

**Department of Health and Human Services  
Fiscal Year 2011**

**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 47,693 staff and retaining 28,655 staff as of day two of a near-term funding hiatus. Put another way, 62% of HHS employees would be on furlough, and 38% 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), and the Food and Drug Administration (FDA)) having the vast majority of their staff on furlough, and agencies with a substantial direct service component (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:

- IHS – IHS would continue to provide direct clinical services and referrals for contracted services that cannot be provided through IHS clinics.
- Health Resources and Services Administration -- Health Centers would continue to provide health services, as grantees would be able to draw down funds that have already been awarded and mandatory funding would remain available.
- ACF – ACF programs funded through mandatory sources with full year appropriations would continue operations, including TANF and Abstinence Education. ACF would also continue operating the Unaccompanied Alien Children program, and States would have adequate funding to continue Foster Care, Adoption Assistance, Child Support Enforcement for a period.
- Administration on Aging (AOA) -- Federal staff would continue to support the operation of Aging and Disability Resource Centers and the Senior Medicare Patrol program, as mandatory funding would remain available for these programs.
- SAMHSA – Federal staff that are authorized to continue working under a funding hiatus would continue to support the operation of the national Suicide Prevention Hotline.
- Assistant Secretary for Preparedness and Response (ASPR) -- There will be sufficient ASPR staff to maintain situational awareness of existing public health emergencies, interact with other response agencies across the Federal government (e.g., FEMA), and maintain a minimal readiness level for response operations.
- National Institutes of Health (NIH) -- The NIH Clinical Center will continue to provide direct medical services and maintain research protocols for *current* patients.
- Centers of Disease Control and Prevention (CDC) -- CDC will implement global health programs abroad, such as the President's Emergency Plan for AIDS Relief funded through prior year appropriations.

- FDA -- FDA will continue to review imports offered for entry into the U.S. and make admissibility decisions.
- Agency for Healthcare Research and Quality (AHRQ) -- In general, research will continue to implement the provisions of the child health quality initiatives mandated and funded by the Children's Health Insurance Program Reauthorization Act of 2009, which is funded through a reimbursable agreement with CMS.
- CMS -- Operations of the Center for Consumer Information and Insurance Oversight could continue as funding was provided through the Affordable Care Act. This includes insurance rate reviews, assessment of a portion of insurance premiums that are used on medical services, establishment of exchanges, operation of the pre-existing condition insurance program and the early retiree reinsurance program.

Activities that would *not continue* include:

- IHS -- Routine environmental health inspections and facilities maintenance and repair would be discontinued.
- HRSA -- No new service grants (e.g., to Ryan White HIV/AIDS grantees) would be awarded with annual appropriations.
- ACF -- No new service grants (e.g., for Head Start) would be awarded with annual appropriations.
- AoA -- No new grants for services for older adults will be awarded.
- NIH -- The NIH Clinical Center will not be admitting any new patients or initiating any new clinical trials during a hiatus in funding. NIH will not be making any extramural research grants or contracts.
- CDC -- Federal staff would not be available to support grants or intramural activities associated with a variety of activities, such as the Chronic Disease Prevention and Health Promotion programs.
- AHRQ -- AHRQ would not be able to fund any new grants, or non-competing grants, which support a broad portfolio of research on healthcare quality, effectiveness, and efficiency.
- SAMHSA -- No new grants for behavioral health services will be awarded.
- CMS -- Health care fraud and abuse strike force teams funded from discretionary funds would have to end their operations.

## **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 DOJ 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, and April 2011 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, our plan would also have to be modified. For example, the 2011 earthquake and tsunami and resulting destabilization of nuclear facilities in Japan has called upon experts within CDC and other HHS agencies to provide guidance and other assistance to protect human life.

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 four hours after OMB notification to implement the contingency plans. The plan is updated for staffing levels and funding levels as of pay period 9, which begins on April 10, 2011.

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:

- Staff performing activities without funding issues – 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 PAS and PA Officials.
- 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 broken out from the total. 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.

The HHS contingency staffing plan for agency operations in the absence of appropriations includes 17,176 staff who would be excepted for the safety of human life and protection of property. A-11 requires legal and policy statements supporting a plan if it exceeds 5 percent of the staff not otherwise authorized by law to be excepted – which would be 3,243 in the case of HHS. The total in this plan exceeds that threshold by about 13,933. This higher number includes:

- Direct medical services (and support operations): 12,444, mostly in IHS and NIH.
- Maintenance of the value of on-going medical experiments: 1,195 of whom 982 are in NIH.
- Border inspections, product safety inspections, adverse event reporting, lot release protocol reviews, and related support activities: 1,250 in FDA.

These three areas total 14,889 and constitute more than the difference between the 5% threshold and the HHS total. These exceptions have been reviewed by both the Office of the General Counsel and HHS leadership, and found to be appropriate from both a legal and policy perspective.

In addition to our current information on the number of staff to be furloughed or excepted, the attachment also includes comparable data for FY 1996 plans where comparable data is available.

HHS will maintain the Payment Management System in an operational status to continue processing grant drawdown requests, so that payments can be made for excepted programs. Many grantees receiving annually appropriated awards prior to a shutdown may also be able to continue drawing funds from prior awards during an appropriations hiatus. Such grantees could not drawdown funds if they were under a restriction that required Federal staff to take a specific action for a drawdown to occur. The robust internal controls that currently exist would continue to ensure the integrity of grant draw-down requests and payments.

HHS will maintain Grants.gov in an operational status to continue to post funding opportunity announcements and accept and process grant applications for fully funded and excepted programs, and to accept and store applications for non-excepted programs. This will allow the government to remain responsive to prospective grantees eligible for financial assistance from excepted programs while adhering to requirements for operating in the absence of annual appropriations.

### **Summary by Category of Exception**

The sections on the attached table display the staff who 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, CMS ACA Implementation Fund, HCFAC mandatory, etc. CDC has a good number of staff supported through carryover funding, including for PEPFAR, the Strategic National Stockpile, and 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.

The Officers appointed by the President at HHS include the Secretary, Deputy Secretary, Assistant Secretaries, and many agency heads. At HHS, these total 19 on board.

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

The HHS plan includes 1,091 staff performing activities authorized by necessary implication, other than law enforcement and orderly shutdown. The largest components of this are CDC and the Program Support Center (PSC).

CDC – 379 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.

Program Support Center – 218 staff would be authorized by necessary implication. These include, but are not limited to:

- Acquisition services for those HHS programs which have funding (as well as any safety/property excepted contracts).
- Repackaging of medical supplies and pharmaceuticals for clinics and hospitals providing direct medical services;
- Maintaining the automated systems and help desks necessary to support funded and other excepted programs (accounting services, Gov-Trip, procurement systems, HHS' Payment Management System (PMS), time-keeping, accounting for pay, etc.).

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

HHS has identified 916 staff (roughly 1 percent of the Department) that would be excepted to assure an orderly phase-down and suspension of activities. This 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 assure that HHS responds appropriately to orders from the Judicial branch.

***Safety of human life – direct medical services***

HHS estimates that 12,444 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 – 9,787 IHS staff would be excepted for the provision of direct medical care. This 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. Given medical inflation, the current rate provided by the CR is not sufficient to provide the same level of care as in FY 2010. 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 1,250 FDA staff who would be excepted include 953 staff to inspect regulated products and manufacturers, conduct sample analysis on products and review imports offered for entry into the U.S. This includes active investigators who will be needed to perform inspections, recall operations, emergency response, review import entries and make admissibility decisions. The remaining 297 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 – 982 staff would be excepted to protect property related to on-going medical experiments, and 652 staff would be needed for maintenance of animals and protection of inanimate government property. The 982 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.

It should be noted that 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 \$15 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 1,438,000 mice; 122,000 fish, 66,000 rats and 3,500 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 376 staff (excluding those otherwise authorized by law) would be excepted for the protection of computer data, with the majority of these at NIH.

NIH – 235 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 NLM data center operational for serving the external biomedical databases that are used in the provision of non-Federal health care.

Attachment

**Department of Health and Human Services  
Fiscal Year 2011 Contingency Staffing Plan  
For Operations in the Absence of Enacted Annual Appropriations**

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.

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**Operating Divisions**

Category/Program	FDA	HRSA	IHS	CDC	NIH	SAMHSA	AHRQ	CMS	ACF	AoA	OS <sup>2/3/</sup>	HHS Total
<b>Total on-board staffing (as of beginning of pay period 9)</b>	<b>13,673</b>	<b>1,845</b>	<b>15,725</b>	<b>11,020</b>	<b>19,863</b>	<b>540</b>	<b>318</b>	<b>5,470</b>	<b>1,355</b>	<b>126</b>	<b>6,413</b>	<b>76,348</b>
<b>Staff Involved in Obligations “authorized by law:”</b>												
<u>Staff performing activities without funding issues</u>												
Administrative funds appropriated in authorizing legislation.	0	197	127	14	3	0	0	1,061	42	22	1,491	<b>2,957</b>
Staff paid from carryover funding	303	21	132	596	0	0	0	71	17	0	3	<b>1,143</b>
User fees appropriated in authorizing legislation.	33	43	0	11	0	0	0	75	0	0	0	<b>162</b>
Reimbursable activities for which the reimbursement is not paid from funds provided by the FY 2011 CR.	0	0	4,626	129	5	0	4	0	8	7	56	<b>4,835</b>
<u>Officers appointed by the President</u>												
HHS officers appointed by the President 1/	1	0	1	0	2	1	0	1	2	1	10	<b>19</b>
<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	40	76	20	379	0	0	0	84	19	0	473	<b>1,091</b>
Law enforcement activities.	100	0	0	0	109	0	0	0	0	0	147	<b>356</b>
Orderly phase-down and suspension of operations	52	74	10	224	379	5	5	10	36	3	118	<b>916</b>
<b>Subtotal, authorized by law</b>	<b>529</b>	<b>411</b>	<b>4,916</b>	<b>1,353</b>	<b>498</b>	<b>6</b>	<b>9</b>	<b>1,302</b>	<b>124</b>	<b>33</b>	<b>2,298</b>	<b>11,479</b>



## Operating Divisions

Category/Program	FDA	HRSA	IHS	CDC	NIH	SAMHSA	AHRQ	CMS	ACF	AoA	OS <sup>2/3/</sup>	HHS Total
<b>Staff involved in the safety of human life or the protection of property</b>												
<u>Activities related to the safety of human life</u>												
Direct medical services provided through clinics and hospitals that the OPDIV operates	0	51	9,787	37	2,564	0	0	0	0	0	5	12,444
Other	1,250	0	0	724	86	1	0	0	0	0	118	2,179
<u>Activities to protect property</u>												
Protect ongoing medical experiments.	91	14	0	105	982	0	0	0	0	0	3	1,195
Maintenance of animals & protection of inanimate government property	60	0	40	98	652	0	0	0	0	0	21	871
Maintain computer data	16	6	0	75	235	0	0	3	4	1	36	376
Other	16	2	0	92	0	0	0	0	0	1	0	111
<b>Subtotal, safety of human life and protection of property</b>	<b>1,433</b>	<b>73</b>	<b>9,827</b>	<b>1,131</b>	<b>4,519</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>4</b>	<b>2</b>	<b>183</b>	<b>17,176</b>
Total on-board staffing (as of beginning of pay period 9)	13,673	1,845	15,725	11,020	19,863	540	318	5,470	1,355	126	6,413	76,348
Total number of staff to be retained	1,962	484	14,743	2,484	5,017	7	9	1,305	128	35	2,481	28,655
Number of staff to be furloughed	11,711	1,361	982	8,536	14,846	533	309	4,165	1,227	91	3,932	47,693
Percent Retained	14%	26%	94%	23%	25%	1%	3%	24%	9%	28%	39%	38%
Percent Furloughed	86%	74%	6%	77%	75%	99%	97%	76%	91%	72%	61%	62%

## FY 1996 Information

Total On-board Staffing	9,620	2,203	15,291	6,349	15,670	705	250	4,322	1,805	169	3,667	60,051
Total number of staff to be retained	2,279	819	12,678	2,641	6,419	147	44	454	65	21	799	26,366
Number of staff to be furloughed	7,341	1,384	2,613	3,708	9,251	558	206	3,868	1,740	148	2,868	33,685
Percent Retained	24%	37%	83%	42%	41%	21%	18%	11%	4%	12%	22%	44%
Percent Furloughed	76%	63%	17%	58%	59%	79%	82%	89%	96%	88%	78%	56%

1/ ACF and OGC -- While Presidential Appointees are excepted based on the nature of the appointment, exceptions for those acting in such positions are based on the nature of the work performed. As a result, the acting head of these organizations are not included on this line.

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

3/ OMHA on-board staffing levels represent estimates for day 2 through 5. These levels would increase as the hiatus continues, consistent with the actions necessary to determine entitlement benefit eligibility.

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Staff Divisions

Category/Program	ASPR <sup>2/</sup>	OCR	OIG	OMHA <sup>3/</sup>	ONC	PSC	Other OS	OS Total
<b>Total on-board staffing (as of beginning of pay period 9)</b>	<b>491</b>	<b>245</b>	<b>1,818</b>	<b>422</b>	<b>152</b>	<b>870</b>	<b>2,415</b>	<b>6,413</b>
<b>Staff Involved in Obligations “authorized by law:”</b>								
<u>Staff performing activities without funding issues</u>								
Administrative funds appropriated in authorizing legislation.	0	2	1,399	0	0	0	90	<b>1,491</b>
Staff paid from carryover funding	0	0	0	0	0	0	3	3
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	56	56
<u>Officers appointed by the President</u>								
HHS officers appointed by the President 1/	1	0	1	0	0	0	8	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	110	2	218	143	473
Law enforcement activities.	0	0	147	0	0	0	0	147
Orderly phase-down and suspension of operations	4	2	0	0	4	0	108	118
<b>Subtotal, authorized by law</b>	<b>5</b>	<b>4</b>	<b>1,547</b>	<b>110</b>	<b>6</b>	<b>218</b>	<b>408</b>	<b>2,298</b>

## Staff Divisions

Category/Program	ASPR <sup>2/</sup>	OCR	OIG	OMHA <sup>3/</sup>	ONC	PSC	Other OS	OS Total
<b>Staff involved in the safety of human life or the protection of property</b>								
<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	5	0	5
Other	114	0	0	3	0	0	1	118
<u>Activities to protect property</u>								
Protect ongoing medical experiments.	0	0	0	0	0	0	3	3
Maintenance of animals & protection of inanimate government property	0	0	0	0	0	17	4	21
Maintain computer data	0	0	0	0	0	32	4	36
Other	0	0	0	0	0	0	0	0
<b>Subtotal, safety of human life and protection of property</b>	<b>114</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>54</b>	<b>12</b>	<b>183</b>
Total on-board staffing (as of beginning of pay period 9)	491	245	1,818	422	152	870	2,415	6,413
Total number of staff to be retained	119	4	1,547	113	6	272	420	2,481
Number of staff to be furloughed	372	241	271	309	146	598	1,995	3,932
Percent Retained	24%	2%	85%	27%	4%	31%	17%	39%
Percent Furloughed	76%	98%	15%	73%	96%	69%	83%	61%

**FY 1996 Information**

Total On-board Staffing		251	938			1,253	731	3,667
Total number of staff to be retained		2	54			511	149	799
Number of staff to be furloughed		249	884			742	582	2,868
Percent Retained		1%	6%			41%	20%	22%
Percent Furloughed		99%	94%			59%	80%	78%