



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

November 17, 1981

MEMORANDUM FOR HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: David A. Stockman *DAS*

SUBJECT: Agency Operations in the Absence of Appropriations

Public Law 97-51, the Continuing Resolution enacted by the Congress on September 30, 1981 to provide for appropriations for all Executive and Judicial branch accounts, will expire on midnight Friday, November 20. No regular appropriations bills for Fiscal Year 1982 have been submitted to the President during the period of the Continuing Resolution, and the House of Representatives and Senate are presently considering widely divergent Second Continuing Resolutions. There is, therefore, a possibility that no appropriations will be enacted as of November 21.

Under the circumstances, you should begin orderly planning to deal with this possibility.

OMB Bulletin 80-14, dated August 28, 1980, requires all agencies to maintain contingency plans to deal with the eventuality of an appropriations hiatus. Additionally, the opinion of the Attorney General dated January 16, 1981, attached, remains in effect.

Examples of excepted activities were developed when the Executive Branch last faced the possibility of an appropriations hiatus, and were sent to agencies by former OMB Director James McIntyre on September 30, 1980. They are:

Beginning [November 21, 1981], agencies may continue activities otherwise authorized by law, those that protect life and property and those necessary to begin phasedown of other activities. Primary examples of activities agencies may continue are those which may be found under applicable statutes to:

1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.
2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.
3. Conduct essential activities to the extent that they protect life and property, including:
 - a. Medical care of inpatients and emergency outpatient care;

b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;

c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;

d. Border and coastal protection and surveillance;

e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;

f. Care of prisoners and other persons in the custody of the United States;

g. Law enforcement and criminal investigations;

h. Emergency and disaster assistance;

i. Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;

j. Activities that ensure production of power and maintenance of the power distribution system; and

k. Activities necessary to maintain protection of research property.

You should maintain the staff and support services necessary to continue these essential functions.

In addition, the following policies will be in effect in the event of a November 21 appropriations hiatus:

1. All employees performing non-expected activities defined by this memorandum and by the Attorney General's opinion of January 16, 1981, are permitted to perform no services other than those involved in the orderly suspension of agency operations.

2. With regard to non-expected agency activities and agency personnel performing them, particular attention should be paid to those provisions of the Antideficiency Act that do not permit agency acceptance of voluntary, i.e. non-expected services. Accordingly, in the event that the appropriations hiatus continues measurably beyond Monday, November 23, 1981, agency heads will be required to make determinations as to whether non-expected personnel have completed all phasedown tasks incident to the orderly suspension of agency operations. At such time, the services of those employees can no longer be accepted in the absence of appropriations.

3. This memorandum is principally directed towards the ability of agencies to obligate funds in the absence of appropriations. It should be made clear that, during a appropriations hiatus, funds may not be available to permit agency payment of obligations. All personnel performing excepted services, including activities incident to the orderly suspension of agency operations, should be assured that the United States will not contest its legal obligation to make payment for such services, even in the absence of appropriations.

4. Agencies are requested to report promptly to OMB staff who normally handle their budgets any major disruptions of activities or services that may or will imminently result from the absence of appropriations.

5. Within the guidance established by the Attorney General's opinion of January 16, 1981, and this memorandum, agency heads are to make such determinations as are necessary to operate their agencies during an appropriations hiatus, and to do so pursuant to normal agency processes for the resolution of issues of law and policy. Questions that cannot be determined by an agency should be addressed to OMB. All unresolved questions relative to the construction of the Antideficiency Act will be jointly referred to the Office of Legal Counsel of the Department of Justice.