner



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D.C. 20410

PRESIDENT, GOVERNMENT NATIONAL
MORTGAGE ASSOCIATION

JAN - 2 1996

96-1

MEMORANDUM FOR: All Participants in the Government National
Mortgage Association ("Ginnie Mae")
Mortgage-Backed Securities Program

FROM: 
Kevin G. Chavers, President, T

SUBJECT: Forbearance for Loans in Areas Affected by the
Federal Budget Impasse (Budget Impasse)

In an effort to minimize the economic hardship for those people affected by the federal budget impasse, Ginnie Mae encourages all single-family, manufactured housing, and multifamily Ginnie Mae issuers to provide as much forbearance as possible to mortgagors affected by the absence of an approved federal budget or continuing resolution. Ginnie Mae realizes that with the interruption of payrolls, stop work orders to government contractors, and the temporary loss of jobs, many individuals will experience severe economic and personal hardships. Ginnie Mae is prepared to assist issuers that hold a significant proportion of their mortgage loans in areas with high concentrations of federal employees and government contractors in making their Ginnie Mae pass-throughs.

For the months of January, February, and March 1996, Ginnie Mae will assist issuers with pass-throughs if the issuer has more than five percent (5%) of its Ginnie Mae loan portfolio affected by the budget impasse. However, Ginnie Mae should be asked to provide assistance as a "last resort". Those issuers who have a significant number of mortgagors unable to make their loan payments because of the budget impasse, and who, as issuers, cannot obtain private market financing to cover the delinquencies, will be eligible for Ginnie Mae assistance under the following conditions:

A. The issuer will compute the allowable eligible assistance in the following fashion:

1. The issuer will compute its advances needed for the January, February, and March pass-throughs respectively, for loans affected by the budget impasse ("Eligible Loans"). The issuer must demonstrate to Ginnie Mae's sole satisfaction that

more than five percent (5%) of its portfolio of loans is affected by the budget impasse. Issuers should contact their Ginnie Mae account executive to review the details of their case prior to submission of a request;

2. The issuer will subtract the November 1995 advances that it made with respect to the Eligible Loans. Ginnie Mae considers the November advances to be the base level of advances not related to the budget impasse, and therefore are not eligible for assistance under this announcement; and

3. The difference resulting from steps 1 and 2 above will be eligible for Ginnie Mae advance assistance ("Eligible Advances").

B. For each month that assistance is requested, the issuer will sign and submit the attached Request for Budget Impasse Relief ("Request"), and Supervisory Agreement (two copies) to Ginnie Mae at least three business days prior to the month for which assistance is requested;

C. Ginnie Mae will review the Request and, if appropriate, will execute the Supervisory Agreements, and return one copy to the issuer;

D. The attached Supervisory Agreement obligates the issuer to repay all Eligible Advances with interest;

E. Ginnie Mae will wire Eligible Advances directly into the issuer's Principal and Interest custodial account(s) on January 12, 1996, February 14, 1996, and March 14, 1996, as appropriate, to assure that the issuer can properly cover checks, ACH payments or wire transfers to investors on Ginnie Mae I pass-through dates;

F. A similar procedure will be followed for Ginnie Mae II pass-throughs, with issuers receiving wire transfers on January 19, 1996, February 19, 1996, and March 19, 1996.

As noted above, issuers subject to these Supervisory Agreements with Ginnie Mae will be obligated to repay Eligible Advances to Ginnie Mae on the expiration of the 90-day term, which will be in April, May, and June as appropriate. While these repayment dates and the associated Supervisory Agreements are not expected to be extended, the President of Ginnie Mae may do so in his sole discretion.

Issuers will not be viewed negatively for availing themselves of this emergency assistance, so long as they comply with their Supervisory Agreements.

In addition to the Ginnie Mae advance assistance, Ginnie Mae will exclude mortgages on properties affected by the budget impasse from calculations of delinquency ratios (DQ3, DQ2 and DQP). These thresholds are used to approve commitments, assign pool numbers, and allow transfers of issuer responsibility. Through Ginnie Mae's Mortgage-Backed Security Information System, Ginnie Mae, and their agent, Coopers & Lybrand, will work with issuers to track the affected mortgages.

An issuer requesting assistance pursuant to this All Participants Memorandum should submit two (2) copies of the Supervisory Agreement, properly executed by an authorized corporate official, Request for Budget Impasse Relief form, and Wire Instructions form by express mail to:

George S. Anderson
Vice President for Customer Service
Government National Mortgage Association
451 7th Street, SW, Room 6204
Washington, DC 20410

REQUEST FOR BUDGET IMPASSE RELIEF

ISSUER NAME _____

ISSUER NUMBER _____

This request is submitted pursuant to Section 8.02 of the Guaranty Agreements and/or the Contractual Agreements (under Section 15-2(b) of the Ginnie Mae II Guide) previously entered into between _____ (the "Issuer"), and the Government National Mortgage Association ("Ginnie Mae"), and pursuant to Ginnie Mae All Participants Memorandum 96-1.

The Issuer hereby requests Advances for Eligible Loans (as defined in Ginnie Mae All Participants Memorandum 96-1), and calculates them as follows:

	<u>GNMA I</u>	<u>GNMA II</u>
Necessary Advance on Eligible Loans for Current Month	_____	_____
Less, Necessary Advance on Eligible Loans for Month of December 1995	- _____	- _____
Eligible Advance (as defined in All Participants Memorandum 96-1)	_____	_____

The Issuer has attached to this form its wire instructions.

ATTESTATION: The undersigned certifies that the information submitted on this temporary form is accurate, and is prepared in accordance with Ginnie Mae requirements (see All Participants Memorandum No. 96-1). Undersigned acknowledges that the information contained herein is intended to be relied upon by Ginnie Mae, and is subject to the sanctions of Title 18 USC, sections 1001 and 1010.

Date

Authorized Signature

Title

WIRE INSTRUCTIONS TO TRANSMIT FUNDS TO ISSUER FROM GINNIE MAE

	<u>GNMA I</u>	<u>GNMA II</u>
AMOUNT	\$ _____	\$ _____
BANK NAME	_____	
BANK ADDRESS	_____	
	street	

	city, state, zip code	
ABA NUMBER	_____	
FOR CREDIT TO (ISSUER NAME)	_____	
ACCOUNT NUMBER	_____	
PURPOSE	ADVANCE REQUEST	

PLEASE SUBMIT THIS WIRE INSTRUCTIONS FORM, REQUEST FOR DISASTER ASSISTANCE FORM, AND TWO (2) COPIES OF THE SUPERVISORY AGREEMENT EXECUTED BY AUTHORIZED CORPORATE OFFICIAL, BY EXPRESS MAIL TO:

George S. Anderson
Vice President for Customer Service
Government National Mortgage Association
Room 6204
451 7th Street, SW
Washington, DC 20410

THE GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

Instructions to Remit Funds to Ginnie Mae Via Electronic Funds Transfer.

To remit funds to Ginnie Mae's Treasury Account Via Electronic Funds Wire transfer, please use the following format:
(NOTE: This is not a commercial bank.)

RECEIVING INSTITUTION

ABA NO: 021030004\$X,XXX.XX
TREAS NYC/CTR/
BNF=/AC-8235 OBI=
(Use this & next line for details
supporting remittance)

If you have any questions concerning instructions for wire transferring funds to Ginnie Mae, please call Mr. Victor Correa of the Treasurer's Office at telephone number (202) 708-2257.

SUPERVISORY AGREEMENT

This Supervisory Agreement ("Agreement") is made and entered into as of _____, by and between _____ (hereinafter referred to as "Issuer"), and the Government National Mortgage Association, a body corporate organized and existing under the laws of the United States within the Department of Housing and Urban Development (hereinafter referred to as "Ginnie Mae"):

WHEREAS, Issuer has been the issuer of Mortgage-Backed Securities based on mortgage pools listed on the enclosed Exhibit A (the "Mortgage Pools"), guaranteed by Ginnie Mae pursuant to the Guaranty Agreements or Schedules of Subscribers and Ginnie Mae II Contractual Agreements ("Contractual Agreements") entered into between Ginnie Mae and Issuer, such Guaranty Agreements and Contractual Agreements being incorporated herein by reference; and

WHEREAS, since October 1, 1995, the federal government has been unable to execute a budget or increase the federal debt ceiling that, among other things, has required the shutdown of the federal government, and issuance of stop work orders to federal contractors; and

WHEREAS, as a direct result of the effects of the budget impasse, Issuer is unable to make the full payments due to the holders of the Mortgage-Backed Securities backed by the Mortgage Pools, and has requested that Ginnie Mae advance certain payments to security holders (Payments) in accordance with the terms of All Participants Memorandum No. 96-1 (Memorandum).

NOW THEREFORE, the parties hereto mutually undertake and agree as follows:

1. Issuer has submitted a written request to Ginnie Mae to advance Payments for the month of _____, in accordance with the instructions set forth in the Memorandum. Upon receipt of such request, and in accordance with the Memorandum, Ginnie Mae has wire transferred funds directly into Issuer's Principal and Interest Custodial Account to assure full and timely Payment to security holders. Ginnie Mae has made the Payment in order to comply with its guarantee obligations to the security holders.

2. Issuer acknowledges that failure to make the full payment due to the security holders is an event of default under its Guaranty Agreements and Contractual Agreements with Ginnie Mae, and that upon such failure Ginnie Mae is entitled to complete the extinguishment of any redemption, equitable, legal or other right, title and interest of Issuer in the Mortgage Pools (hereinafter referred to as "Termination of Issuer Status"). The parties have conferred in an effort to remedy and

correct the default pursuant to the authority of 12 USC § 1721 et seq., Section 8.04 of the referenced Guaranty Agreements, and Section 15-3a(1) of the Ginnie Mae Mortgage-Backed Securities Guide 5500.2 ("Guide II").

3. Ginnie Mae has advanced the Payment on behalf of Issuer on the following terms and conditions. The Payment shall be repaid in full to Ginnie Mae, together with interest on the Payment at the annual rate of _____, within ninety (90) days of the date of Ginnie Mae's advance of the Payment. Repayment shall be made by wire transfer to Ginnie Mae in accordance with the wire instructions attached hereto. Timely repayment of the Payment plus accrued interest in accordance with the terms set forth herein shall be deemed a cure of the default under the Issuer's Guaranty Agreements and Contractual Agreements with Ginnie Mae. Failure to repay the Payment and accrued interest in accordance with the terms set forth herein shall constitute an event of default under this Supervisory Agreement, and a further default under the Guaranty Agreements and Contractual Agreements between Issuer and Ginnie Mae, and shall constitute grounds for Ginnie Mae to complete the Termination of Issuer Status.

4. For the term of this Agreement, Issuer shall continue as a Ginnie Mae issuer in accordance with the Ginnie Mae Mortgage-Backed Securities Guide, 5500.1 (Guide I) and 5500.2 (Guide II) (hereinafter collectively referred to as the "Guide"), and the Guaranty Agreements and Contractual Agreements, including, but not limited to, the responsibilities referenced below. At any time until this Agreement expires pursuant to Paragraph 7, Ginnie Mae may complete the Termination of Issuer Status if Issuer fails to perform properly its responsibilities pursuant to the Guides, Guaranty Agreements and Contractual Agreements, except as provided herein. Upon expiration of this Agreement, if (i) Issuer has fully complied with the terms of this Agreement, the Guides and the Guaranty Agreements and Contractual Agreements between Issuer and Ginnie Mae, and (ii) Ginnie Mae has not effected a Termination of Issuer Status, the Issuer shall be deemed restored to the status Issuer held immediately prior to the actions giving rise to this Agreement.

5. To the extent that the terms and conditions of the Guide, Guaranty Agreements or Contractual Agreements conflict with or are inconsistent with the terms of this Agreement, the terms and conditions of this Agreement shall govern.

6. Issuer shall not assign or delegate any of its rights or responsibilities under this Agreement without the prior written consent of Ginnie Mae.

7. This Agreement shall continue in effect until the earlier to occur of one of the following: (a) Issuer has repaid the Payment to Ginnie Mae; or (b) any date specified by Ginnie

Mae at its convenience after delivery of written notice to Issuer from Ginnie Mae that this Agreement shall be terminated, and that Ginnie Mae will complete the Termination of Issuer Status. However, if this Agreement terminates pursuant to (b) above, Issuer's obligation to repay the Payment to Ginnie Mae shall survive until such obligation is satisfied in full.

8. Issuer shall meet the requirements of Section 2-2(g) of the Ginnie Mae I Guide, and Section 3-1(g) of the Ginnie Mae II Guide with regard to fidelity and insurance coverage.

9. Nothing in this Agreement shall constitute a waiver or release by Ginnie Mae of any claim or any right to proceed or to recover any damages from Issuer relating to any existing or future facts or circumstances.

10. Issuer agrees to execute all documents and undertake all actions reasonably necessary to effect the intent and terms of this Agreement.

11. This Agreement may be modified or amended only by written agreement of the parties hereto.

GOVERNMENT NATIONAL MORTGAGE ASSOCIATION

By: _____

Name: Kevin G. Chavers

Title: President

Date: _____

(Issuer)

By: _____

Name: _____

Title: _____

Date: _____

ESCROW AGREEMENT

DRAFT

THIS ESCROW AGREEMENT, dated as of _____ by WILLIAM JEFFERSON CLINTON of 1600 Pennsylvania Avenue, Washington, D.C. ("Pledgor"), and BOATMEN'S NATIONAL BANK OF ARKANSAS, Post Office Box 1681, Little Rock, Arkansas 72203-1681 ("Escrow Agent").

WITNESSETH:

WHEREAS, the Pledgor wishes to decline the benefit of his usual compensation as President of the United States during such time as Federal workers are furloughed or otherwise serving without compensation as a result of disagreement over the Federal budget; and

WHEREAS, the Escrow Agent has agreed to hold the Pledgor's compensation in escrow in accordance with the terms of this Escrow Agreement;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants herein set forth, the parties hereto agree as follows:

1. Deposit of Compensation in Escrow. Pledgor authorizes and directs Escrow Agent to segregate and hold in a separate account, in accordance with the terms hereunder, an amount equal to the sum of all Federal compensation payments that have directly deposited into Pledgor's checking account with Escrow Agent since [December 15, 1995] and to segregate and hold in escrow all compensation payments subsequent hereto until the

receipt of notice pursuant to paragraph 2 of the release of escrow funds or the termination of this agreement.

2. Release of Funds in Escrow. The Escrow Agent shall release the funds from escrow only as provided in this Paragraph 2, or as directed by a court of competent jurisdiction.

(a) The Escrow Agent shall release and distribute the escrow funds to the Pledgor or to his checking account promptly upon receipt of written notice from David E. Kendall, Esquire that Federal workers have resumed employment with full compensation.

(b) This Escrow Agreement may be terminated by written notice of termination from David E. Kendall, Esquire, whereupon any remaining funds in escrow shall be promptly distributed to the Pledgor or to his checking account.

3. Resignation of Escrow Agent. The Escrow Agent may resign at any time by transferring the funds held in escrow to another agent who agrees in writing to accept and carry out the duties and obligations of this Escrow Agreement. The Escrow Agent's resignation shall take effect upon acceptance of the substitution by the Pledgor. The Pledger shall be liable to pay the reasonable fees and expenses of the Escrow Agent and any substitute Escrow Agent.

4. Duties of Escrow Agent; Indemnification.

(a) The parties hereto agree that the sole duty and responsibility of the Escrow Agent, or any substitute Escrow Agent, shall be to hold the funds in escrow in accordance with

the terms of this Escrow Agreement; and upon release of the funds and termination of this Agreement pursuant to Paragraph 2 herein, the Escrow Agent shall be released from any obligation under this Agreement.

(b) In the event of any dispute between the parties arising pursuant to this Agreement or as to the right of any of the parties in or to the funds, it is agreed that, notwithstanding anything to the contrary in this Escrow Agreement, the Escrow Agent shall have the right to hold and retain all or any part of the funds until such dispute is settled or finally determined by litigation, arbitration, or otherwise.

(c) The Escrow Agent shall be protected in relying upon the accuracy, acting in reliance upon the contents, and assuming the genuineness of any notice, demand, certificate, or other document which is given to the Escrow Agent pursuant to this Escrow Agreement, without the necessity of the Escrow Agent verifying the truth or accuracy of any such notice, demand, certificate, instrument, or other document.

(d) The Escrow Agent shall be indemnified by the Pledgor against any liabilities, damages, losses, costs, or expenses incurred by, or claims or charges made against, the Escrow Agent (including counsel fees and court costs) by reason of the Escrow Agent's acting or failing to act in connection with any of the matters contemplated by this Escrow Agreement or in carrying out the terms of this Escrow Agreement, except as a result of the Escrow Agent's negligence or willful misconduct.

5. Miscellaneous.

(a) All notices, certifications, and other documents shall be in writing and shall be deemed given when delivered, sent by electronic facsimile, or mailed, postage prepaid, by certified or registered mail, return receipt requested: if to the Pledgor, c/o DAVID E. KENDALL, Williams & Connolly, 725 Twelfth Street, N.W., Washington, D.C. 20005-5901, Fax No. (202) 434-5029); and if to the Escrow Agent, Boatmen's National Bank of Arkansas, Attn: _____, Post Office Box 1681, Little Rock, Arkansas 72203-1681, Fax No. () _____. Any party may change the address to which notice is to be delivered or mailed by notice of such change given to the other parties in the manner herein set forth.

(b) This Escrow Agreement may not be changed, terminated, or modified orally or in any manner other than by an instrument in writing signed by all the parties hereto.

(c) This Escrow Agreement shall be construed in accordance with the laws of the state of Arkansas.

(d) This Escrow Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective representatives, successors, and assigns.

(e) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior negotiations.

IN WITNESS WHEREOF, the parties have caused this Escrow Agreement to be signed and ensealed as of the day and year first written above.

PLEDGOR

_____ (SEAL)

ESCROW AGENT

BOATMEN'S NATIONAL BANK OF ARKANSAS

By: _____ (SEAL)

Title: _____

Citation	Rank(R)	Database	Mode
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11/15/95 News & Observer (Raleigh NC) A25			
1995 WL 2692719			

To: Elena

The News & Observer Raleigh, NC
Copyright 1995

Wednesday, November 15, 1995

Editorial/Opinion

Is this train wreck constitutional?
George B. Tindall

CHAPEL HILL - They keep talking about a train wreck so grievous as to make the feds default on the public debt. The simplest way to achieve that (if one thinks that an achievement) would be just not to raise the debt limit.

Don't they know they can't do that, at least not if they mean to honor the Constitution?

Securely hidden away, right out in plain view, the Fourteenth Amendment, Section Four, states: "The validity of the public debt of the United States . . . shall not be questioned."

The rest of Section Four annulled the Confederate debt, or literally, any debt "incurred in aid of insurrection or rebellion." That part would seem to reinforce the other part. In contrast to the rebel debt, the union debt is to be paid when due. Uncle Sam's bond is as good as his word, isn't it?

The Fourteenth Amendment entered the Constitution the last time a Republican majority got itself into the headlong mode and staged a revolution. In 1868 Republicans were still into liberating slaves and preserving the union, so the Fourteenth Amendment seemed to be mainly about human rights and equal protection of the laws. Nobody much noticed then that it was also about corporate profits and bond accounts.

And since Uncle Sam never formed a habit of defaulting, he offered little chance for the Supreme Court to publish opinions on the amendment's Section Four. All the same, the court eventually did bring forth a real doozie.

That was Perry vs. United States (1935), one of four Gold Cases, as they were tagged. If you don't remember them, it is no wonder. They are hardly a hot topic with legal scholars either, and for good reason. As one scholar put it in the Harvard Law Review at the time: "Few more baffling pronouncements, it is fair to say, have ever issued from the United States Supreme Court."

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The plaintiffs all claimed that debts were being paid on the cheap because President Franklin Roosevelt had recently cut the gold content of the dollar. Three plaintiffs sued private corporations. Perry sued the government. He sought to collect \$1.66 in the new currency for every dollar he had put into Liberty Bonds. And in the end the court issued some Delphic utterances toying with the idea that the government had indeed questioned the validity of the debt, but that, in spite of everything, the plaintiff could not be shown to have suffered real damage. In regulating the currency Congress had made it illegal for him to have gold in his possession as the bond had promised.

A Philadelphia lawyer might be able to unravel the court's reasoning, but I suspect that the justices simply didn't want to confront a united president and Congress with an extra 66 cents on every dollar due. The scholar quoted above said also that: "About the only thing which it is possible to say with assurance is that the plaintiff . . . did not recover."

That would seem to leave us still up in the air on construction of Section Four. But let us suppose, for instance, that at some point the Congress refuses to raise the statutory debt limit and thus leaves the Treasury in outright default. Assume further that an annoyed bondholder challenges the constitutionality of the debt-limit law. The court then rules that the debt limit violates the Fourteenth Amendment, Section Four.

Then the plot would thicken. With the debt limit overthrown, funds might be added to the exchequer through the sale of bonds, but the Constitution would still say in Article I, Section 9, that "No money shall be drawn from the Treasury, but in consequence of appropriations made by law. . ." Congress digs in its heels. Then what?

One scenario comes to mind: the administration asking Oliver North's advice on how to spend money without an appropriation. Or the court might make its point by seizing government property, as it did in *South Dakota vs. North Carolina* (1904) - or at least threatened to do before North Carolina folded. That case was just about as convoluted as Perry, too much so to pursue in detail here, but a more rousing story than you might guess.

North Carolina was one of nine former Confederate states which repudiated debts incurred during the Reconstruction era. Individual bondholders cannot sue in state courts because of the principle that a sovereign must give consent to be sued, or in federal courts because of the Eleventh Amendment. But some of the bonds were given to the state of South Dakota, which could sue.

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Maybe, in fact, in our hypothetical new case the court could just stick with the same artful dodge it used in Perry and decide that the government may have violated the Constitution, but the bondholders have no legal remedy. That way the court could in effect, if not in principle, repudiate the debt and balance the budget in one fell swoop.

But then one would have to wonder if that might not cost something in the reaction of financial markets by the time we got to that point.

Maybe it would be cheaper, after all, just to (Read My Lips !) "enhance new revenues"! But of course the economy would be in such a mess by then that nobody would have much left to tax. Except, maybe, those who sold Uncle Sam short.

###

(George B. Tindall, Kenan professor of history emeritus at UNC-Chapel Hill, is the author of "America: A Narrative History.")

----- INDEX REFERENCES -----

KEY WORDS: DEBT; US; BUDGET

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END OF DOCUMENT

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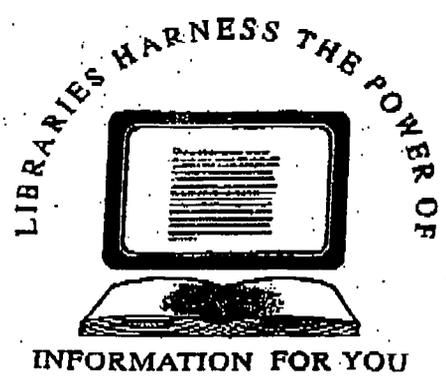
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TO: Cheryl Sweitzer

FROM: Linda Corbelli

NUMBER OF PAGES: 4
(including cover page)

COMMENTS:





U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

January 5, 1996

The Honorable Jack Quinn
Counsel to the President
The White House

Dear Jack:

You have asked whether Congress may make funds available to the executive branch on the condition that the President submit a budget that the Congressional Budget Office ("CBO") "scores" as being balanced. To the extent that "scoring" the President's submission entails the exercise of discretion and judgment, the constitutional doctrine of separation of powers would prohibit the CBO from being accorded such a role. Legislation permitting or requiring the CBO to exercise such discretion would transcend the limits on the constitutional authority of Congress and would empower the CBO, an agency of the legislative branch, to "exercise judgment concerning facts that affect the application of the" legislation. See Bowsher v. Synar, 478 U.S. 714, 733 (1986). Under Bowsher, such legislation would entrust CBO with part of the President's authority to execute the laws. "The structure of the Constitution does not permit Congress to execute the laws; it follows that Congress cannot grant to an [office] under its control what it does not possess." Id. at 726.

You have also asked whether the constitutional problems would be solved if Congress instead required the Clerk of the House or Secretary of the Senate to hold the resolution until the CBO certified that the President had submitted a balanced budget, at which time the resolution would be forwarded to the President for his signature. Such legislation would also be invalid. In addition to the problem noted above of assigning unconstitutional functions to the CBO, such legislation would also vary the constitutionally ordained legislative process. The Constitution creates "a single, finely wrought and exhaustively considered, procedure" for the enactment, including presentment, of legislation. INS v. Chadha, 462 U.S. 919, 951 (1983). The process you describe is unconstitutional under Chadha.

Sincerely,

A handwritten signature in cursive script that reads "Walter Dellinger" followed by a stylized flourish.

Walter Dellinger
Assistant Attorney General



U. S. Department of Justice

Office of Legal Counsel

Office of the
Assistant Attorney General

Washington, D.C. 20530

January 5, 1996

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Counsel to the President
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Sincerely,

Walter Dellinger
Assistant Attorney General

I. POSSIBLE WAYS TO KEEP KEY GOVERNMENT FUNCTIONS GOING

1. Declare all federal employees "excepted" under Anti-Deficiency Act.

2. Direct each agency to reexamine, in light of changed circumstances, its judgment about who is "excepted."

3. Declare functions of government unmanageable without funding, and send everyone home. (action forcing mechanism)

4. Decide Anti-deficiency act doesn't apply in these circumstances, and bring all employees back on a volunteer basis.

5. Find funding for key functions, e.g. meals on wheels. This would require an agency by agency review of available funds, including, e.g., carryover funds, as well as a legal analysis of restrictions on their use. *3 things: debt allowance, self acceptance, authority*

6. Redeploy personnel from the military and/or other agencies to perform key functions, e.g., drive meals-on-wheels trucks.

7. Call Congress back if it goes on recess. *Need OLC advice must be more than 3 days?*

II. ALLEVIATING BURDENS ON FURLOUGHED EMPLOYEES

1. Tap judgment fund.

2. Instruct OPM to waive or suspend any regulations governing personnel consequences of lengthy furloughs, e.g., loss of use-or-lose leave; also instruct OPM to assure continuation of health and life insurance premiums. *- Thrift program -*

3. Issue directive to all agencies to suspend payment obligations of affected federal employees. Examples: direct student loans (Education); FHA Mortgages; home improvement loans; public housing rent (HUD).

military jeopardized feed function

not a problem

marginal activities (not clearly vital) - detail people from other ags -

How a limit on/with contractors? but - termination in emergency avail of funds clause.

Exhort Congress to give people a break

*read
need it*

I. POSSIBLE WAYS TO KEEP KEY GOVERNMENT FUNCTIONS GOING ~~FOR THE~~ ~~PERIOD~~ ~~OF~~ ~~THE~~ ~~CRISIS~~

1. Declare all federal employees "excepted" under Anti-Deficiency Act.
2. Direct each agency to reexamine, in light of changed circumstances, its judgment about who is "excepted."
3. Declare functions of government unmanageable without funding, and send everyone home. (action forcing mechanism)
4. Decide Anti-deficiency act doesn't apply in these circumstances, and bring all employees back on a volunteer basis.
5. Find funding for key functions, e.g. meals on wheels. This would require an agency by agency review of available funds, including, e.g., carryover funds, as well as a legal analysis of restrictions on their use. *Make clear that we can't just transfer appropriated funds around.*
6. Redeploy personnel from the military and/or other agencies to perform key functions, e.g., drive meals-on-wheels trucks.
7. Call Congress back if it goes on recess.

OMB

Sweep each agency

II. ALLEVIATING BURDENS ON FURLOUGHED EMPLOYEES *delegations*

1. Tap judgment fund. *use it also to cover validly incurred*
2. Instruct OPM to waive or suspend any regulations governing personnel consequences of lengthy furloughs, e.g., loss of use-or-lose leave; also instruct OPM to assure continuation of health and life insurance premiums.
3. Issue directive to all agencies to suspend payment obligations of affected federal employees. Examples: direct student loans (Education); FHA Mortgages; home improvement loans; public housing rent (HUD).
4. Exhort creditors to *forebear* from debt collection *if* *few* *close* *on* *unpaid* *federal* *workers.*

defending people for functions

8. *gift acceptance authority - direct agency to explore*
9. *debt authority - direct agency to explore*
10. *Ask agencies to explore what can be done to extend the help employees get reasonable term loans from credit unions.*

~~Dinah~~

~~W.D. May?~~

~~5742~~

~~Tamm Cieber~~

~~366-4450~~

~~Paul W.D.H.~~

~~12.307~~

Barbara Claw 1/5/95

2nd CR - camp like opening

contingent on 7-yr budget

OMB says will violate - predicated on CBO certificatic.

→ working w/ Teresa.

Dems want something to blow this up.

Memo from WD to JQ

Has to be done quickly. By 11:00.

// Faxed to VP's Office
224-0291.

Bob Dammus 1/5/95

if a Pro submits bb plan scored by CBO

if CBO determine is key thing

CBO = GAO

Sounds like Bowsher v Sykes.



U. S. Department of Justice

Office of Legal Counsel

Office of the
Deputy Assistant Attorney General

Washington, D.C. 20530

January 3, 1996

MEMORANDUM TO:

ALAN KRECZKO
NATIONAL SECURITY COUNSEL

JUDITH MILLER
DEPARTMENT OF DEFENSE

From: Teresa Roseborough *JWR*

Attached is a draft memorandum we have prepared regarding the ability to use the military in the event of a concerted action by prison guards to stop work or to disrupt prison activities.

We would appreciate receiving your comments as soon as possible.

DRAFT - 1/2/96

MEMORANDUM FOR THE ATTORNEY GENERAL

From:

Re: Use of Armed Forces to Provide Security in Federal Prisons in Event of Shutdown-related Guard Shortage

This responds to your request for our opinion as to whether members of the Armed Forces may be used to provide necessary security in federal prisons in the event that substantial numbers of regular prison guards engage in work stoppage, simultaneous absence from their prison assignments, or interference with access to prison facilities or with prison operations or security. In the event that Armed Forces personnel may be employed in these circumstances, you have also asked what Presidential or other executive action is necessary to authorize such deployment.

We have been asked to consider these questions in light of three different hypothetical situations:

1. A situation where substantial numbers of federal prison guards simultaneously take sick leave in protest of non-payment of wages during the shutdown period.

2. A "sit-in" situation, where guards on duty at the federal prisons would engage in a protest sit-down strike during working hours.

3. A protest or picketing staged by prison guards outside the federal prison walls, resulting either in substantial absences from work or the possible interference with guards seeking to enter prison facilities to go on duty.

In all of these scenarios, the critical issue is whether the extent of absences, or the degree of interference caused by protests or stoppages, is substantial enough to pose a significant threat to the secure functioning of the federal prisons or to the safety of prison facilities, prison personnel, or prisoners. Our assessment is based on a scenario where the extent of absences and/or interference is substantial in that respect. Absent such a significant threat, it is doubtful that the various authorities for employment of Armed Forces to provide back-up security at federal prisons could be validly called into play.

1. The President's Inherent Authority to Protect Federal Property and Functions

In the event that actual or threatened absenteeism by federal prison guards is sufficiently widespread to pose a

significant threat to the functioning, safety, or security of federal prisons, we believe that the President would be authorized to employ members of the Armed Forces to maintain or restore prison safety and security until the threat has ended. Such action would be based upon the President's inherent constitutional authority to protect federal property and federal governmental functions when the need for such protection arises and cannot be met by available civilian resources and authorities. U.S. Const. art. II, § 3; In re Neagle, 135 U.S. 1, 65 (1890); In re Debs, 158 U.S. 564, 581-82 (1895); 32 C.F.R. § 215.4(c)(1)(ii). The actions of military personnel employed under these circumstances would not be subject to the restrictions of the Posse Comitatus Act, 18 U.S.C. § 1385, or those of 10 U.S.C. § 375.

The basis for this inherent authority, and the grounds for invoking it, were summarized in a memorandum issued by this office in connection with planned demonstrations that threatened to disrupt governmental functions in Washington, D.C., in 1971:

The President, as Chief Executive, may use federal troops to protect "federal functions". The principal authority for this proposition, in addition to general statements in cases such as In Re Debs, 158 U.S. 564 (1895), is a long series of J.A.G. opinions to this effect. The Office of Legal Counsel has taken this position for a period of at least several years, going back to the Pentagon demonstrations of October, 1967. Since the contemplated disruption is of access to the nation's capital, and of ingress by employees of the federal government to the federal establishments at which they work, the disruption is certainly aimed at the functioning of the federal government. Under these circumstances, troops may be used without any proclamation or Executive Order such as is required under Chapter 15 of Title 10, U.S. Code. No violence necessary as predicate.

Memorandum for the Deputy Attorney General, from William H. Rehnquist, Assistant Attorney General, Re: "May Day" (Apr. 28, 1971) (emphasis in original).¹

This inherent Presidential authority has also been traced to the Supreme Court's opinion in In re Neagle, 135 U.S. 1 (1890), involving the use of a federal marshal to protect a traveling federal judge. Citing the example of obstruction of the U.S. mails, the Court noted that "soldiers of the army" could be used to prevent such obstruction to a vital federal function pursuant

¹ The cited memorandum was subject to a claim of executive privilege when it was disclosed to the Senate Judiciary Committee in connection with the nomination of William H. Rehnquist as an Associate Justice of the Supreme Court.

to the inherent authority of the President. Id. at 65. Similarly, when the mails were obstructed during a railway strike, President Cleveland called out federal troops for the purpose of protecting federal property and "removing obstruction to the United States mails." In In re Debs, 158 U.S. 564 (1895), the Supreme Court stated as follows in upholding this action:

The strong arm of the national government may be put forth to brush away all obstructions to the freedom of interstate commerce or the transportation of the mails. If the emergency arises, the army of the Nation, and all its militia, are at the service of the Nation to compel obedience to its laws.

Id. at 582. We believe the reasoning of Neagle, Debs, and prior OLC opinions on this issue extends to a situation where the absence of substantial numbers of federal prison guards, or concerted disruptive action by or against such guards, poses a substantial threat to the functioning, safety, or security of federal prisons that cannot be satisfactorily contained by available civilian resources.

An additional issue raised by use of the Armed Forces under this inherent authority is whether it must be confined to a protective or preventive role, limited to preventing breaches of safety or security, or whether deployed military personnel could actively assume the functions otherwise performed by absent prison guards. Given the nature of a prison guard's primary duties -- i.e., the preservation of safety and security at the prisons -- we see little distinction between the two roles. To the extent that the prison guards' duties might extend to functions that are extraneous to the maintenance of prison safety and security, the performance of such activities by military personnel could exceed the limited purposes that may justify the exercise of the President's inherent authority. However, given the inherently dangerous conditions prevailing in federal prisons, we believe it would be unrealistic to classify many prison guard duties as unrelated to safety and security. Accordingly, as long as the conditions justifying deployment of Armed Forces under the inherent authority doctrine are present in the first instance, we believe that those forces could properly perform most of the essential functions otherwise performed by prison guards.

Where the employment of the Armed Forces is based upon the President's inherent authority to protect federal property and functions, no Presidential Proclamation or executive order is necessitated. The President could simply issue a directive to the Secretary of Defense, directing him to deploy and use such numbers of the Armed Forces as may be required to protect against unlawful interference with property, personnel, and functions at federal prison facilities.

2. The President's Authority under 10 U.S.C. § 332

In the event that guard absences or protests at a federal prison or prisons became sufficiently severe to satisfy the standards of 10 U.S.C. § 332, the President could invoke that specific statutory authority to deploy the Armed Forces. Where those statutory preconditions are satisfied, and where there are no considerations militating against the issuance of an emergency proclamation and executive order, we believe the provisions of section 332 should also be invoked as authority for the deployment of Armed Forces personnel in the circumstances posited.

Section 332 provides as follows:

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

This statutory authority has been invoked in a variety of circumstances, ranging from the threat to the enforcement of federal laws posed by "combinations of outlaws and criminals" in the Arizona Territory, 17 Op. Att'y Gen. 333, 334 (1882), to protection of the federal rights of black students seeking to enter formerly segregated public schools, e.g., Exec. Order No. 11,111, 28 Fed. Reg. 5709 (1963). We believe that 10 U.S.C. § 332 would also be applicable in the event that substantial numbers of federal prison guards combined to threaten the safety and security of federal prisons -- and thus to undermine the enforcement of the federal criminal laws -- through absences, obstructions, or other concerted effort.

There are two factors that would make 10 U.S.C. § 332 more difficult and complicated to employ than the above-described inherent authority in dealing with a prospective "sick-out" or other disruptive active by federal prison guards. First, invocation of this authority requires the prior issuance of a Presidential Proclamation commanding the insurgents or conspirators to disburse and retire peaceably, followed by an Executive Order directing the Secretary of Defense to deploy necessary units of the Armed Forces and/or National Guard. 10 U.S.C. § 334. Unless emergency conditions have actually developed, the issuance of such a proclamation and executive order may be considered undesirable or inflammatory.

Secondly, the section 332 authority is subject to the existence of "unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States." Although the President has extensive discretion in determining whether those conditions exist, it may be difficult to make such a determination in advance of the event.² We do not believe those specific conditions or occurrences are a prerequisite to the exercise of the President's inherent authority to take necessary action to protect federal functions and property.

² In that regard, we note that there is some precedent for invoking the authority of 10 U.S.C. § 332 in circumstances where interference with the enforcement of federal law has not yet occurred but is merely anticipated. This occurred, for example, when President Johnson called upon the National Guard to assure compliance with a court order upholding the rights of the Selma, Alabama, freedom marchers based upon "a substantial likelihood that domestic violence may occur in connection with such march" Proclamation No. 3645, 30 Fed. Reg. 3739 (March 20, 1965) (emphasis added).

1. AG opinion - firm

2. Mechanics of sitting at lunch

OLC opinion.

fastest process of sitting a check out

Severability cases - Neil Thinks There's a better arg.

Leg veto cases - all reversed.

1 con other way - New Ham - Imp Control Act -

[Gov to have it to solve some of them
problems.

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6. Redeploy personnel from the military and/or other agencies to perform key functions, e.g., ~~drive meals on wheels trucks~~.
7. Call Congress back if it goes on recess.

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January 4, 1996

EXAMPLES OF REDUCED GOVERNMENT SERVICES DURING A SHUTDOWN

- A. **The Federal Government has been partially shutdown for 20 days.**
- B. **National Park Services facilities are closed.**
 - 1. *On an average day*, 383,000 people visit National Parks Services facilities. Approximately 7 million National Park Visits have been prevented by the shutdown.
 - 2. Potential per day losses for businesses in communities adjacent to National Parks could reach \$14 million, due to reduced recreational tourism.
 - 3. As a result of the closing of Yosemite National Park, Mariposa County declared a state of emergency last week and asked Governor Wilson of California to declare the county an economic disaster area and therefore eligible for state aid. Nearly 1,600 non-park employees have lost their jobs and Yosemite concessionaires are losing \$200,000 to \$300,000 each day of closure.
- C. **Access to and use of National Forests is restricted.**
 - 1. Forest Service operated campgrounds, monuments, and visitors centers are closed in the 155 National Forests.
 - 2. No timber sales activities, including preparation, advertising and award of sale are occurring. Harvesting will continue for sales that were awarded prior to the shutdown.
- D. **FHA mortgages and housing vouchers are halted.**
 - 1. *On an average day*, the Federal Housing Administration processes 2500 home purchase loans and refinancings totaling \$200 million worth of mortgage loans for moderate-and low-income working families nationwide. Because of the shutdown, FHA has been unable to make over 45,000 FHA single-family home loans, forcing FHA home-buyers to delay their purchase, or FHA lenders to temporarily carry the credit risk of such loans on their own books.
 - 2. In January, HUD will be unable to renew 49,000 vouchers and other Section 8 rental subsidies for low and moderate income households which could lead to the eviction of these families.

- E. Applications for **passports** are not being processed and foreign visitors are unable to obtain visas.
1. *On an average day*, the State Department receives 23,000 applications for passports. Over 200,000 passport applications are now backlogged as a result of the shutdown.
 2. *On an average day*, the State Department issues 20,000 visas to visitors who spend on average of \$3,000 on their trips for a total of \$60 million. Foreign students studying in the United States and home for the holidays are unable to obtain visas to return to the United States for their classes.
- F. Some **Veterans Benefits** will not be delivered.
1. While the December 22 Continuing Resolution provided funding for certain benefits and payments, it expires tomorrow (January 3); consequently, contractors providing services and supplies to hospitals will not be paid and benefits for January will not be paid on February 1.
 2. In addition, approximately 170,000 veterans did not receive their December Montgomery GI Bill education benefits and will not receive benefits in January. Funding has also lapsed for processing veterans' claims for educational and rehabilitation counseling, and enabling veterans to obtain VA guaranteed home loans.
- G. Programs for the **Elderly** are at risk.
1. Some 600,000 elderly Americans potentially face loss of "Meals on Wheels," transportation and personal care provided by HHS' Administration on Aging because a Continuing Resolution has not been passed.
- H. Contractors handling **Medicare** claims will not be paid.
1. Approximately 24,000 contractor employees are involved in paying Medicare claims (which average about \$3.5 billion per week) and most will have to self-fund payroll and other expenses or stop their activities.
- I. Federal funds to states for **Medicaid** will be limited.
1. On December 27, States received only 40 percent of the estimated quarterly payment for Medicaid. Without further action, the Federal match for Medicaid and its 36 million beneficiaries, including 18 million children, will run out in late January.

- J. **State-run Unemployment Insurance** operations are threatened.
1. By the end of this week, 11 states (plus DC and the Virgin Islands) will have exhausted Federal funds for administering the unemployment insurance program (NJ, AL, RI, TN, KS, AK, MA, NH, VT, UT, NM). In order to keep unemployment offices open, states would have to fill the gap with their own funds. Otherwise, unemployment offices would have to close and benefit payments would cease. Kansas has already closed its unemployment office.
 2. If State unemployment offices are closed, all activity stops. No new claims are taken; no continuing benefit claims are paid; and tax collections stop.
- K. Grants for **state JOBS, social services, and child protection programs** will not be made.
1. States are due \$630 million in Social Services Block Grants today (January 2). These funds are used by the states to provide a variety of health and social service programs to low-income populations.
 2. HHS will not be providing grants of \$248 million to states today (January 2) for JOBS programs to help those on welfare to obtain training and work.
 3. As of today (January 2), states will lose \$74 million in quarterly grants for discretionary child protection programs. Such programs help states respond to more than 2.5 million reported cases of child maltreatment each year.
- L. The **FCC** is substantially closed.
1. Each week, 1,000 consumer inquiries and complaints go unanswered.
 2. Processing of spectrum licenses and ongoing deregulatory efforts by the FCC are deferred, possibly delaying the availability of new communications services.
- M. Food and other supplies for **prisons** may become unavailable.
1. Many vendors to Federal prisons bill once a month and bills for supplies provided during the shutdown will come due in early January. Absent an appropriation, these bills cannot be paid and some vendors may be unable to continue to deliver goods and services.
- N. **Federal workers** are being penalized.

1. Due to Congress' failure to approve short-term funds by Friday, December 29, over three-quarters-of-a-million Federal employees only received half their usual pay (or less because of withholdings).
 - a. They received pay for December 10 to 15, but not December 16 to 23.
 - b. Without Congress enacting additional funding measures by late this week, these emergency and furloughed employees will not receive pay for the current pay period (December 24 to January 6) on time, i.e. next week.
 2. The three-quarters-of-a-million of Federal employees consist of:
 - a. 480,000 emergency workers who are working and whom the government is obligated to pay, but who can't be paid until Congress approves funds to end the shutdown (this includes Federal law enforcement officials, prison guards, social security workers and those providing care at veterans hospitals); and
 - b. 280,000 non-emergency workers who are currently furloughed and not being paid (and who have no guarantee they will receive back pay unless Congress acts to approve back pay).
 3. The vast majority of these workers cannot afford this big cut in their take-home pay, especially during and immediately after the holidays.
 4. 20,000 employees were furloughed when their agencies exhausted carryover funding in late December; they will receive substantially complete paychecks for the pay period ending December 23 (but not future pay periods).
- O. **The Smithsonian museums, Kennedy Center, Holocaust Museum, National Zoo, and National Gallery of Art** (except for the Vermeer exhibit which is supported by private funds) are closed.
1. *On an average day*, 80,000 people visit the Smithsonian Museums on the Mall and the National Zoo.
 2. *On an average day*, 12,400 people visit the National Gallery of Art.
 3. *On an average day*, 6,900 people visit the JFK Center for Performing Arts. (This does not include individuals who pay to attend performances, for which the Kennedy Center will continue to be open.)

4. *On an average day*, 3,000 people visit the Holocaust Museum.

P. Activities in Foreign countries are hampered.

1. The inability to pay locally hired personnel for services performed during the shutdown likely will have an adverse impact on overseas activities. Inability to compensate these local hires in a timely manner could result in work stoppages that would adversely affect:
 - a. Security precautions taken to protect the safety of U.S. personnel and property overseas that include supplemental guard services for housing and office facilities.
 - b. Support services including those provided to official delegations and other official travel since local employees are generally used to assist visitors (e.g., drivers, security personnel, interpreters).

In addition, legal actions are anticipated by at least some local employees who cannot be paid under shutdown conditions but are entitled to be paid under host-country laws.

2. Operations could be disrupted if the U.S. fails to pay utility payments (quarterly assessments due the first week of January). Loss of basic services including provision of electricity, drinking water and gasoline and even evictions from leased buildings abroad could result if vendors and landlords continue to go unpaid.

Q. Programs for Native Americans are stopping.

1. The Bureau of Indian Affairs cannot make general assistance payments due to about 53,000 Indian families and individuals or to guardians and foster families that care for about 3,000 Indian children.

R. "Deadbeat Dads" are getting a holiday through the shutdown.

1. The Federal Parent Locator Service, to which 20,000 cases per day on average are referred, is closed.

S. Assistance to Small Businesses is interrupted.

1. *On an average day*, more than 260 small businesses are not receiving SBA guaranteed financing totaling more than \$40 million of loans per day. Since the shutdown began, approximately 5,200 small businesses have been prevented from receiving SBA guaranteed financing.

2. *On an average day*, more than 90 small businesses are prevented from bidding on government contracts because they are unable to receive SBA guaranteed bid bonds which allow them to bid on those contracts.
3. *On an average day*, 1,200 small business owners are not receiving SBA-sponsored training and counseling normally available to them.
4. Banks issuing federally-guaranteed loans from SBA, VA, and HUD have stopped receiving default claim payments. In addition to potential cash flow shortages to participating banks, this will result in higher costs to the Government, because the claims will accrue additional interest during the furlough period.
5. No out year payments for Advanced Technology Program awards made in prior years to more than 100 innovative, high-tech companies are being made totaling \$68 million.

T. Many **protections for American workers** are suspended due to the shutdown of much of the Labor Department. *For each day of the shutdown:*

1. Approximately 840 veterans will not be placed in jobs through the Veterans' Job Training Assistance program which is closed.
2. Since the start of the shutdown, over 1,000 workplace safety complaints have gone unanswered.
3. 160 workplace safety and health inspections are not being performed.
4. Three OSHA-approved state programs have shut down because of a lack of matching federal funds (New Mexico, Hawaii, Puerto Rico) and three others (South Carolina, Tennessee and Utah) will shut down this week.
5. 170 worker complaints of minimum wage and overtime violations remain unresolved.
6. 3,500 investigations involving pension, health and other employee benefit plans have been suspended.
7. 500 requests for information and assistance from pensioners participating in plans with \$3 trillion in assets are going unanswered.

U. Important **environmental protections** are curtailed due to the shutdown. For each day of shutdown, on average:

1. As a result of exhausting carryover funds, EPA has furloughed about 2800 Superfund staff, which will mean that up to 32 ongoing remedial cleanup actions being lead by Superfund staff and cleanup-related activities at over 420 other sites will be shut down beginning on January 2. Cleanup actions will stop at additional sites if the shutdown continues. Work at about 100 Superfund-funded sites will continue to address immediate threats to life or property or where States or the Army Corps of Engineers are overseeing the cleanup.
2. All EPA (non-Superfund) civil environmental enforcement actions have stopped. On an average day, \$8 million of fines, injunctive relief, and Superfund settlements against polluters will be lost and 8 Federal environmental compliance inspections of polluters' facilities will not be conducted.
3. At EPA headquarters alone, an average of 1,600 "hotline" calls a day are going unanswered, including about 240 calls each day to EPA's "hotline" for drinking water contamination outbreaks. Shutdown of EPA's "hotlines" deprives the public of potentially critical information on pesticides and toxic substances, asbestos in schools, and other public health information.
4. EPA-issued permits for air, land, and water pollution limits nationwide cannot be approved and necessary EPA technical assistance to States for State-issued permits cannot be provided. Approvals of some companies' activities will be put on hold while their competitors with approved permits are allowed to operate.
5. All emergency exemptions for farmers to use restricted pesticides to fight pest outbreaks have stopped, potentially resulting in severe crop damage and loss of income.

V. **Important Education programs** are shut down.

1. Civil rights violations in schools cannot be investigated. *In an average week*, the Education Department's Office for Civil Rights receives about 100 new complaints of discrimination on the basis of race, color, national origin, sex, age or disability. These complaints cannot be investigated or remedies sought. The buildup up of backlogs delays justice for individuals.
2. Help cannot be given to parents and teachers. *During an average week*, the Department of Education answers 8,000 inquiries from teachers, school administrators and concerned parents, seeking help with education problems that cannot be answered during the shutdown.

W. **American exporting businesses** are being disadvantaged during a shutdown.

1. *On an average day*, more than 30 export licenses with a value of \$30.5 million that would otherwise have been approved by the Bureau of Export Administration will not be acted upon.
2. *On an average day*, more than \$92 million in sales of U.S. products are blocked due to inability of the Department of State's Defense Trade Center to process license applications for the export of defense articles and dual-use technology. During the previous shutdown, more than 4000 export applications were delayed and part of that backlog was still being processed prior to the shutdown.
3. *On an average day*, more than 2500 telephone calls and faxes from U.S. businesses seeking export advice, information and counseling are not being responded to by the Bureau of Export Administration or the International Trade Administration due to the shutdown.
4. American exporters have been losing export opportunities to foreign competitors because of lack of financing due to the shutdown of the federal Export-Import Bank. When the Bank is open, it responds to about 1,000 inquiries per week from exporters seeking information about export financing. In an average week, the Export Import-Bank approves financing for 44 transactions worth about \$230 million in exports.

X. The Securities and Exchange Commission will soon shutdown.

1. The SEC's funds are expected to be exhausted by the end of next week, causing review of an estimated three-fourths of pending and new SEC filings for the month of January to be delayed. A delay in review of filings for initial public offerings, mergers and acquisitions, and filings for new debt or stock offerings would eventually impact the flow of corporate financing and capital formation.

Y. **Vital legal and law enforcement functions** are shut down or will be delayed.

1. FBI training of state and local law enforcement officers has ceased.
2. Investigations of employment discrimination on the basis of race, sex, religion, or national origin are suspended.
3. Processing of prison grant applications has slowed down. Appropriated funds to assist states in constructing and bringing on line new prison facilities will be delayed.

4. Collection activities by Justice's Civil Division have ceased. The cessation of collection activities means that the Treasury receives less income and thus the deficit actually grows. In addition, individuals who owe the government money can withhold payment without any particular penalty.

Z. **Social Security Administration is not processing new or replacement Social Security numbers.**

1. The Social Security Administration processes on a daily basis an average of 60,000 new and replacement Social Security numbers. Social Security numbers are required for tax, employment eligibility, and other purposes. Processing and verifying of Social Security numbers is not occurring during the shutdown.

AA. **Key statistical data are not being collected and disseminated.**

1. Important statistical releases have been delayed -- most importantly the Bureau of Economic Analysis' Gross Domestic Product and Corporate Profits for the third Quarter of 1995, the October 1995 U.S. International Trade in Goods and Services, and Personal Income and Outlays for October and November. Also postponed are the scheduled December releases on Import and Export Price Indexes, Durable Goods, Housing Starts, and Single Family Home Sales.
2. State population estimates that are used to establish ceilings on tax-free bonding authorities also have been delayed.
3. Other economic indicators now being delayed include the monthly unemployment rate (originally scheduled for Jan. 5), Producer Price Index (originally scheduled for January 11), Consumer Price Index (originally scheduled for January 12), Value of New Construction (originally scheduled for January 2), Manufacturers' Shipments, Inventories, and Orders (originally scheduled for January 4), and Wholesale Trade (originally scheduled for January 9).
4. *On an average day*, 2,000 people call the Census Bureau and 4,000 people call the Bureau of Labor Statistics requesting information on economic and demographic statistics. These calls are going unanswered as are the 70,000 daily inquiries on the Census Bureau's on line data services, which are shut down.

BB. **The National Institute of Standards & Technology has shut down.**

1. Companies, universities, hospitals, and defense and law enforcement agencies depend upon NIST's laboratory-based research and services. For example, NIST provides in excess of 20,000 measurement samples and performs thousands of

calibration tests each year for more than 3000 large and small companies.

2. U.S. firms are being denied critical support in their efforts to deal with international standards and testing requirements that limit the sale of U.S. goods overseas.

I. POSSIBLE WAYS TO KEEP KEY GOVERNMENT FUNCTIONS GOING

1. Declare all federal employees "excepted" under Anti-Deficiency Act.
2. Direct each agency to reexamine, in light of changed circumstances, its judgment about who is "excepted."
3. Declare functions of government unmanageable without funding, and send everyone home. (action forcing mechanism)
4. Decide Anti-deficiency act doesn't apply in these circumstances, and bring all employees back on a volunteer basis.
5. Find funding for key functions, e.g. meals on wheels. This would require an agency by agency review of available funds, including, e.g., carryover funds, as well as a legal analysis of restrictions on their use.
6. Redeploy personnel from the military and/or other agencies to perform key functions, e.g., drive meals-on-wheels trucks.
7. Call Congress back if it goes on recess.

II. ALLEVIATING BURDENS ON FURLOUGHED EMPLOYEES

1. Tap judgment fund.
2. Instruct OPM to waive or suspend any regulations governing personnel consequences of lengthy furloughs, e.g., loss of use-or-lose leave; also instruct OPM to assure continuation of health and life insurance premiums.
3. Issue directive to all agencies to suspend payment obligations of affected federal employees. Examples: direct student loans (Education); FHA Mortgages; home improvement loans; public housing rent (HUD).

Date: 01/04/96 Time: 13:48

SEPA Shutdown May Keep Some New Ford Pickups from Showrooms

DETROIT (AP) The partial government shutdown is complicating Ford Motor Co.'s plans for a new model of its best-selling pickup truck, temporarily blocking sales of 1997 F-150s equipped with manual transmissions.

Production of the trucks started last month, before the Environmental Protection Agency had finished the fuel economy certification of the standard-shift models, Ford spokesman Jim Bright said Thursday. Now the EPA workers who do the certifying are not working because of the shutdown.

That means about 800 of the 8,000 trucks Ford had built by Wednesday were held at the factories and not shipped to dealers. Models with automatic transmissions the vast majority of those sold were already certified, so they are not affected by the shutdown. Nor are 1996 models, which Ford is continuing to build as it introduced the 1997s.

Ford will start national advertising for the 1997 F-series pickups on Jan. 25. The trucks have been the nation's best-selling vehicle for the past 14 years.

APNP-01-04-96 1346EST

Settlement Plus for fed employees

1. If Dole proposal doesn't pass,
go over whole workforce again using diff. time frame; bring
everyone poss back.

Then do settlement of all claims.

2. Forbearance for fed EEs

e.g. HUD - FHA mortgages / GNMA dividends

Public housing? / home improvement loans

General directive to all agencies to review loan programs
etc. + make arrangements for fed EEs

3. Federal employee benefits

e.g. leave, health bene.

(If ADA doesn't apply at all,
can you keep people in?
only volunteers; then for
appropriations)

(ADA never meant to apply in this sit)

- Go thru all excepted debarment
Assume on going children
Change debarment
Reassess plans.
- Declare all fed ee's "emergencies"
- Declare fines of part can't be discharged
in this way - (union argument)
send everyone home. (force act by law)
- Declare nat'l emergency
Yuch.
Steel seizure cases.
- Find funding for key functions
(hidden pockets of funds?) <sup>can you find -
are using them up?</sup>
OASB - will know
reprogramming restrictions
appropriation restrictions (ADA)
restrictions based on appropri act
HOMTS audit - where's the \$
- Using personnel from military + / or
other agencies -
Tensa will know.

He may, on extraordinary occasions, convene both Houses
or either of them. Art II, sec 3



SHUTDOWN RELATED QUESTIONS

1. The House contemplates going out on a series of three-day recesses until their conditions for resolving the budget impasse are met. If they go out on recess, can the President recall them and make them go back into session?
2. What steps can the President take to get emergency assistance into the hands of federal workers who are not receiving paychecks?
 - a. Can he declare a state of emergency of some sort and make some pool of funds available? What resources are there?
 - b. Should he make a speech in which he exhorts creditors of unpaid federal workers to forbear from debt collection or foreclosure?
3. What steps can be taken to mitigate the effect of the regulations discussed in the Post's Federal Diary piece, which are said to require furloughed federal workers to forfeit leave, among other things? Can these regulations be waived or suspended? What steps can the White House or OPM take to reassure federal workers on these points?

Blue Cross /
Blue Shield
etc
benefits

today's
paper.

When to start?
What's most important?
Rational work plan?
Powers to act unilaterally?

MEMORANDUM FOR CHRIS CERF AND ELENA KAGAN

FROM: KATHLEEN WALLMAN
SUBJECT: SHUTDOWN ACTIONS
DATE: JANUARY 4, 1996

I've spoken to Chris and have left a message for Elena concerning Jack's request, coming out of his 9:30 meeting, for an inventory of actions that the President may take to mitigate or fix the effects of the shutdown.

In that connection, can we add to the list that we're already composing (e.g., calling Congress back from recess; unilateral declaration that all employees are "excepted", etc.), the following --

Can/should the federal government forbear from collecting monies due from unpaid federal workers? Can it grant a grace period on student loan payments, for example? Are there tax payments or other payments where the federal government, as creditor, could demonstrate leniency?

In terms of specific programs that are unfunded and whether there is a way to get them back up and running, I think that given the press of time, we should pick a handful of highest priority programs where there is a strong life/health argument to make -- e.g., Meals on Wheels. We may want to branch out eventually, but I think that the immediate need is for the President to know what authority he has that he can exercise now to aid beneficiaries of unfunded programs.

cc: JQ