



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

April 7, 2011

M-11-13

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Jacob J. Lew
Director

SUBJECT: Planning for Agency Operations During a Lapse in Government Funding

The current Continuing Resolution (CR) expires at the end of tomorrow, Friday April 8, 2011. We are deeply engaged in efforts to reach an agreement that cuts spending in a balanced way so that we do not have a government shutdown that could setback our economic recovery. Negotiations on the budget are continuing, and it remains possible that Congress will reach an agreement by midnight tomorrow on continued funding for the current fiscal year.

Yet at this late hour, responsible management requires that we be prepared if there is a lapse in appropriations. To that end, and pursuant to Section 124 of Circular A-11, the Office of Management and Budget (OMB) has been providing guidance and coordinating the efforts of the Executive Branch to facilitate appropriate contingency planning in accordance with the provisions of the Antideficiency Act. This Memorandum is being sent in conjunction with these efforts.

As part of the guidance that has been provided to you, OMB has referred agencies to legal opinions issued by the Attorney General and the Office of Legal Counsel (OLC) of the Department of Justice, which set forth the legal requirements imposed by the Antideficiency Act during a lapse in appropriations and the guiding standards that agencies should use in making decisions under the Act during a lapse in appropriations. In reviewing existing contingency plans, agency leaders are reminded of the agency's duty to make the determination of which agency activities qualify as "excepted" functions pursuant to applicable legal requirements, and to make the determination of which employees are needed for the performance of those "excepted" functions on a case-by-case basis.

We have received a number of technical questions about particular matters related to agency operations during a lapse in funding. As a result we have issued Frequently Asked Questions (FAQ) documents through the OMB MAX community system. (See Attachments) The FAQ documents provide an overview of relevant legal principles that apply to all government operations, address particular issues with contracts and grants, and answer questions relating to information technology, travel, orderly shutdown, and payment for excepted work.

Earlier this week, we encouraged agencies to reach out to their senior managers on logistical and managerial issues associated with executing agency contingency plans. We know that the current uncertainty and threat of a shutdown is a tremendous burden on Federal employees and therefore, earlier this week, we encouraged agencies to reach out to all employees regarding the possible lapse in appropriations. In addition, the Office of Personnel Management issued an FAQ to assist agencies and employees on personnel issues associated with a funding lapse, posted at <http://www.opm.gov/furlough2011>.

We will remain in close communication until this situation is resolved to ensure that the Executive Branch is prepared in case a funding lapse occurs. At this time, agencies should proceed as follows:

Today, Thursday, April 7: You should continue to review your shutdown plans and begin the process of communicating the details of your plans to all employees. Your communications with an employee should address the expected status of that employee under a shutdown: that is, whether the employee would continue to report to work (either because the employee is paid from an appropriation that continues to remain available or because the employee would be needed for the agency's performance of its "excepted" functions) or instead would be placed on furlough as "non-excepted." An agency may complete this communication electronically if appropriate. Agencies also are encouraged to conduct appropriate outreach to unions, State, local and tribal governments, grantees, contractors, Congressional committees, and other stakeholders.

Tomorrow, Friday, April 8: As noted, the current CR expires at midnight tomorrow. Therefore, tomorrow is a normal workday for the Federal Government, and all employees should report to work as normal. Agencies must complete the process of communicating to all employees their status under a shutdown no later than the end of the day tomorrow.

We will advise you tomorrow of further developments, including whether a new CR will likely be enacted. If we inform you tomorrow that a new CR is not likely to be enacted, then you should prepare to implement your shutdown plan beginning on Saturday, April 9. In that case, agencies must instruct non-excepted employees (including those who do not have a weekend work schedule) that they are prohibited, pursuant to the legal requirements of the Antideficiency Act, from performing any work over the weekend pending further notice. This means that the non-excepted employees will be prohibited, after midnight on Friday night, from working remotely, such as from home -- including by accessing agency information technology (e.g., Blackberries, cell phones, computers, laptops), except to the extent that the agency's contingency plan provides for the agency to use such technology to provide non-excepted employees with updates regarding their furlough and return-to-work status. Also, as noted below, there may be circumstances in which certain employees are accessing agency information technology remotely for a brief period to carry out *de minimis* shutdown related activities.

If there is a lapse in appropriations, during the employee's next scheduled work day (i.e.,

