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Utah State Legislature

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September 29, 2017

Sen. Jerry W. Stevenson, Senate Chair
Rep. Dean Sanpei, House Chair
Executive Appropriations Committee

RE: Federal Shutdown: Risks, Tools, and Resources

Dear Sen. Stevenson and Rep. Sanpei,

On August 16, 2017, the Federal Funds Commission approved, by motion and vote, that the legislative staff and the governor's office conduct research related to a federal government shutdown. The potential risks that the state of Utah could be exposed to in the event of a federal shutdown are outlined below and supported by the enclosed report.

At the time of the August 16, 2017 meeting, no appropriations bills for continued federal funding had been passed by the federal government and roadblocks to passing a budget by the September 30, 2017 appropriations deadline remained, including President Trump's position that the budget include funds to build a security wall on the southern border, Congress's displayed lack of progress on a plan to lift the nation's debt limit, and the Senate's potential use of the reconciliation process to attempt to pass health care and tax reform bills during the short September session, ultimately delaying the passing of a budget. Although the imminent threat of a federal shutdown has now been delayed given President Trump's recent signature on a bill extending government funding until December 8, 2017, a federal government shutdown remains a possibility. If short-term or full-year appropriations are not enacted prior to the new December 8, 2017 deadline, then federal agencies and programs that rely on appropriations to operate will shut down to avoid running afoul of the Antideficiency Act.

Risks of a Federal Shutdown

- **Utah's Dependency on Federal Grants:** Per the Federal Funds Information for States (FFIS) August 2017 State Policy Report, as of 2015 Utah ranked near or at the bottom of all states in total federal spending. Per the report, Utah received \$7,327 per capita in federal funds, the lowest per capita amount in the nation, 30.7 percent less than the national average, and less than half what the top-ranking states received. During the 2017 General Session, the State Legislature appropriated \$4.3 billion from federal funds, or 26 percent of the State Fiscal Year 2018 Operating and Capital Budget. Enclosed is a table noting the distribution of federal funds for FY 2018, broken down by agency.

- **Shutdown Effect on Federal Grants to Utah:** Whether a state program is affected by a federal shutdown is determined by whether the program is considered “discretionary” or “mandatory.” Generally, mandatory program funding is not subject to the annual appropriations process, while discretionary programs rely on annual appropriations acts and are thus more likely to be impacted by a shutdown. Some discretionary and mandatory programs in Utah have already received an appropriation for part of 2018 and will not be immediately affected by a shutdown, including Title I and special education grants to local education agencies, Medicaid, Foster Care, and Child Support Enforcement. Enclosed is a spreadsheet describing all federal grants provided to Utah, categorized by whether the program is mandatory or discretionary. The following programs may be affected by a federal shutdown:

- Mandatory Programs: Funding for programs like Vocational Rehabilitation Services – Basic State Grants, the Social Services Block Grant, Child Nutrition, and the Supplemental Nutrition Assistance Program (SNAP), is determined by authorizing legislation, but also included in annual appropriations bills, while funding for programs like the Children’s Health Insurance Program, Community Health Centers (mandatory portion), Maternal, Infant, and Early Childhood Home Visiting Program, the National Flood Insurance Program and the Federal Aviation Administration, will expire.
- Discretionary Programs: Child Welfare Services, Family Planning Services, Homeless Mental Health (PATH), Substance Abuse Prevention and Treatment Block Grant, Public Housing Capital and Operating Funds.

- **Shutdown Effect on State Personnel:**

- State Employees Paid with Federal Funds: Approximately \$273 million in federal funds is used to pay State employees per year. Enclosed is a table separated by agency describing the total number of State employees whose compensation includes federal funds.
- Agency Strategies in Event of Shutdown: In response to a recent survey of State agencies requesting information about strategies in place in the event of a federal shutdown, nearly all agencies indicated an expectation to be able to fund labor costs and continue work during a short-term shutdown. The Department of Agriculture and the Utah National Guard expressed the most concern for continued function in the event of a federal shutdown. Enclosed is a more thorough summary of the response provided by each respective agency.

- **Estimated Daily Costs of Operating Selected Federal Programs:** The following is an *estimate* of the daily costs to operate programs that receive federal funding:

National Parks and Monuments:	\$166,600
Supplemental Nutrition Assistance Program (SNAP):	\$1,310,000
Child Nutrition:	\$690,000
Special Education:	\$500,000
Women, Infants and Children (WIC) Supplemental Food Program:	\$170,000
<u>Unemployment Insurance State Administration:</u>	<u>\$106,000</u>
Total Estimated Cost Per Business Day:	\$2.9 million

The State budget includes \$4.3 billion from federal funds, which equates to about \$17.2 million per business day, not including other federal programs that are outside the State budget.

Available Tools and Resources

- **Guidance from Former Shutdowns:** Analysis of the response of Utah and the federal government to former federal shutdowns, specifically the most recent shutdowns in 1995, 1996, and 2013, may prove helpful for determining a course of action should another federal shutdown occur.
 - Activities Allowed to Continue during Former Shutdowns: During the most recent shutdowns, the federal government relied on the guidance provided by the 1981 Office of Management and Budget memorandum, which identified three categories of “excepted activities” that could continue during a government shutdown: (1) activities “authorized by law,” (2) activities that “protect life and property,” and (3) activities “necessary to begin phasing out of other activities.” In the past, excepted activities included those that protected national safety, public health and medical services, law enforcement, emergency and disaster assistance, and the like.
 - Utah’s Former Legislative Response to a Shutdown: The following bills were drafted in response to the 2013 shutdown, or shortly thereafter, and may serve as a roadmap for actions that may be necessary or services that may require funding in the event of another shutdown:
 - *State Employee Benefit Amendments – 2013 Second Special Session:* Authorized the Utah National Guard, the State Office of Rehabilitation, the Labor Commission, the Division of Health and Preparedness within the Department of Health, and the Department of Workforce Services to use existing resources from funds appropriated to the agency to pay fixed cost benefits and holiday leave benefits for state employees furloughed as a result of a reduction or loss in federal funding.
 - *Funding of Federal Programs – 2013 Second Special Session:* Authorized the State Board of Education to use state funds to pay for Child Nutrition Programs to offset a loss in federal funding.
 - *National Park Funding – 2013 Second Special Session:* Authorized funds in the Sovereign Lands Management Account to be used to pay one or more federal government entities for the ongoing operation of national parks, monuments, and national recreation areas in the state.
 - *Contingent Management for Federal Facilities – 2014 General Session:* Authorized the governor to work with the federal government to open and maintain the operation of one or more national parks, monuments, forests, or recreation areas in the state.
 - Reimbursement for Continued Operating Affected Programs: If a state continues to operate affected grant programs during a shutdown, it is not guaranteed to receive reimbursement for discretionary programs. However, following the FY 2014 shutdown, the continuing resolution that ended the shutdown included specific language to ensure states were reimbursed for costs they incurred to carry out federal programs during the shutdown. For mandatory programs included in appropriations acts, states are entitled to reimbursement once an appropriations bill is

enacted. However, states are not likely to be reimbursed for covering federal programs normally paid from the federal budget, including operation of national parks and monuments. It should be highlighted that Utah has not been reimbursed for the \$999,400 of State funds spent to operate national parks and monuments during the FY 2014 shutdown.

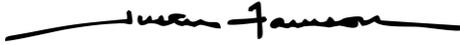
- **Tools Available to Measure State Risk:** The Federal Funds Commission funded a Federal Funds Risk Model in late 2015. This tool contains three pre-set scenarios (dollar crash, Medicaid Reduction, and Federal Employment Reduction) and an option to build a scenario. This tool is a useful indicator of how the State's federal funds could be affected by a federal shutdown. Other available options to assess risk include the annual Stress Testing Report designed to examine the State's ability to manage a range of fiscal scenarios, the annual Federal Receipts Report, which per statute provides a plan to operate the designated state agency in the event federal receipts are reduced below a certain amount, and the currently in development Electronic Grant Management System, which intends to track the lifecycle of a grant from award to application.
- **Financial Resources Available to Offset Federal Funds:** The following are financial resources available to combat the loss of federal funds:
 - Rainy Day Fund: The General Fund Budget Reserve Account has a current balance of \$143.6 million. During the 2017 General Session, the Budgetary Procedures Act was amended to allow the Legislature to appropriate money from the account to finance an existing federally funded program when the program or activity is deemed essential.
 - Restricted Account Balances: The Legislature may amend the statute governing certain restricted accounts to allow them to be appropriated for activities or programs affected in a shutdown. The Legislature used this option during the 2013 shutdown when it authorized funds from the Sovereign Lands Management Account to be used to pay for the ongoing operation of national parks, monuments, and national recreation areas.
 - Nonlapsing Balances: The Legislature could re-appropriate an agency's nonlapsing balances to temporarily cover lost federal funds.
 - General or Education Fund: The Legislature may appropriate from the unrestricted General or Education Fund to provide for services lost during a federal shutdown.

In addition to the above resources, additional policy based actions may be taken to assist in the event of a federal shutdown. An extensive list of options is provided in the materials enclosed with a more thorough analysis. Some options include, allowing federally funded State personnel to use annual leave during a furlough, prioritizing activities to continue within federal grant programs, or allowing those furloughed to perform other duties.

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As noted, the report enclosed provides a more thorough explanation and analysis of the issues at play, while the summary above serves as an overview. Should additional information be necessary so that this material may be presented to the Executive Appropriations Committee please let me know. Feel free to contact my office should you have any questions.

Sincerely,

A handwritten signature in black ink that reads "Justin Fawson". The signature is written in a cursive style with a long horizontal line extending to the right.

Rep. Justin Fawson, Chair of the Federal Funds
Commission

Delivery Method Mail

cc: Legal Fiscal Analyst, Governor's Office of Management and Budget

Encl.: as noted