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MEMORANDUM

TO: Interested parties
FROM: Penn Hill Group
DATE: September 24, 2013
SUBJECT: Impact of a Government Shutdown on Department of Education Operations

If Congress does not pass a continuing resolution (CR) that the President signs into law by September 30, the federal government will begin a process of curtailed operations typically referred to as a government shutdown. This memo provides background information on what happens during a government shutdown, as well as how a government shutdown would affect the major program areas of the Department of Education (ED). While the Office of Management and Budget (OMB) has issued [initial guidance to agencies to prepare for a shutdown and information on how contracts and grants](#) would or would not be administered, specific guidance on individual agency programs or activities has not been issued as of the date of this memo. **It is important to keep in mind that only OMB and agency or program specific guidance can provide definitive direction on agency activities during a government shutdown.** It is not certain whether additional guidance will be forthcoming from OMB or agencies.

Background

If any of the 13 annual appropriations bills have not been signed into law by September 30 of any given year, a CR is required for the federal government to continue to operate agencies and programs that are funded through discretionary spending appropriated by these unfinished bills. **In this case, none of the FY2014 appropriations bills have been signed into law.** At present, a CR has been passed by the House and will be considered by the Senate this week. This CR would fund the government through December 15, 2013, at which point Congress would need to pass a CR, or a series of short-term CRs, to determine funding for the remainder of the fiscal year. The CR currently being debated contains provisions that limit funding for the Affordable Care Act (Obamacare) as well as other measures that are not acceptable to Senate Democrats and the Obama Administration. The Senate may pass the House bill (very unlikely) or modify it and send it back to the House this weekend. If the Senate and House cannot agree on a CR that the President is willing to sign into law by September 30, agencies and programs funded through discretionary spending will be forced to go into a period of significantly curtailed operations often referred to as a government shutdown.

Under a shutdown, not all government functions actually cease. Programs and activities carried out with mandatory spending and those that have already been funded (such as certain contracts and grant activities funded under the previous years' appropriations) will continue. Activities that, if suspended, would imminently threaten the safety of human life or the protection of property or would infringe upon the constitutional responsibilities of the President, will continue. Lastly, individual agencies must determine which employees are necessary to carry out this limited set of programs and functions. These employees are referred to as "essential" employees, and will continue working through a government shutdown.

It is important to note that a government shutdown on October 1 would have a wider impact than the shutdowns in 1995 and 1996 did during the first Clinton Administration. During previous shutdowns, several appropriations bills, including the measures funding the Department of

Defense, had been signed into law. Agencies funded under these bills were not subject to the government shutdown. With none of the FY2014 appropriations bills having been signed into law yet, this shutdown would have a wider impact and affect all government agencies.

Department of Education Operations, Impact on Programs and Funding

As with past shutdowns, the Department of Education would be impacted since Congress and the President have not agreed to an appropriations bill funding its discretionary operations. As discussed above, programs funded via mandatory funding operate normally except to the extent a program relies on operations funded via discretionary spending. Below we provide information, based on past shutdown guidance and experiences, for some of the major Department functions and programs. None of the information in this memo should be viewed as final until, and if, additional guidance comes out from either OMB or the Department.

Student Aid

The Department is likely to follow [the guidance they issued in 2011](#) regarding student aid programs. If this holds true, there is not expected to be significant disruption of Department of Education based federal student aid. Student aid websites that are used to apply for financial aid would continue to operate. Payments of student aid that were already in the pipeline would be expected to continue to be awarded. New applications for student aid could run into delays or problems if data are required to be verified, especially from other agencies such as the IRS. Student loan servicers are expected to continue to service student loans under the terms of their contracts.

Elementary and Secondary Formula Programs

It is unlikely that there would be major disruptions for school districts in elementary and secondary formula programs during a short term government shutdown. School districts are not expected to encounter issues drawing down Title I, IDEA Part B, Improving Teacher Quality, and Career and Technical Education funds. These major K-12 state formula programs are forward-funded (meaning the funding for a fiscal year is provided to states in July of that fiscal year). In addition, a portion of this same funding is advance funded, which means it becomes available to states three months later in October. While the Department may not be able to make the October money available to states due to the shutdown, this is unlikely to be a problem as states and school districts typically have large carry-over balances at the start of a school year and don't immediately need the portion of funding provided in October. The normal electronic fund transfer systems that are utilized by states and school districts should continue to function during a government shutdown.

Among other formula programs, one that might be affected by a shutdown, particularly a protracted one, is Impact Aid, which receives its funding on a "current-year" basis (unlike the major state programs, which are "forward-funded" and thus will not make FY 2014 funds available until July and October of next year). Some Impact Aid districts, typically those for which program funds make up a significant portion of revenues, rely on timely receipt of these funds during the school year. A delay in making Impact Aid awards for more than a brief period of time could result in serious consequences for these districts' operations.

Competitive Grant programs

The Department of Education does not generally make competitive awards at the start of a fiscal year based on appropriations from that same new fiscal year. As many of these program awards are made in the spring, a government shutdown of a few weeks would be unlikely to have significant consequences on when and how these competitive awards would be made. A lengthier shutdown would, however, cause delays in grant-making.

Contracts and Grants

Generally, contracts or grants will continue to function if the specific grant or contract doesn't require the involvement of a Department of Education employee to oversee, provide direction or issue the award during the period of a shutdown. If a contract or grant, or a specific aspect of a contract or grant, does require involvement of the Department, then that aspect of the contract or grant would not proceed during a government shutdown. The [OMB memo](#) mentioned above provides some government-wide guidance on contract and grant administration during a shutdown. Overall, we believe that operations should be able to continue under all ED grant programs and under most contracts.

Interaction with ED and Other Federal Staff

As discussed above, in the event of a shutdown, agencies will designate certain employees as "essential," and these staffers will continue to work; all other federal employees will remain at home until a CR is in place. "Essential" employees are typically those who have an immediate impact on national defense, homeland security, law enforcement and health and safety. At the Department of Education, where employees do not carry out those functions, only a handful of people (typically only the head of each office and a few more people department-wide) have been designated as essential. Therefore, grantees, state and local officials and other members of the public seeking information or advice from Department will, under a shutdown, find that there is no one to take their calls or answer their e-mails. The same is likely to be true in the offices that administer job training programs at the Department of Labor and early childhood and human services programs at the Department of Health and Human Services.