

**Department of Health and Human Services
Fiscal Year 2014**

**Contingency Staffing Plan for Operations in the
Absence of Enacted Annual Appropriations**

Summary Data

As shown on the attachment, HHS' contingency plans for agency operations in the absence of appropriations would lead to furloughing 40,512 staff and retaining 37,686 staff as of day two of a near-term funding hiatus. Put another way, 52% of HHS employees would be on furlough, and 48% would be retained. These percentages vary among HHS' agencies and offices, with grant-making and employee-intensive agencies (e.g., the Administration for Children and Families (ACF), the Substance Abuse and Mental Health Services Administration (SAMSHA), the Administration for Community Living (ACL), and the Agency for Healthcare Research and Quality (AHRQ)) having the vast majority of their staff on furlough, and agencies with a substantial direct service component (e.g., the Indian Health Service (IHS)) having most of their staff retained.

Summary of Activities to Remain Open and to be Closed

Consistent with legal advice that activities authorized by law, including those that do not rely on annual appropriations, and activities that involve the safety of human life and protection of property are to be continued, some of the HHS activities that would *continue* include:

- Indian Health Service (IHS) – IHS would continue to provide direct clinical health care services as well as referrals for contracted services that cannot be provided through IHS clinics.
- Health Resources and Services Administration (HRSA) – HRSA would continue activities funded through sources other than annual appropriations including the Community Health Centers, National Health Service Corps, Maternal Infant, and Child Health Home Visiting program. Additionally, HRSA would continue the National Practitioner Databanks and Hansen's Disease Program.
- Administration for Children and Families (ACF) – ACF would continue mandatory funded programs including the Federal Parent Locator Service, Personal Responsibility Education, and Health Profession Opportunity Grants. Child support and foster care services will also continue because they receive advanced appropriations in the FY 2013 appropriation process. All permissible activities for the Unaccompanied Alien Children program under an exception of preserving human life will continue.

- Administration for Community Living (ACL) – ACL would continue to support the Aging and Disability Resource Centers and Health Care Fraud and Abuse Control through mandatory appropriations.
- Substance Abuse and Mental Health Services Administration (SAMHSA) – SAMHSA would continue programs such as the Disaster Distress Helpline, Treatment Locator, Treatment Referral Line, and Suicide Prevention Lifeline using available grant balances.
- Assistant Secretary for Preparedness and Response (ASPR) – ASPR would continue to maintain minimal readiness and limited staffing for all-hazards preparedness and response operations including the Secretary's Operations Center, the National Disaster Medical System, and specialized medical countermeasure response under the safety of human life exception.
- National Institutes of Health (NIH) – NIH would continue patient care for current NIH Clinical Center patients, minimal support for ongoing protocols, animal care services to protect the health of NIH animals, and minimal staff to safeguard NIH facilities and infrastructure.
- Centers for Disease Control and Prevention (CDC) – CDC will continue minimal support to protect the health and well-being of US citizens here and abroad through a significantly reduced capacity to respond to outbreak investigations, processing of laboratory samples, and maintaining the agency's 24/7 emergency operations center. CDC would also continue activities supported through mandatory funding including the World Trade Center health program, U.S. President's Emergency Plan for AIDS Relief (PEPFAR), CDC's Global AIDS program, the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), Vaccines for Children (VFC) program, and certain childhood obesity activities and asbestos exposure in Libby, Montana.
- Agency for Healthcare Research and Quality (AHRQ) – AHRQ would continue to maintain oversight of ongoing projects funded by the Patient-Centered Outcomes Research Trust Fund (PCORTF) and would continue CMS-funded work related to measure development for the Children's Health Insurance Program Reauthorization Act.
- Food and Drug Administration (FDA) – FDA would continue limited activities related to its user fee funded programs including the activities in the Center for Tobacco Products. FDA would also continue select vital activities including maintaining critical consumer protection to handle emergencies, high-risk recalls, civil and criminal investigations, import entry review, and other critical public health issues.
- Centers for Medicare & Medicaid Services (CMS) – CMS would continue large portions of ACA activities, including coordination between Medicaid and the Marketplace, as well as insurance rate reviews, and assessment of a portion of insurance premiums that are used on medical services. In the short term, the Medicare Program will continue largely

without disruption during a lapse in appropriations. Additionally, other non-discretionary activities including Health Care Fraud and Abuse Control, Center for Medicare & Medicaid Innovation, and Pre-existing Condition Insurance Plan activities would continue. States will have funding for Medicaid on October 1, due to the advanced appropriation enacted in the FY 2013 appropriations legislation, as well as for the Children's Health Insurance Program (CHIP).

Activities that would *not continue* include:

- IHS – IHS would be unable to provide funding to Tribes and Urban Indian health programs, and would not perform national policy development and issuance, oversight, and other functions, except those necessary to meet the immediate needs of the patients, medical staff, and medical facilities.
- HRSA – HRSA would be unable make payments for the Children's Hospital GME Program and Vaccine Injury Compensation Claims. Monitoring of Ryan White Grants – particularly AIDS Drug Assistance Program Grants, Emergency Relief Grants and Comprehensive Care would be insufficient to assure states, cities and communities are complying with statutory guidance and necessary performance.
- ACF – ACF would not continue quarterly formula grants for Temporary Assistance for Needy Families, Child Care, Social Services Block Grant, Refugee Programs, Child Welfare Services and the Community Service Block Grant programs. Additionally new discretionary grants, including Head Start and social services programs, would not be made.
- ACL – ACL would not be able to fund the Senior Nutrition programs, Native American Nutrition and Supportive Services, Prevention of Elder Abuse and Neglect, the Long-Term Care Ombudsman program, and Protection and Advocacy for persons with developmental disabilities.
- NIH – NIH would not admit new patients (unless deemed medically necessary by the NIH Director), or initiate new protocols, and would discontinue some veterinary services. NIH will not take any actions on grant applications or awards.
- CDC – CDC would be unable to support the annual seasonal influenza program, outbreak detection and linking across state boundaries using genetic and molecular analysis, continuous updating of disease treatment and prevention recommendations (e.g., HIV, TB, STDs, hepatitis), and technical assistance, analysis, and support to state and local partners for infectious disease surveillance.

- AHRQ – AHRQ would be unable to fund new grants and contracts related to health services research initiatives, including research on improving patient safety and reducing healthcare-associated infections. In addition, the data collection and modifications to the household survey of the Medical Expenditure Panel Survey would be stopped.
- SAMHSA – SAMHSA would be unable to monitor grants or contracts, including activities requiring on-site supervision.
- CMS – CMS would be unable to continue discretionary funding for health care fraud and abuse strike force teams resulting in the cessation of their operations. Fewer recertification and initial surveys for Medicare and Medicaid providers would be completed, putting beneficiaries at risk of quality of care deficiencies.
- FDA - FDA will be unable to support the majority of its food safety, nutrition, and cosmetics activities. FDA will also have to cease safety activities such as routine establishment inspections, some compliance and enforcement activities, monitoring of imports, notification programs (e.g., food contact substances, infant formula), and the majority of the laboratory research necessary to inform public health decision-making.
- ASPR - ASPR would be unable to fund activities related to medical countermeasures against chemical, biological, radiological, nuclear, and emerging threats, the Hospital Preparedness Program, and fully staff the National Disaster Medical System. Additionally, the potential assistance to Colorado in recovering from recent unprecedented flooding and the preparation to respond to H7N9 influenza or MERS incident could be delayed.
- ONC - ONC will be unable to continue the Standards and Interoperability Framework activities as well as related standards and testing activities; policy activities such as privacy, security, and clinical quality measure development; and administration of the Certified Health IT Product List.

Methodology

The HHS contingency staffing plan for agency operations in the absence of appropriations has been updated consistent with the requirements in Section 124 of OMB Circular A-11. The plan was prepared based on the Department of Justice legal opinions of April 25, 1980, January 16, 1981, and August 16, 1995, and the memoranda and Q's and A's that OMB provided to Departments and Agencies in 1995, 1996, April 2011, December 2011, and August 2013 on this topic. To the degree that updated government-wide guidance is released, or there are events that affect the programmatic activities that HHS needs to carry out during an absence of annual appropriations, the plan would require additional updating. In cases of public health disasters at home or abroad that demand the attention of a range of agency experts to secure and protect human life, the HHS plan would also have to be modified. This plan reflects the anticipated number of staff who would be on-board the second business day of a near-term

funding hiatus, after initial shutdown activities would have been completed. On the first day, HHS expects to complete initial shutdown activities within the first day after OMB notification to implement the contingency plans. The plan is updated for staffing levels and funding levels as of August 24, 2013.

As in previous periods without enacted annual appropriations, the number of excepted staff would vary daily, depending on the amount of excepted work that needs to be done. For example, at the end of a pay period, time keepers would need to be excepted for the amount of time to prepare and enter into the timekeeping system the hours worked in pay status, hours worked in non-pay status, and hours in furlough status. Also, the second-day staffing level is likely to include more contract officers than some later days, as contract officers must complete their notifications of those contractors whose performance would need to be changed.

The information on staff who would not be furloughed is broken into the two broad categories of “authorized by law” and “safety of human life and protection of property,” consistent with Department of Justice legal opinions.

“Authorized by law” includes:

- Employees who are “exempt” from furlough because they are not affected by a lapse in appropriations – These staff would be working in a pay status, as funding would continue to be available to pay their salaries.
- Officers appointed by the President –This includes all presidential appointment with Senate confirmation and presidential appointment officials and members of the uniformed services (Commissioned Corps).
- Staff performing activities authorized by necessary implication.

For activities related to the safety of human life and the protection of property, HHS relied on the guidance provided by the Attorney General in 1980, as modified by the Department of Justice in 1995 to reflect relevant statutory changes in the intervening years.

For safety of human life, the numbers needed to continue medical services that HHS provides are separately identified. For protection of property, the plan provides separate information on the number of staff excepted to protect on-going medical experiments, to maintain computer data, and to maintain animals and protect inanimate government property.

HHS, Program Support Center (PSC), Financial Management Service (FMS), Division of Payment Management (DPM) will be operational and retain minimal necessary staffing in an excepted status to ensure delivery of grant payments for excepted programs during a possible appropriations hiatus. The DPM will follow specific processes to ensure payment of permissible disbursements. Additionally, grant payments will continue be processed following the existing, robust internal controls – as long as the drawdown requests do not trigger the Payment Management System (PMS) edit checks and awarding entity drawdown limit controls. DPM is

poised to issue specific guidance to its customers, including information about how payment requests that trigger any one of the PMS drawdown controls will be handled.

HHS will maintain Grants.gov system in an operational status, but with reduced federal support staff presence, should a lapse in appropriations occur. In addition, the Grants.gov Contact Center will remain available, and provide assistance to callers. HHS, as Managing Partner, in collaboration with OMB and the Grants.gov Program Management Office, will keep the federal grantor community updated as to the status of the Grants.gov system as plans evolve in the event of a government shutdown.

Summary by Category of Exception

The sections on the detailed staffing tables display the staff that would be exempted according to which category their funding falls or the activities they fulfill. This section summarizes the highlights of those totals across HHS.

Staff performing activities without funding issues

Several HHS agencies have substantial mandatory, carryover, or user fee funds which are not affected by a hiatus in annual appropriations, with CMS having the most mandatory funds, including State Grants and Demos, ACA Mandatory Program Management, ARRA Mandatory Program Management, Center for Medicare and Medicaid Innovation, the ACA Implementation Fund, and the HCFAC mandatory. CDC has some staff supported through carryover funding, including for PEPFAR, and the Strategic National Stockpile, and the James Zadroga 9/11 Health and Compensation Act of 2010, which includes mandatory administrative funding for the World Trade Center program. FDA also has carryover funding from user fees paid by industry. IHS has the most reimbursable activities, which includes collections from third-party billing for health services, including from private insurance, Medicaid, and Medicare.

Officers appointed by the President

The Officers appointed by the President at HHS include the Secretary, Deputy Secretary, Assistant Secretaries, and many agency heads, which total 18 on board. Other Officers appointed by the President include Commissioned Corps personnel. HHS would retain 4,879 on board.

Staff performing activities authorized by necessary implication – support of funded activities

The HHS plan includes 1,269 staff performing activities authorized by necessary implication, other than law enforcement and orderly shutdown.

CDC – 192 staff would be carrying out excepted activities to support both domestic and international operations in foreign countries with a CDC presence, such as travel, procurement, grants, finance, and payment services. Fully funded programs include: PEPFAR, Strategic National Stockpile, World Trade Center, International Malaria, Haiti cholera response, and some of CDC's reimbursable activities.

Staff performing activities authorized by necessary implication – orderly phase-down and suspension of operations

HHS has identified 1,103 staff that would be excepted to assure an orderly phase-down and suspension of activities. This designation include staff that would be needed to assure an orderly process for determining, as conditions change, what activities should be re-initiated and what activities may no longer be excepted. This number also includes non-PAS shutdown staff carrying out responsibilities described in the November 17, 1995 OMB memorandum to the President's Management Council on PAS shutdown responsibilities, and the estimated number of OGC staff who would be excepted to ensure that HHS responds appropriately to orders from the Judicial branch.

Safety of human life – direct medical services

HHS estimates that 9,597 staff would be excepted for the provision of direct medical services, with the vast majority of these in the Indian Health Service and the NIH Clinical Center.

Indian Health Service – 6,924 IHS staff would be excepted for the provision of direct medical care. This number reflects FTE at all of the IHS service unit facilities where direct health care is provided. The contingency plan provides for health care to continue at all of these locations. While some preventive health services would continue to be provided (e.g., well child exams or prenatal visits), the predominant care provided would be treatment services for acute conditions or monitoring of chronic diseases for complications. The IHS annual appropriation is not large enough to provide the level of medical services that, for example, Federal employees receive through FEHB. IHS already defers needed medical services. In addition, most IHS facilities are in remote locations, where there are few if any other providers. As a result of these factors, IHS does not anticipate further reducing the number of inpatient/outpatient visits during a hiatus. While the furlough percentage is lower than in FY 1996, the lower percentage reflects changes in the way IHS does business, including significant reductions in the number of headquarters administrative staff.

National Institutes of Health -- 2,564 staff would be excepted for the provision of patient care. In general, individuals enroll in inpatient and outpatient investigational procedures at the NIH Clinical Center only when standard medical treatments have failed, and other treatment options are not available. As a result, they have no other alternatives. While NIH would not be accepting new patients or initiating new clinical protocols during a hiatus, the continued provision of care to existing patients (both inpatients and outpatients) means the hospital would be operating at roughly 90% of normal patient load during the initial weeks of a funding hiatus. These staff comprise the multidisciplinary patient care team needed for safe and effective patient care, including direct patient care and patient support. NIH also plans to retain a small group of staff to support direct medical care staff. These staff will perform critical functions such as the monitoring of protocols and regulatory adverse effect report functions, and the distribution of drugs to clinics.

Safety of human life – activities other than direct medical services

Food and Drug Administration – FDA comprises over half of the other staff that would be excepted for the protection of human life. The 698 FDA staff who would be excepted include 578 staff to inspect regulated products and manufacturers, conduct sample analysis on products and review imports offered for entry into the U.S. This number includes active investigators who will be needed to perform inspections, recall operations, emergency response, review import entries and make admissibility decisions. The remaining 120 staff would be conducting and overseeing adverse event reporting and lot release protocol reviews as well as providing support with surveillance, product incidents, compliance, recalls, and emergencies.

Protection of property -- research property, animals, and inanimate property

NIH – 734 staff would be excepted to protect property related to on-going medical experiments, and 568 staff would be needed for maintenance of animals and protection of inanimate government property. The 734 excepted to protect property related to on-going medical experiment is a subset of the over 8,000 people that work in 1,140 intramural research laboratories and clinical branches. For some of the on-going experiments, a break in the protocol would render the research property (both animate and inanimate) useless and require some of it to be destroyed. These staff would also be responsible for maintaining cell lines and other invaluable research materials.

NIH staff provide continuous utilities, facilities surveillance and maintenance, fire protection, and support a host of other critical systems. These functions protect the 281 government buildings, comprising 15 million square feet worth \$6 billion, as well as 45 leased facilities, constituting over 4 million rentable square feet. In addition to supporting patient care activities, NIH also provides utilities and buildings surveillance for laboratory and vivarium facilities housing 1,350,000 mice; 390,000 fish, 63,000 rats and 3,900 nonhuman primates. These animals are used for research by 24 NIH Institutes and Centers at multiple facilities across the country; many of these animals are priceless and have taken generations to breed. NIH also plans to retain staff responsible for the proper maintenance, calibration, and usage of specialized medical equipment (e.g., infusion pumps, medication administration, pharmacokinetics, medical gas, anesthesia pumps, etc.). These staff include technologists, chemists, pharmacists, and biomedical engineers.

Protection of property -- maintenance of computer data

HHS estimates that 407 staff (excluding those otherwise authorized by law) would be excepted for the protection of computer data, with the majority of these at NIH.

NIH – 212 staff would be excepted to maintain computerized systems to support research and clinical patient care. The majority of retained individuals would be for the maintenance of the hospital data network, clinical research information system, picture archiving and communications systems, radiology information system, and other components directly related to the electronic patient medical record (e.g., patient care unit workstations on wheels and bar coding devices). Additional retained employees would be necessary to curate concurrent

toxicologic data from external contractor sites requiring sophisticated data-handling expertise to prevent corruption of data streams, as well as to ensure the integrity of experimental data systems.

The plan for maintaining access to databases includes the minimum staff required to identify and correct dynamic access problems caused by changes in the volume and types of use. (During a shutdown, there would be no routine updating of databases that is normally a major part of these database operations.) In addition, the plan for continuation of IT infrastructure services represents only the bare minimum to sustain the essential infrastructure for keeping the National Library of Medicine data center operational for serving the external biomedical databases that are used in the provision of non-Federal health care.

**Department of Health and Human Services
Fiscal Year 2014 Contingency Staffing Plan
For Operations in the Absence of Enacted Annual Appropriations**

Category/Program	FDA	HRSA	IHS	CDC	NIH	SAMHSA	AHRQ	CMS	ACF	ACL	OS	HHS Total
Total on-board staffing (as of October 1, 2013)	14,800	1,927	15,541	12,825	18,646	631	317	5,994	1,323	149	6,045	78,198
Staff Involved in Obligations "authorized by law:"												
<u>Staff performing activities without funding issues</u>												
Administrative funds appropriated in authorizing legislation.	0	318	122	72	3	0	6	849	90	14	5	1,479
Staff paid from carryover funding	6,043	131	205	1,935	0	0	0	705	8	0	1,231	10,258
User fees appropriated in authorizing legislation.	40	46	0	2	0	0	0	71	0	0	0	159
Reimbursable activities for which the reimbursement is not paid from funds provided by the FY 2011 CR.	0	0	5,249	107	5	0	7	0	7	0	8	5,383
<u>Officers appointed by the President</u>												
Commissioned Corps	1,002	107	2,064	974	300	50	8	156	7	0	211	4,879
HHS officers appointed by the President	1	0	1	0	2	1	0	1	1	1	10	18
<u>Staff performing activities authorized by necessary implication</u>												
Activities required to ensure that fully funded programs continue operation, and that funded entitlement benefits are paid	62	69	35	192	0	0	0	211	25	0	675	1,269
Law enforcement activities.	111	0	0	0	95	0	0	0	0	0	147	353
Orderly phase-down and suspension of operations	52	66	10	281	379	11	4	120	38	9	133	1,103
Other		0	0	0	0	0	0	0	0	0	0	0
Subtotal, authorized by law	7,311	737	7,686	3,563	784	62	25	2,113	176	24	2,420	24,901
Staff involved in the safety of human life or the protection of property												
<u>Activities related to the safety of human life</u>												
Direct medical services provided through clinics and hospitals that the OPDIV operates	0	36	6,924	71	2,564	0	0	0	0	0	2	9,597
Other	698	0	0	192	86	2	0	0	35	0	97	1,110
<u>Activities to protect property</u>												
Protect ongoing medical experiments.	92	18	0	46	734	0	0	0	0	0	0	890
Maintenance of animals & protection of inanimate government property	39	0	40	52	568	0	0	0	3	0	5	707
Maintain computer data	40	6	0	94	212	0	0	0	0	0	55	407
Other	0	3	0	53	0	2	0	0	0	1	15	74
Subtotal, safety of human life and protection of property	869	63	6,964	508	4,164	4	0	0	38	1	174	12,785

Category/Program	FDA	HRSA	IHS	CDC	NIH	SAMHSA	AHRQ	CMS	ACF	ACL	OS	HHS Total
FY 2014 Summary Analysis												
Total on-board staffing (as of October 1, 2013)	14,779	1,981	15,541	12,825	18,646	631	317	5,994	1,323	149	6,045	78,198
Total number of staff to be retained	8,180	800	14,650	4,071	4,948	66	25	2,113	214	25	2,594	37,686
Number of staff to be furloughed	6,620	1,127	891	8,754	13,698	565	292	3,881	1,109	124	3,451	40,512
Percent Retained	55%	42%	94%	32%	27%	10%	8%	35%	16%	17%	43%	48%
Percent Furloughed	45%	58%	6%	68%	73%	90%	92%	65%	84%	83%	57%	52%
Life & Property as % non-expected	12%	5%	89%	5%	23%	1%	0%	0%	3%	1%	5%	24%

1/ ASPR and the Office of the Secretary (OS) do not include any of the National Disaster Medical System members, who are on-call employees.

Note: The staff estimates reflect the number that would be excepted on the second day of a hiatus in appropriations. Some staff who are included might complete their activities within another day or so (such as those notifying contractors.) This excludes staff (such as those who approve travel or file time and attendance reports) who would not be needed the second day, but would be excepted for short periods if the hiatus continued.

Staff Divisions

Category/Program	ASPR/1	OCR	OIG	OMHA	ONC	PSC	Other OS	OS Total
Total on-board staffing (as of October 1, 2013)	596	221	1,627	487	184	625	2,305	6,045
Staff Involved in Obligations "authorized by law:"								
<u>Staff performing activities without funding issues</u>								
Administrative funds appropriated in authorizing legislation.	0	0	0	0	0	0	5	5
Staff paid from carryover funding	0	0	1,220	6	0	0	5	1,231
User fees appropriated in authorizing legislation.	0	0	0	0	0	0	0	0
Reimbursable activities for which the reimbursement is not paid from funds provided by the FY 2011 CR.	0	0	0	0	0	0	8	8
<u>Officers appointed by the President</u>								
Commissioned Corps	65	2	0	0	1	37	106	211
HHS officers appointed by the President	1	1	1	0	0	0	7	10
<u>Staff performing activities authorized by necessary implication</u>								
Activities required to ensure that fully funded programs continue operation, and that funded entitlement benefits are paid	0	0	0	372	0	191	112	675
Law enforcement activities.	0	0	147	0	0	0	0	147
Orderly phase-down and suspension of operations	4	2	0	0	3	0	124	133
Other	0	0	0	0	0	0	0	0
Subtotal, authorized by law	70	5	1,368	378	4	228	367	2,420
Staff involved in the safety of human life or the protection of property								
<u>Activities related to the safety of human life</u>								
Direct medical services provided through clinics and hospitals that the OPDIV operates	0	0	0	0	0	2	0	2
Other	97	0	0	0	0	0	0	97
<u>Activities to protect property</u>								
Protect ongoing medical experiments.	0	0	0	0	0	0	0	0
Maintenance of animals & protection of inanimate government property	0	0	0	0	0	5	0	5
Maintain computer data	0	0	0	0	0	6	49	55
Other	0	0	0	0	0	0	15	15
Subtotal, safety of human life and protection of property	97	0	0	0	0	13	64	174

Staff Divisions

Category/Program	ASPR/1	OCR	OIG	OMHA	ONC	PSC	Other OS	OS Total
FY 2014 Summary Analysis								
Total on-board staffing (as of October 1, 2013)	596	221	1,627	487	184	625	2,305	6,045
Total number of staff to be retained	167	5	1,368	378	4	241	431	2,594
Number of staff to be furloughed	429	216	259	109	180	384	1,874	3,451
Percent Retained	28%	2%	84%	78%	2%	39%	19%	43%
Percent Furloughed	72%	98%	16%	22%	98%	61%	81%	57%
Life & Property as % non-expected	18%	0%	0%	0%	0%	3%	3%	5%