



THE SECRETARY OF EDUCATION
WASHINGTON, DC 20202

September 28, 2025

MEMORANDUM

TO: Office of Management and Budget (OMB)

FROM: Linda McMahon

SUBJECT: U.S. Department of Education Contingency Plan for Lapse
in Fiscal Year (FY) 2026 Appropriations

Lapse Plan Summary Overview		
	Department of Education (excluding FSA)	Office of Federal Student Aid only
Estimated time (to nearest half day) needed to complete shutdown activities:	0.5 days	0.5 days
Total number of agency employees expected to be on board before implementation of the plan:	1,700	747
Total number of agency employees expected to be furloughed under the plan (unduplicated count)	1,485	632
Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):		
Compensation is financed by a resource other than annual appropriations:	6	0
Necessary to perform activities expressly authorized by law:	4	0
Necessary to perform activities necessarily implied by law:	48	103
Necessary to the discharge of the President's constitutional duties and powers:	0	0
Necessary to protect life and property:	10	11
Brief summary of significant agency activities that will continue during a lapse:		

The Department will continue to disburse student aid such as Pell Grants and Federal Direct Student loans, and student loan borrowers will still be required to make payments on their outstanding student debt. The Department will also make Title I and IDEA grant funding available as usual. States, schools and other grantees will continue to be able to access funds from the billions of dollars in recent awards the Department made over the summer. Further, the Office of Federal Student Aid will except agency employees as needed to conduct certain rulemakings and other actions necessary to meet statutory requirements under H.R. 1.

Brief summary of significant agency activities that will cease during a lapse:

The Department would cease any new grantmaking activities. However, the majority of the Department's grant programs typically make awards over the summer and therefore there would be limited impact on the Department's grantmaking. Grantees will continue to be able to drawdown funds from these awards, and therefore, the impacts on schools and students should be minimal. The Office for Civil Rights would pause its review and investigations of civil rights complaints. The Department's development and implementation of guidance, technical assistance, and regulatory actions would also pause during a lapse, unless required for otherwise funded activities.

The contingency plan for the U.S Department of Education (the Department) was developed pursuant to applicable legal requirements governing a lapse in Federal appropriations. In the event of an interruption or absence of an appropriation (lapse) or continuing resolution, the Department will perform work that is "exempt" from furlough because it is funded by unexpired budget authority that does not require further congressional action pursuant to an annual appropriations Act. Such budget authority for "**exempt**" activities may include appropriations provided in permanent law; advance appropriations provided in prior-year appropriations Acts; and balances from multi-year or no-year appropriations. The Department may also continue certain unfunded activities during a lapse in annual appropriations if such activities fall under an "exception" to the Antideficiency Act. These exceptions permit the following "**excepted**" activities to continue during a lapse in appropriations:

- (1) Activities that discharge the President's constitutional duties and powers,
- (2) Activities expressly authorized by law to continue in the absence of appropriations,
- (3) Activities necessary to protect life or property, and
- (4) Activities necessarily implied by law, including those required to continue otherwise funded or authorized activities.

As set forth in this plan, the Department would furlough approximately 95 percent of its non-Federal Student Aid staff for the first week of such a lapse in funding. During this first week, we would maintain only those staff needed to perform exempt or excepted functions.

If the lapse lasts longer than a week, the Director of Budget Service, within the Office of Planning, Evaluation, and Policy Development, would be responsible for adjusting the plan to respond to the length of the lapse in appropriations and changes in external circumstances. The Assistant Secretary for Finance and Operations would be responsible for implementing the adjusted plan. The Department would phase in employees only as necessary under one of the exceptions to the Antideficiency Act, including to support and prevent significant damage to the underlying exempt or excepted activity. Some employees would be called in on a partial or rotating basis; the combined number of excepted employees working at any given time is not expected to exceed approximately 5 percent (122 FTEs) of the Department's total full-time equivalents (FTEs). As of September 20, 2025, the Department employed 2,447 full- and part-time employees.

This contingency plan for the Department, like previous plans dating back to 1996, would authorize certain categories of employees (“excepted employees”) to work in the absence of a specific appropriation.

1. Necessary to Ensure an Orderly Shutdown

Immediately upon receiving notification of a lapse in appropriations, the Department would direct employees to be entirely devoted to “closing down” their individual and group work functions. The Department would ensure that employees’ orderly shutdown activities would be completed within a relatively short period (no more than 4 hours for most employees). The non-excepted employees would then be released on furlough. Examples of shutdown activities include:

- Performing payroll functions and processing travel vouchers for the period just prior to the appropriations lapse;
- Completing inventories of property;
- Securing Federal property;
- Performing personnel functions to process furlough notices;
- Setting up consistent voicemail and email out-of-office messages;
- Notifying grantees of any impact on the disbursement of funds; and
- Notifying contractors as to whether they will be required to stop work.

2. Authorized by Law

Each of the Department’s confirmed Presidential appointees subject to Senate confirmation (PAS) would not be subject to the furlough. One FTE for each PAS would be excepted from the furlough to perform—and support the PAS in carrying out—excepted or exempt activities at the PAS’s direction that arise during the shutdown. These FTEs would only perform excepted or exempt activities where suspension of the related activity during the funding lapse would prevent or significantly damage the execution of the funded function. The total number of FTEs excepted for this purpose is shown in the chart, “Lapse Plan Summary Overview.”

3. Necessary to Protect Life or Property

The Department engages in certain regular, ongoing functions, the suspension of which would pose a threat to property. These activities are coordinated by applicable offices, including the Office of the Secretary, the Office of Finance and Operations, the Office of the Chief Information Officer, and the Office of Federal Student Aid (FSA). The Office of Inspector General (OIG) would also except personnel to engage in law enforcement functions, the suspension of which would pose a threat to the protection of property and resources, affect ongoing criminal investigations, and impede the execution of search warrants and arrests. Eight OIG employees in this category are excepted and would report to duty on an as-needed basis and only to meet critical needs as approved by OIG. The total number of FTEs excepted for this purpose is shown in the chart, “Lapse Plan Summary Overview.”

4. Funded from an Alternative Source

Programs using mandatory or advance appropriations, or unobligated multi-year or no-year funds from a prior year (carryover), would continue to operate through a government shutdown. For these programs, staff may be brought in on an excepted basis, as necessarily implied by law, to execute the following exempt or excepted activities:

A. Grant and Loan Programs

Programs with mandatory funding can make obligations and payments during a shutdown. In addition, approximately 17 non-mandatory programs have advance funds appropriated in FY 2025 that are available in FY 2026 and/or have authority to carry over and use remaining unexpired, unobligated balances from FY 2025 multi-year or no-year discretionary appropriations. Obligations and payments from these programs may continue, depending on the length of the lapse and availability of funds. Only those grant activities that, if not continued, would prevent or significantly damage the execution of funded functions (the “significant damage” standard) will continue on a limited basis after a lapse of one week and continue through a short-term shutdown. Examples of significant damage could be disruption of local educational agency operations or inability of students to obtain necessary higher education financing.

For exempt and excepted programs such as these, employees performing work that satisfies one of the exceptions to the Antideficiency Act may be brought in to work as “excepted employees” to provide payments and fulfill obligations to grantees and other recipients. The number of excepted staff necessarily implied by law will vary depending on the length of the shutdown and amount of money and number of recipients involved. These numbers include employees in the program and support areas. In each case, only the minimum number of employees needed would be brought in to work. The chart at the top of this document specifies the number of excepted FTEs necessary to conduct these activities. It is assumed that the G5 system for making payments to grantees—either grants awarded in prior years or those made with mandatory or carryover appropriations—would continue to operate at least for the first week. For a lapse of more than a week, Department staff would be needed as excepted employees to resolve any issues necessary to prevent significant damage to the underlying exempt or excepted activity.

Non-mandatory programs that do not have available unobligated balances from FY 2025 may not incur new obligations while under a government shutdown caused by a lapse in appropriations unless otherwise allowable under an exception.

B. Direct Loans and Pell Grants

Program funds for Pell Grants and Federal Direct Loans are provided through mandatory and carryover appropriations. More than 9.9 million students receive student aid, in the form of grants and loans, at approximately 5,400 schools through these programs. As available, permanent and multi-year appropriations will be used to continue some key operations (such as processing Free Applications for Federal Student Aid, (FAFSA[®]); disbursing Pell Grants and Direct Loans; and servicing Federal student loans).

FSA’s Chief Operating Officer and other management officials across the Department responsible for Pell Grants and Direct Loans will designate the contracts and minimum number of employees and contractors necessary to keep these programs operational. Important contracts and thousands of contract staff to service and collect on student loans have been pre-funded, and borrowers are expected to continue repayment throughout a shutdown. Other contracts needed to obligate and process payments, maintain systems necessary to disburse Pell Grants and student loan payments, and provide legal counsel to FSA and other offices have been prefunded and will continue. FSA employees working in areas not directly related to Pell Grants, Direct Loans, and administrative functions not related to providing student aid to schools and students or servicing loans, would not be excepted. Further, the Office of Federal Student Aid may except employees as necessary to conduct certain rulemakings as needed to meet the statutory deadlines required by H.R. 1.

C. Bipartisan Safer Communities Act and Administration

Programs and activities authorized and funded through the Bipartisan Safer Communities Supplemental Appropriations Act, 2022 (Division B of P.L. 117-159) for mental health under the Safe Schools and Citizenship Education account have authority to continue obligations and payments in FY 2026.

Effect of Shutdown Caused by a Lapse in Appropriations

During an interruption, no new contracts would be awarded unless they were significantly related to excepted activities. Contractors receiving recently awarded contracts may be ordered to stop work during the furlough, if doing so would not cause significant damage to that activity. Department staff who are furloughed may be unfurloughed as necessarily implied by law to the extent the staff are needed to provide initial direction to these contractors. Those contractors allowed to continue their work would not immediately receive payment for their services, but the Department would be obligated to make payment, along with any Prompt Payment Act interest to compensate for the delay, once funds were available.

The chart above represents an estimate of staffing levels if a lapse were to occur after midnight, September 30, 2025. Staffing levels reflect the first week of a lapse in appropriations.

The Department will phase in employees as necessary when one of the exceptions to the Antideficiency Act is met for such employees' activity or function.

If the lapse lasts more than one week, the total number of employees working at some point during the shutdown would be approximately 330 FTE; approximately 2,117 employees would be furloughed. The FTE and employee numbers in this plan reflect levels as of September 20, 2025.

Actions Necessary to Resume Orderly Operations

When directing employees to "close down" their individual and group work functions, the Department will provide information to employees to monitor the status of appropriations. This information will include links to OMB websites that will provide updates on the status of agency appropriations. Employees will also be informed that they will be expected to return to work the workday following resolution of conditions that led to the shutdown. After resumption of orderly operations, supervisors will be informed of their ability to offer leave flexibility to employees who may not have returned to work as scheduled due to extenuating circumstances.