



September 25, 2015

MEMORANDUM FOR THE DEPUTY SECRETARY

FROM: M. PATRICIA SMITH

A handwritten signature in blue ink that reads "M. Patricia Smith".

RE: PLAN FOR CONTINUATION OF CERTAIN LIMITED
DEPARTMENTAL AND SOLICITOR ACTIVITIES DURING A
LAPSE IN APPROPRIATIONS

I have reviewed my July 31, 2015 memo to you entitled "Third Update to April 7, 2011 Plan for Continuation of Certain Limited Departmental and Solicitor's Office Activities During a Lapse in Appropriations," which confirmed that agency plans that the Office of the Solicitor (SOL) approved as of September 25, 2013 as meeting the legal criteria and principles for performance of excepted activities during a lapse in appropriations remained in effect as of such date.

With the exception of the changes noted below, the Office of the Solicitor has determined that the agency plans remain current in the event that a lapse in appropriations occurs in the near future.

SOL has approved for legal sufficiency the following substantive changes to DOL agencies' excepted activities agency plans. These activities are excluded from the general prohibition on performing government functions during a lapse in appropriations, and the appropriate number of FTE will be assigned to work during a lapse in appropriations:

- The Office of the Assistant Secretary for Administration and Management's revised plan reflects increased security staffing to provide security and protective services to the Secretary of Labor, a function previously provided by Office of Inspector General. Accordingly, the plan submitted by the Office of Inspector General has removed this excepted activity.
- The Occupational Safety and Health Administration's revised to reflect the addition of two excepted functions: 1) Follow-up inspections of establishments with high gravity, serious violations for which no abatement has occurred; and 2) Activities necessary to preserve OSHA's ability to take enforcement action within statutory deadlines.

As I noted previously, we will revise our approvals if and when circumstances warrant any additional changes.

Updated Agency-by-Agency Dates of Solicitor Approval for Legal Sufficiency

The Office of the Solicitor reviewed and approved proposals for excepted activities for the following DOL agencies or offices (the date of each approval appears in parentheses):

- Office of the Secretary (includes Immediate Office, Office of the Deputy Secretary, Executive Secretariat (9/21/15)
- Benefits Review Board (9/18/15)
- Bureau of Labor Statistics (9/17/15)
- Employee Benefits Security Administration (9/21/15)
- Employment and Training Administration (9/25/15)
- International Labor Affairs Bureau (9/25/15)
- Mine Safety and Health Administration (9/24/15)
- Office of Administrative Law Judges (9/21/15)
- Office of Assistant Secretary for Administration and Management (9/23/15)
- Office of Chief Financial Officer (9/22/15)
- Office of Congressional and Intergovernmental Affairs (9/21/15)
- Office of EEOICPA Ombudsman (9/23/15)
- Office of Inspector General (9/22/15)
- Office of Labor Management Standards (9/25/15)
- Office of Public Affairs (9/25/15)
- Office of the Solicitor (9/23/15)
- Occupational Safety and Health Administration (9/25/15)
- Office of Workers Compensation Programs (9/23/15)
- Wage and Hour Division (9/25/15)

SOL-approved plans for each of the above agencies are included in this memorandum.

Pursuant to its legal analysis, SOL also determined that the following agencies have no functions that would continue during a funding lapse. We have indicated in parentheses the date on which the agency head confirmed to SOL his or her understanding that the agency would shut down during a lapse in funding:

- Administrative Review Board (9/25/15)
- Employee Compensation Review Board (9/25/15)
- Office of Assistant Secretary for Policy (9/21/15)
- Office of Federal Contract Compliance Programs (9/21/15)
- Office of Disability Employment Policy (9/22/15)*¹

¹ Asterisks in this section of the list denote the head of an agency that has no functions that would continue during a funding lapse is a Presidential appointee not subject to furlough who would continue to report to work during a shutdown.

- Veterans Employment and Training Administration (9/17/15)*
- Women's Bureau (9/18/15)


Updated Agency-by-Agency Employee Census

Agency Name	"On Board"	During Shut-Down
Office of the Secretary (IO, Dep Sec, Exec Sec & CFBNP)	61	7
Benefits Review Board	58	4
Bureau of Labor Statistics	2,392	3
Employee Benefits Security Administration	976	46
Employment and Training Administration	1,104	17
International Labor Affairs Bureau	113	3
Mine Safety and Health Administration	2,282	821
Office of Administrative Law Judges	153	0
Office of the Assistant Secretary for Administration and Management	793	65
Office of the Chief Financial Officer	97	9
Office of Congressional and Intergovernmental Affairs	27	3
Office of EEOICPA Ombudsman	6	6
Office of Inspector General	369	160
Office of Labor Management Standard	206	0
Office of Public Affairs	59	8
Office of the Solicitor	730	92
Occupational Safety and Health Administration*	2,115	261
Office of Workers Compensation Programs*	1,535	1,244
Wage and Hour Division	1,810	6
Administrative Review Board*	14	0
Employee Compensation Appeals Board*	36	0
Office of the Assistant Secretary for Policy	38	0
Office of Federal Contract Compliance Programs	612	0
Office of Disability Employment Policy	53	0
Office of Public Engagement	6	0
Veterans Employment and Training Administration	235	0
Women's Bureau*	51	0
Totals:	15,931	2,755

U.S. DEPARTMENT OF LABOR

OFFICE OF THE SECRETARY
WASHINGTON, D.C.
20210





MEMORANDUM FOR THE SOLICITOR


FROM: Matthew Colangelo 
Chief of Staff

DATE: September 25, 2013

SUBJECT: Review of March 1, 2011 Contingency Planning Memo

I have reviewed the contingency planning memo for the Office of the Secretary, dated March 1, 2011, and the changes made in the memo on December 14, 2011. No substantive changes to these previous memos are necessary, so the office plan continues to call for the following:

- Four (4) "excepted" positions to satisfy the office's minimum full time staffing requirement.
 - , Chief of Staff
 - , Deputy Chief of Staff
 - , Senior Counselor to the Secretary
 - , Director of Scheduling and Advance

- One (1) "excepted intermittent" individual who would work as necessary (office or telework).
 - , Chief Economist

U.S. DEPARTMENT OF LABOR
DEPUTY SECRETARY OF LABOR
WASHINGTON, D.C.
20210

February 28, 2011

MEMORANDUM FOR M. PATRICIA SMITH
SOLICITOR OF LABOR

FROM: SEYH D. HARRIS 
DEPUTY SECRETARY

SUBJECT: Proposed "Excepted" Activities During a Lapse in
Appropriations

During a lapse in appropriations, my immediate office will suspend all operations and all of my employees will be furloughed, except as described below. Upon your approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the name of the individuals performing the activities set forth below. I envision job rotation for some activities.

Excepted staff in this office will limit their activities to activities in support of the Secretary and Deputy Secretary in the performance of "excepted" activities as identified in the Department. This would include departmental excepted activities, activities arising from the fact that the funding lapse has occurred, and executive branch efforts to resolve the impasse with Congress.

In the absence of special needs during such a lapse in appropriations, one staff assistant would be utilized to perform excepted activities, including, for example, screening callers, reviewing mail and other requests, and structuring my schedule and coordinating it with the needs of the Secretary. Other staff could be recalled should the volume of my duties with respect to the shutdown or other excepted activities rise to warrant additional staffing. This would include the occurrence of a serious emergency or a major initiative, e.g., legislative, legal or programmatic, subsequently authorized as an excepted activity.

Thank you for your review of this request.

MEMORANDUM FOR PATRICIA SMITH,
SOLICITOR OF LABOR

FROM: BETSY KIM *[Signature]*
DIRECTOR, EXECUTIVE SECRETARIAT

DATE: March 1, 2011

SUBJECT: Proposed "Excepted" Activities in the Office of the Executive Secretariat
During a Lapse in Appropriations

The Office of the Executive Secretariat is charged with managing and implementing the Secretary's internal communication process, and providing logistical support to the Secretary, who performs statutory duties and fundamental responsibilities for, and on behalf of, the President. The Secretary's ability to perform these duties requires staff support from the Office of Executive Secretariat.

During a lapse in appropriations, this office remains the Secretary's communications nerve center for (1) performing triage of correspondence and other communication for the appropriate Secretarial, PAS and staff attention, and (2) ensuring quality control and correspondence management for all written communications relating to the authorized functioning of the Department.

In addition, the Office of the Executive Secretariat manages controlled information intended for the Secretary and Deputy Secretary, and performs logistical support required to assure that the Secretary's daily agenda, both within and outside the departmental headquarters, is carried out in an effective manner, as free as possible from undue security risk.

In the event of a lapse in appropriations, I believe a minimum of three staff are necessary to assure that these minimal activities are performed. In the event that circumstances require additional staff, or require the rearing of staff, alternates may be utilized.

Individuals who would provide the authorized services:

- [REDACTED]** - Director, Executive Secretariat
- [REDACTED]** - Director, Management Support Services
- [REDACTED]** - Secretary Driver Day Shift



18 September 2015

MEMORANDUM TO: PATRICIA SMITH
Solicitor

FROM: BETTY JEAN HALL *BjH*
Chair and Chief Administrative Appeals Judge
Benefits Review Board

RE: AGENCY SHUTDOWN

Individuals Authorized for Work Under this Exception:

During a lapse in appropriations, the Benefits Review Board will suspend all operations, and its staff will be furloughed, except for the following positions:

- BRB Chair and Chief Administrative Appeals Judge
- Clerk of the Appellate Boards
- Member & Administrative Appeals Judge
- Member & Administrative Appeals Judge

Upon the approval of this request, a member of my staff will provide the Assistant Secretary for Administration and Management of the names of the individuals staffing these positions. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work during the duration of the emergency.

Exception for Processing Motions for Stays of Payments:

The Benefits Review Board references the exception from a required shutdown of government activities due to lapse in appropriations that is permitted for obligations that are necessary for the protection of property. The narrow category of activities described below will permit the protection of property interests that would otherwise be lost.

Pursuant to 33 U.S.C. §914(f), an employer must pay an award ordered by the administrative law judge within 10 days after it becomes "due." If employer does not pay, it is liable for an additional assessment of 20 % of the amount due. *See also* 20 C.F.R. §702.350.

An award becomes "due" at the time it becomes "effective" pursuant to 33 U.S.C. §919(e), which is when the administrative law judge's compensation order is "filed" in the office of the district director. *See also* 33 U.S.C. §921(a); 20 C.F.R. §702.350.

The last clause of 33 U.S.C. §921(b)(3) provides that compensation required by an award must be paid even while a case is on appeal, unless a stay of payments is granted by the Board. Section 921(b)(3) states that a stay of payments shall not be issued unless the employer/carrier can establish "irreparable injury" will ensue if it is required to pay the award. *See also* 20 C.F.R. §802.105. If the Board grants a stay of payments, its order must contain a specific finding regarding the nature and extent of the irreparable injury that would ensue to the employer/carrier. 20 C.F.R. §802.105(a).

Thus, in order for an employer/carrier to obtain complete, albeit possibly temporary, relief, it must apply for, and the Board must grant, a stay of accrued and prospective payments within 10 days of the date the compensation order is filed by the district director. Employer, however, may apply for a stay of payments at any time, and after the initial 10-day period, any stay granted would apply only to prospective benefits.

Conclusion:

In light of the forgoing, it appears to the undersigned that the Clerk of the Boards is essential to administering the Benefits Review Board's responsibility to process motions for stays of payments. The Clerk will, therefore, report to work in order to screen incoming mail for any motions for stays of payments. In the event any such motions are found, he will prepare a recommendation on the motion for the Board's consideration. Since a panel of three judges is required to address and rule on any such motion, three judges may be required to report to work intermittently to rule. Subsequently, the Clerk will prepare an order for the judges' signature, and timely issue that order.

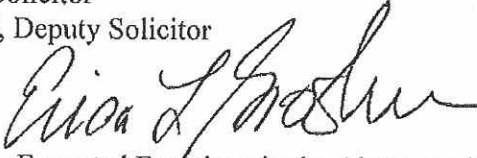
U. S. Department of Labor

Commissioner for
Bureau of Labor Statistics
Washington, D.C. 20212



SEP 17 2015

MEMORANDUM FOR: M. Patricia Smith, Solicitor
Deborah Greenfield, Deputy Solicitor

FROM: Erica L. Groshen 

SUBJECT: Contingency Plan for Excepted Functions in the Absence of Appropriations

During a lapse in appropriations the Bureau of Labor Statistics will suspend all operations and its staff will be furloughed, except as described below. All survey and other program operations will cease and the public website will not be updated. In addition, for command and control purposes, blackberry and email service will be maintained for those in work status. Minimum timekeeping functions for excepted personnel will continue, though most administrative functions will cease during a shutdown. I anticipate the possibility of job rotations in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

In order to maintain program operations as long as possible leading up to a shutdown, we will need to back up our systems, verify successful backup, and then shut them down. We consider this a necessary part of the orderly cessation of operations. This process will take up to 3 days, and will vary by program.

While GSA manages physical security in the building, it is possible that any incidents that might pose a risk to the security of protected data will require staff to report to work on an as-needed basis.

A list of our exempt, excepted and intermittent-excepted individuals will be sent to the Assistant Secretary for Administration and Management. As mentioned, some staff not listed may be required depending on the timing of a shutdown or unforeseen emergencies.



SEP 21 2015

MEMORANDUM FOR

Patricia Smith
Solicitor of Labor

FROM:

Timothy D. Hauser *TDH*
Deputy Assistant Secretary
For Program Operations

SUBJECT:

Suspension of Operation Plans

Based upon an analysis of EBSA's responsibilities, we propose that 100 of our field and National Office staff be declared "excepted" or "intermittent excepted." In FY 1995, we received approval from the Solicitor's Office for these same activities. In FY 2011 and FY 2013, these same activities were reaffirmed by the Solicitor's Office. This limited number of staff is needed in order to continue to perform excepted and "by necessary implication" activities arising from the Secretary's criminal authority under ERISA and to otherwise respond to situations which require immediate action under the statutory civil remedies provided to the Secretary to prevent an imminent threat to property as well as to address imminent threats to human life when medical benefits are denied in life threatening situations.

During a lapse in appropriations the Employees Benefit Security Administration will suspend all operations and its staff will be furloughed, except as described in the attached. Upon approval of this request a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individual performing the excepted and or excepted by "necessary implication" activities set forth above. I anticipate the possibility that additional or intermittent employees may be required to in some instances. If unforeseen emergencies occur, these additional employees would be identified and a request for their exception requested.

If you have any questions or further clarification is necessary please contact me at your earliest convenience.

Agency: EMPLOYEE BENEFITS SECURITY ADMINISTRATION

Excepted Activities

The following employees' continued service is needed on an ongoing basis to perform excepted activities that arise from the Secretary's authority to i) pursue criminal cases involving ERISA plans, ii) pursue civil proceedings and remedies necessary to prevent an imminent threat to property, particularly including plan assets, and iii) address situations posing an imminent threat to human life due to the denial of health or disability benefits by an ERISA-covered plan.

National Office

Assistant Secretary, Office of the Assistant Secretary	693-8300
Deputy Assistant Secretary, Office of the Assistant Secretary	693-8300
Administrative Assistant, Office of the Assistant Secretary*	693-8300
Special Assistant, Office of the Assistant Secretary	693-8300
Deputy AS Program Operations, Office of the Assistant Secretary	693-8315
Director, Office of Program Planning	693-8480
Director, Office of Enforcement	693-8440
Division of Enforcement Support, Office of Enforcement	693-8440
Deputy Director for Criminal Enforcement, Office of Enforcement	693-8440
Director, Office of Outreach Education & Assistance	693-8337
Deputy Director, Office of Outreach Education & Assistance	693-8680
Director, Office of Technology and Info	693-8595
Program Analyst, Office of Technology and Info	693-8618

*Support Staff

Subtotal: 13

Field Offices

Each of the 10 Regions designates their Regional Director, Deputy Regional Director, and the Regional Criminal Coordinator. In the 3 District Offices, the District Supervisor is designated.

Subtotal: 33

Agency Total: 46

Intermittent Exceptions (Agency Total: 54)

In addition there is a requirement that the below listed employees be excepted in order to perform the excepted activities described.

Office of Technology and Info (National Office): 4 IT staff to ensure DOL's technology services, including e-mail, local area network framework, and various IT systems, operate without disruption to support excepted employee work in our National Office and Field Offices.

Boston Regional Office: 3 Investigators to handle trial and grand jury matters.

New York Regional Office: 3 Investigators to handle trial and grand jury matters.

Philadelphia Regional Office: 8 Investigators to handle trial and grand jury matters.

Atlanta Regional Office: 1 Investigator to handle a court hearing.

Cincinnati Regional Office: 4 Investigators to handle trial and grand jury matters.

Chicago Regional Office: 6 Investigators to handle trial and grand jury matters.

Kansas City Regional Office: No Intermittent Exceptions.

Dallas Regional Office: 6 Investigators to handle trial and grand jury matters.

Los Angeles Regional Office: 7 Investigators to handle trial and grand jury matters.

San Francisco Regional Office: 12 Investigators to handle trial and grand jury matters.

Employees funded by non-lapsed funding source.

NONE



September 24, 2015

MEMORANDUM FOR: M. PATRICIA SMITH
Solicitor

FROM: PORTIA WU *(PW)*
Assistant Secretary for Employment and Training

SUBJECT: FY 2016 Funding Interruptions:
Designation of Excepted Activities and Personnel

The purpose of this memo is to identify certain Employment and Training Administration (ETA) activities that could be maintained throughout any extended shutdown. During a lapse in appropriations, ETA will suspend all operations and its staff will be furloughed, except as described below. ETA's plan meets the Department of Justice tests for the continuation of UI benefits that don't lapse and the protection of life and property. The plan is based upon the following assumptions and provides a list of Excepted Personnel in Attachment B:

- No foreign labor certifications will be processed.
- No program performance reports will be received from grantees.
- No Trade Adjustment Assistance determinations will be made.
- Because there is no lapse in the payment of Unemployment Insurance (UI) benefits to unemployed workers, it will be necessary to cover the following UI functions: 1) Support to states and Federal agencies for payment of UI benefits for Federal and Military personnel (UCFE and UCX); 2) Disaster Unemployment Assistance; 3) Ensuring money transfers to states and to the various trust fund accounts are managed; 4) Emergency Unemployment compensation (EUC) and 5) Information technology functions.
- The operations of all Job Corps centers are maintained by contracts that utilize PY funds. For that reason, and in order to protect the lives and safety of students and facilities, Job Corps will maintain operations of all centers housing students. This will require a number of excepted employees during the shutdown. Center-related contracts are funded, but if the shutdown progresses, ETA will be required to provide additional funds to maintain center operations, security and safety.
- Daily checks of the Dislocated Worker Electronic System will be made to verify if a disaster application has been submitted.
- Electronic systems will be maintained to process any Job Corps, Dislocated Worker Grants (DWG) for declared disasters, advance funding for WIOA, UI funding, or other items.

- Personnel may be called to work upon request – for example, in the case of a FEMA-declared disaster to help process a DWG application, WIOA advance funding, UI funding or to process Job Corps shopping carts.

Attachment A describes in more detail ETA's excepted functions and activities; Attachment B identifies the minimum number of excepted employees (including those subject to call-back) who will be required to carry out these functions and activities. There are a number of additional employees on the excepted list termed as "alternate" to ensure that excepted work is covered during periods when excepted staff is off duty on unpaid status. Those alternate individuals will not increase the total number of excepted employees on duty at any given time, since they are only on duty to substitute for another excepted employee.

Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

Attachments

September 24, 2015

Attachment A: Excepted Functions and Activities

ETA functions and activities that would be maintained throughout a shutdown are summarized below:

Job Corps: Protecting Life and Property – ETA administers the Job Corps program, a network of 126 Centers nationwide. The funding for all Job Corps center operations is through the Program Year (PY) appropriation. The current PY runs from July 1 through June 30. At any point in time, about 35,000 Job Corps students reside at these Centers operated by Job Corps contractors, attending academic and occupational training, and centers operated by the U.S. Forest Service under an agreement between the Departments of Labor and Agriculture. ETA retains responsibility for the life and safety of the students, and for the protection of center property. ETA has added additional funding and executed any needed modifications necessary to operate its Job Corps centers through November 1st. This assumes that contractors continue to operate at their current rate of costing. In addition, ETA will provide funding to cover student payroll through November 15th.

Excepted personnel in the national and regional offices will provide minimum acceptable oversight of the Centers, perform financial, procurement and related administrative functions to insure the Centers protect student life and safety as well as protection of facility property; and monitor electronic systems to prevent failure or malfunction and insure system availability.

The continuation of Job Corps services is key to the safety and health of the students. Shutting down a center because of the lack of funding or because of a non-extension will place many students in situations of elevated risk for life and health. ETA notes that the staff required to close down a center and handle the contract and related student issues is far greater than that required to extend or modify a contract. If ETA is not allowed to address these anomalies when they occur, it will need authorization to bring in more staff than currently requested to handle the shutdown in an orderly manner. ETA also will be required to act before the funding runs out so as to be able to pay the severance and travel costs associated with a shutdown. Since these costs are unbudgeted, ETA also will need to adjust its projection of students served and modify contracts to ensure that the cost of the shutdown does not cause other budget issues.

Unemployment Insurance: Continuing Functions Not Funded with Expiring Annual Appropriations – ETA will continue to provide essential functions, as occurred during the shutdown in 1995. These include direction to Federal agencies and administration of UI benefits for unemployed Federal and military personnel (UCFE & UCX). ETA will also continue to process Disaster Unemployment Assistance provided by the Federal Emergency Management Agency for declared disasters. UI benefits will continue to be paid since funds are available. Current circumstances are different from 1995 when we were not paying Emergency Unemployment

Compensation (EUC) or full Federal funding for Extended Benefits (EB) and states were not borrowing to pay benefits (currently 18 states have outstanding advances).

Excepted personnel in the national and regional offices will oversee UI activities related to the fiscal and financial aspects of administering the UI program; interface with Treasury and the states should there be issues that surface with regard to states drawing down funds to pay benefits and/or repaying trust fund advances. Excepted personnel will also interface between the states and the Department of Homeland Security, Federal Emergency Management Agency, to facilitate funds flowing to states to pay disaster unemployment benefits; oversee the operations of the UCFE and UCX programs; provide information and guidance Federal agencies, furloughed workers, and states relative to UCFE and UCX.

Dislocated Worker Grants: Protecting Life and Property – A small group of national and regional office personnel will assist states in completing DWG applications to address declared disasters under the Stafford Act. These activities are critical to help states and localities address unexpected labor market dislocations caused by natural or man-made disasters.

Financial and Technology Support – A small number of ETA personnel who perform a range of procurement, grant, and financial functions such as authorizing and obligating necessary federal funds, process shopping carts, and oversee draw downs will be retained on a full and intermittent basis. In addition, ETA will provide adequate support for its electronic systems to assure they are protected from physical harm or cyber attack. Support for ETA's user applications will be limited to only those systems that are determined to be necessary to support authorized "excepted" activities.

Amendment of the Plan – In the event of emergency or other unforeseen circumstances that require additional excepted work be performed, or require excepted work to cease, ETA will submit an appropriate request to amend this plan.



MEMORANDUM FOR THE SOLICITOR

FROM: Carol Pier *CP*
Deputy Undersecretary

SUBJECT: Excepted Functions in the Event of Lapse in Appropriations

DATE: September 30, 2015

In the event of a lapse in appropriations the Bureau of International Labor Affairs (ILAB) would perform only those functions that are obligations necessary to discharge the President's constitutional duties and powers, and that are necessary by implication to support those functions. Specifically, the functions are necessary to the President's responsibility to receive Ambassadors and other public Ministers and to conduct foreign relations.

Fulfilling these functions would require a minimum number of staff to attend or support senior leadership in any international meetings and/or negotiations taking place during such lapse where the Department of Labor/ILAB serves as the sole or a lead USG representative on labor and employment issues at the meeting. This will be determined on a case-by-case basis considering the importance of the meeting but would involve the minimum number of staff necessary to address the most crucial meetings and issues. In addition, ILAB staff may be called upon to support the President's travel and/or initiatives.

The titles of those ILAB staff that could be called upon depending on the meeting or event are:

- Deputy Undersecretary
- Associate Deputy Undersecretary
- Chief of Staff
- Director, Office of Trade and Labor Affairs (OTLA), or subject matter expert designated from OTLA staff
- Director, Office of International Relations (OIR), or subject matter expert designated from OIR staff
- Director, Office of Child Labor, Forced Labor and Human Trafficking (OCFT), or subject matter expert designated from OCFT staff

U.S. Department of Labor

Mine Safety and Health Administration
201 12th Street South
Arlington, Virginia 22202-5452



SEP 24 2015

MEMORANDUM FOR M. PATRICIA SMITH
Solicitor of Labor

FROM:

JOSEPH A. MAIN
Assistant Secretary of Labor for
Mine Safety and Health

A handwritten signature in black ink that reads "Joseph A. Main".

SUBJECT:

**Contingency Plan for Excepted Functions
In the Absence of Appropriations**

If there is no FY 2016 appropriations bill for the Department of Labor or FY 2016 Continuing Resolution, the Mine Safety and Health Administration (MSHA) would continue key functions which directly involve protecting against imminent threats to human life in the Nation's mines, and which are necessary for the protection of government property. In our opinion, these excepted functions meet the Department of Justice test that there be a reasonable likelihood that safety of life and property would be compromised if the functions are not performed.

The attachment describes these functions, and identifies the minimum number of excepted employees who will be required to carry out these functions.

If unforeseen emergencies, such as a mine disaster occurred, additional employees would be identified to work for the duration of the emergency. During a lapse in funding, MSHA would cease all other continuing, regular functions.

The FY2016 contingency plan reflects the same substantive information as the FY2013 contingency plan.

During a lapse in appropriations the Mine Safety and Health Administration (MSHA) will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances.

MINE SAFETY AND HEALTH ADMINISTRATION
EXCEPTED ACTIVITIES AND EMPLOYEES
SEPTEMBER 22, 2015

Excepted Activities:

I. Inspections of targeted mines and specific hazards; investigations of accidents and miners' complaints, and sample analysis.

During a funding lapse, MSHA will perform certain activities which, if not performed would significantly compromise the safety of human life in the Nation's mines. MSHA will perform targeted inspections at mines which have been prioritized based on the mine's history of the hazards that put miners' lives at risk. Hazard-specific inspections will also be conducted across the Nation to address those conditions and practices which have been recent key causes of death and serious injury. Additionally, investigations of accidents and miners' safety complaints and select sample analysis will continue because they represent potentially serious and imminent safety problems.

Number of Excepted Employees

	Regional	National	Total
Subtotal	631	0	631

II. Executive/managerial/supervisory direction; staff support.

MSHA will designate program officials in each geographical location where employees are performing the excepted activities described in Section one above, to provide executive/managerial/supervisory direction. This direction will ensure that the excepted activities being performed are in targeted mines and address targeted issues. Additionally, a limited number of excepted employees will provide clerical duties in support of excepted activities; and perform system and computer hardware monitoring duties to prevent failure or malfunction and ensure system availability. The excepted positions below represent the minimum numbers needed to adequately support the functions described in Section one.

- Senior management staff (50 positions)
- Field office supervisors (86 positions)
- Support staff (1 positions)

Number of Excepted Employees

	Regional	National	Total
Subtotal	122	15	137

III. Building security activities.

To ensure the protection of two MSHA-owned properties and proprietary product documentation housed at one of the facilities, MSHA will provide 24 hour security services at the Mine Academy and Triadelphia, WV facility.

Number of Excepted Employees

	Regional	National	Total
Subtotal	4	0	4

MINE SAFETY AND HEALTH ADMINISTRATION
EXCEPTED ACTIVITIES AND EMPLOYEES
SEPTEMBER 22, 2015

IV. Information Technology Support.

MSHA will designate information technology support personnel at MSHA headquarters in Arlington and assign similar responsibility at MSHA's devolution sites in Denver, CO and Beckley, WV, to coordinate network infrastructure and maintain connectivity required for continuity of emergency operations and continuing target enforcement.

Number of Excepted Employees

	Regional	National	Total
Subtotal	2	1	3

V. Mine Plan Approvals.

MSHA performs certain plan review and approval activities which have a direct impact on miner health and safety. Plan revisions, as well as new plans dictated by changes in the mine conditions and mining practices, must be reviewed and approved for operators to continue safe operations.

Number of Excepted Employees

	Regional	National	Total
Subtotal	40	0	40

VI. Mine Emergency Operations Readiness.

MSHA's quick response to a mine emergency situation is critical in order to protect the safety and health of our Nation's miners. Excepted personnel are needed in order to ensure that vehicles and equipment are ready for deployment in the event of a mine emergency.

Number of Excepted Employees

	Regional	National	Total
Subtotal	5	0	5

Grand Total, MSHA Excepted Employees:

Number of Excepted Employees

	Regional	National	Total
Subtotal	804	16	820

U.S. Department of Labor

Office of Administrative Law Judges
800 K Street, NW, Suite 400-N
Washington, DC 20001-8002

(202) 693-7300
(202) 693-7365 (FAX)



DATE: March 25, 2011

MEMORANDUM TO: M. PATRICIA SMITH
Solicitor

FROM: STEPHEN L. PURCELL
Chief Judge

A handwritten signature in black ink, appearing to read "Stephen L. Purcell", is written over the typed name and title.

SUBJECT: Suspension of Operations Plan

During a lapse in appropriations, the Office of Administrative Law Judges (OALJ) will suspend all non-essential operations. All staff will be furloughed until such time as appropriations are authorized, except as provided below and approved by your office.

Upon the approval of OALJ's plan, a member of my staff will notify the Assistant Secretary for Administration and Management (ASAM) of the names of the individuals who are needed to perform the activities set forth below. I anticipate the possibility of intermittent work and job rotation for all of these activities. If unforeseen emergencies occur during any suspension of operations, additional employees would be identified to work solely for the duration of the emergency.

The OALJ adjudicates approximately 6,000 cases each fiscal year and in doing so holds hearings in many of these cases. Hearings are typically scheduled 60 to 120 days in advance, and they are generally held within 75 miles of a claimant's residence. For each week that the government suspends operations, the agency must cancel the hearings scheduled for that week. OALJ needs access to its case tracking system to determine where and when hearings are scheduled. Only an administrative law judge can order a hearing cancelled, and the files which contain the information needed to cancel these hearings reside in the National Office and seven District Offices. The National Office, due to its workload, needs the Chief Judge and Associate Chief Judges to handle the task of cancelling hearings, and the District Chief Judges would perform the same duties for each District Office.

Support staff is also needed to contact the parties in these cases, and those duties will be handled by Special Assistants in each office. These activities will constitute weekly intermittent work.

In addition, administrative functions, such as time and attendance submissions or responding to emergency phone calls, will be handled on an intermittent basis by the Director of Program Operations and the Administrative Officer.

In the National Office, which is located in leased space, OALJ receives its mail through the post office, and mail must be picked up daily, even though it cannot be processed. This activity will require the Chief Docket Clerk to work approximately 1-2 hours every day.

OALJ is one of nine agencies within the Department which has its own network and data center. This data center must remain operational to allow email, case tracking, and keeping website access operational for technical reasons. Keeping the data center operational during any government shutdown will require that the IT Division Chief spend 1-2 hours each day checking emails for security and accessibility issues and identifying work that may require additional employees be called in to perform.

In the August 1995 OALJ Suspension of Operations Plan the number of approved exempt positions for OALJ was 22 and this is the same number being requested by OALJ. Both plans identify 22 positions as essential during the suspension of operations in light of the fact that each of the seven District Offices operates independently from the National Office with respect to the cases assigned to those offices. The only change in exempt personnel identified in the current plan is that, instead of a secretary position being requested for the National Office, an additional Associate Chief Judge has been substituted since OALJ now has two Associate Chief Judges.

The plan devised by OALJ is intended to comply with our obligation to furlough all non-essential personnel during any suspension of functions caused by a lapse in appropriations. Should you need clarification or additional information with regard to any elements of the plan, please let me know. Thank you for your consideration.

cc: Deborah Greenfield,
Deputy Solicitor of Labor



SEP 23 2015

MEMORANDUM FOR M. PATRICIA SMITH
Solicitor of Labor

FROM: T. MICHAEL KERR
Assistant Secretary for
Administration and Management

SUBJECT: OASAM Excepted Employees - 2015

OASAM's plan identifies one exempt employee (Assistant Secretary), 64 Federal employees as "excepted, full time," and 53 as "excepted, intermittent" for a total of 117. Of those 117 employees, 88 are funded through the Working Capital Fund (WCF). The remaining 29 employees are funded by the Departmental Management Salaries and Expenses (S&E) Account. Overall, this represents only 15 percent of OASAM's total federal workforce (15 percent in the National Office, 14 percent in the Regional Offices).

The following is OASAM's justification for its staffing level. As you know, OASAM's mission requires it to provide support services to Department of Labor (DOL) agencies. In the event of a government-wide shutdown, excepted personnel from DOL agencies will need basic support services in order to perform their duties. In general, the services OASAM will provide include Human Resources (HR), Information Technology (IT), Facilities Management (including minimal mail services), Procurement, Security, Budget Planning, and support for the Department's shutdown activities.

Human Resources

National Office: 16 employees (3 S&E; 13 WCF)

Regional Offices: 15 employees (15 WCF)

By maintaining a small staff of HR managers in the National Office and an HR specialist in each regional office, OASAM will provide basic HR services to support excepted or exempt DOL personnel who will continue to work. HR staff members will provide the necessary pay and human resources support to excepted and exempt employees who will be continuing to work during the suspension period. OASAM requires additional HR staff to process payroll with the move to WebTA, a federal shared service provider, who does not permit batch processing, which requires substantially more manual processing. In addition, minimal staff from each regional HRO will be available on an as-needed basis to address and resolve any local issues that may prevent payroll from properly running. This also includes labor-management relations services and HR systems services for excepted or exempt activities.

Information Technology

National Office: 14 employees (14 S&E)

Regional Offices: 6 employees (6 WCF)

OASAM has identified a minimal IT staff in the Office of the Chief Information Officer (OCIO) who will ensure DOL's technology services and IT security responsibilities continue without disruption to support excepted and exempt staff from other DOL agencies. The services provided include e-mail, local area network framework, blackberries and mobile devices, help desks and IT systems (financial, procurement). OCIO will provide additional IT procurement staff to handle the increased procurement actions resulting from the integration of IT infrastructure. An IT manager in each regional office will coordinate the IT services for excepted staff in the field.

Facilities Management

National Office: 9 employees (9 WCF)

Regional Offices: 12 employees (12 WCF)

In order to ensure the Department's Frances Perkins Building is operational for excepted or exempt DOL personnel who will continue to work, four building engineers will alternate shifts to monitor building operations, including heat, air conditioning, electricity, and sanitation services provided by contract staff. One telecommunications specialist will provide limited telecommunications support. Additionally, two mail clerks will provide limited mail collection and delivery during a shutdown. Two to three employees from each of OASAM's regional offices will coordinate these functions in the field. This will involve coordinating with GSA or the building manager to ensure operations of excepted and exempt staff from other agencies is unimpeded.

Procurement / Finance (Region)

National Office: 2 employees (2 WCF)

Regional Offices: 4 employees (4 WCF)

Two Contracting Officers will be maintained at the National Office in order to provide contracting/procurement services as necessary in support of excepted and exempt staff. If, for example, an agency needs to modify a contract during the shutdown because of excepted activities, the Contracting Officer will execute that process. In the field, a Finance Manager will continue providing payroll services in support of excepted employees.

Security & Emergency Management

National Office: 19 employees (19 WCF)

In the event of a shutdown, maintaining the safety and security of the Secretary of Labor and the Department's excepted and exempt personnel who will continue to work and the Department's property will remain a high priority. Fourteen special agents on a rotating basis will maintain the security and protective services provided to the Secretary of Labor. A federal employee will supervise a skeletal staff of contract security guards – rotating 17 guards, three shifts per day – who will provide basic coverage in the South Garage for parking and adequate coverage at the main employee entrance in the National Office.

Additionally, to ensure the Department receives timely notification from Federal law enforcement sources and the White House on any emergency situations, the Emergency Management Center will remain operational with three employees on a rotational basis.

Appropriations Guidance

National Office: 4 employees (4 S&E)

One manager in the Departmental Budget Center will provide expertise for all budget matters for the Department, including monitoring and providing guidance on the appropriate use of funds during the shutdown and exempt/excepted work during the shutdown. They will ensure senior exempt and excepted staff are kept apprised of budget developments. Three high-level employees may be recalled as needed should appropriations and apportionment issues arise.

We believe we have appropriately identified the staff we would need to facilitate an orderly shutdown of OASAM and still be able to adequately support exempt and excepted personnel from other DOL agencies who will continue to work.

If you have any questions, please contact OASAM's Deputy Assistant Secretary for Operations.



SEP 22 2015

MEMORANDUM FOR M. PATRICIA SMITH
SOLICITOR

FROM:


Geoffrey Kenyon
Principal Deputy Chief Financial Officer

SUBJECT: Excepted Personnel in the Event of a Lapse in Appropriations

During a lapse in appropriations the Office of the Chief Financial Officer (OCFO) will suspend all operations and its staff will be furloughed, except for 14 employees declared in Attachment A as excepted "full-time" or excepted "intermittent." Since submission of our last plan in September 2013, there have been significant changes. The Payroll staff has been realigned from OCFO to OASAM/HRC and the Department's New Core Financial Management System (NCFMS) is no longer owned and operated by a private vendor. During the summer of 2014 the Department entered into an interagency agreement with the Department of Treasury (DOT) to maintain and operate NCFMS. This change will significantly reduce the number of contractors required in OCFO during a shutdown. Upon approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the "excepted" activities. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

The individuals identified are the minimum staff by "necessary implication" required to support excepted Agency activities. The Office of the Chief Financial Officer provides administrative support for activities throughout the Department, therefore a complete list of staff that may be needed to fulfill that role is derivative of what the Department determines as "excepted" programmatic activities and therefore may be adjusted based upon the programmatic activities that are ultimately determined to continue in the event of a funding lapse. We have considered the activities/employees necessary to the lawful continuation of other activities, including minimal obligations necessary for suspension of operations. The exception for activities that must occur by "necessary implication" applies to all OCFO excepted staff listed.

The employees recommended as excepted will ensure that the integrity of the Department's financial information is not compromised.

Attachment: a/s

cc: Deborah Greenfield, Deputy Solicitor

ATTACHMENT A

Title/Function (Excepted "Full-Time" Employees)

Principal Deputy CFO – will identify and manage funding for excepted activities.

Deputy CFO - will identify and manage funding for excepted activities.

Acting Associate Deputy Chief Financial Officer for Financial Systems - will provide system support for grants, contracts and travel systems for "excepted" activities.

Administrative Officer - will provide oversight for "excepted" activities.

Budget Officer - will provide budget execution support for "excepted" activities.

Supervisory Information Technology Specialist - will oversee systems security.

Supervisory Information Technology Specialist (Systems/Server Administrator) - will provide LAN support and critical file and data collection for records that would be rendered irretrievable without timely action by the Department.

Supervisory Accountant - will provide travel support to "excepted" staff throughout the Department.

Supervisory Financial Management Specialist - (Contracting Officer's Representative (COR)) will manage contractual activities that are deemed "excepted."

Title/Function (Excepted "Intermittent" Employees)

Supervisory Accountant - will provide budget execution support for "excepted" activities.

Lead Accountant - will provide funding support for "excepted" activities required by other agencies within the Department.

Accountant - will provide funding support for "excepted" activities required by other agencies within the Department.

Accountant - will provide budget execution support for "excepted" activities.

Supervisory Financial Management Specialist - will provide travel support to "excepted" staff throughout the Department.

U.S. Department of Labor

Assistant Secretary for
Congressional and Intergovernmental Affairs
Washington, D.C. 20210



MEMORANDUM FOR M. PATRICIA SMITH, SOLICITOR OF LABOR

FROM: BRIAN KENNEDY *BK*

DATE: March 1, 2011

SUBJECT: OCIA "Excepted" Activities During a Shutdown

During a lapse in appropriations, the Office of Congressional and Intergovernmental Affairs (OCIA) will suspend all operations and its staff will be furloughed, except as described below. Upon approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occurred, additional employees would be identified to work for the duration of the emergency.

The mission of OCIA is to advise the Secretary on all matters relating to Congress. Included among these responsibilities is the management of the legislative responsibilities of Secretary as principal advisor to the President on labor matters. OCIA also serves as the Secretary's liaison with Members of Congress, the Committees, and the House and Senate leadership. This office is the voice of the Secretary of Labor in all matters relating to and affecting Congress, as well as with respect to the enactment of the President's labor legislative agenda.

I understand that this Department's activities must be significantly curtailed during a funding lapse. I further understand that even this office's support for the Secretary's core functions must be curtailed to conform with applicable legal requirements. This office has reviewed its shutdown plan in the context of a prolonged lapse in appropriations and has identified certain activities for which we believe exists both the need and the authority to continue, for the duration of a shutdown.

In the event of a government shutdown during an appropriations impasse, our office's functions are critical in serving the Secretary who, in turn, is advising the President during the budget debate with Congress. To serve the Secretary during this time, OCIA would require at least a core number of staff from this office. As a part of the Office of the Secretary, we believe that our continued core functions must be performed to support the Secretary's work with the legislative branch.

I request your approval of our designation of a minimum of three "excepted positions" to provide that core legislative support to the Secretary. All of the activities we identify

below would be justified as implicitly necessary to assure adequate effectuation of authorized Secretarial activities deemed "excepted."

We propose to continue all legislative activities on behalf of the Secretary with respect to the actual suspension of Departmental activities. We would maintain contact with the relevant Member and Committee offices and provide them with information on the Departmental and office functions that are continuing during a shutdown and those that are suspended. We also propose to continue all legislative activities on behalf of the Secretary with respect to legislation as appropriations and continuing resolutions, budget/budget reconciliation, debt ceiling, and other legislation with a close nexus to the suspension of funding. In addition, this office would continue its involvement with respect to any other legislation, when directed by the Office of Management and Budget (OMB).

The minimal staffing for these activities would be 3 FTE (3 professional staff). In the event of significant emergency involving one of the Department's excepted activities, such as a major mine disaster, this office might utilize the minimum level of additional staff, if the need arose for enhanced consultations with Congress. In addition, in the event of substantial progress, during a shutdown, in Congressional consideration of significant legislation, this office might also, upon the request of OMB, recall the minimum level of additional staff necessary to assure proper effectuation of the Secretary's legal role as principal labor advisor to the President.


Upon your approval of this request, we will identify to the Assistant Secretary for Administration and Management the individuals who would provide these approved services. Thank you for your review of this request.



September 23, 2015

MEMORANDUM

TO: M. PATRICIA SMITH, SOLICITOR
UNITED STATES DEPARTMENT OF LABOR

FROM: MALCOLM D. NELSON, OMBUDSMAN 
ENERGY EMPLOYEES COMPENSATION PROGRAM

RE: CONTINGENCY PLANNING IN EVENT OF LAPSE IN
DOL ANNUAL APPROPRIATIONS

The Office of the Ombudsman for the Energy Employees Occupational Illness Compensation Program provides services to claimants and potential claimants under both Part B and Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). We are currently funded through two EEOICPA administrative funding streams that will not be subject to any lapse in the Department's Fiscal Year (FY) 2016 appropriations:

- (1) Our primary funding is allocated from the Department's permanent indefinite appropriation for Part E administrative expenses (see 42 USC 7385s-13), which is not subject to annual appropriation or to a lapse in the Department's annual appropriation.
- (2) We also receive a small amount of Part B administrative expense funding from the Department's FY15 appropriation. These funds are "no year" funds and we expect to have sufficient carryover funding to continue operating despite any lapse in FY16 appropriations.

Because this Office's sources of funding will continue to be available even if there is a lapse in the Department's FY16 appropriations, we fully expect to be able to address all of our Part B and Part E operations during any lapse in the Department's annual appropriation.

The Office of the Ombudsman currently includes the following positions:

1. Ombudsman
2. Policy Analyst
3. Policy Analyst
4. Policy Analyst
5. Administrative Officer
6. Writer/Editor

The attached list provides the names of the employees currently employed by the Office of the Ombudsman.

ATTACHMENT

LISTING OF EMPLOYEES

OFFICE OF THE OMBUDSMAN

ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

1. Ombudsman - Malcolm Nelson
2. Policy Analyst- Patricia Louie
3. Policy Analyst- Kim Holt
4. Policy Analyst – Amanda Fallon
5. Administrative Office – Pamela Ford
6. Writer/Editor - Tiffany Bridgett



September 22, 2015

MEMORANDUM FOR: M. PATRICIA SMITH
Solicitor of Labor

FROM: THOMAS D. WILLIAMS
Assistant Inspector General
for Management and Policy

A handwritten signature in black ink, appearing to read "T.D. Williams", written over the printed name of the sender.

SUBJECT: OIG Listing of Excepted Personnel

The OIG is submitting an updated contingency plan in the event of a lapse in appropriations, which includes an updated listing of OIG excepted personnel. If you have any questions concerning the plan, please contact me on (202) 693-5224.

Attachment

**U. S. Department of Labor
Office of Inspector General
2013 Contingency Plan**

September 22, 2015

The U.S. Department of Labor (DOL) Office of Inspector General (OIG) has developed the following Contingency Plan in the event of a lapse in appropriations. This plan was developed consistent with Office of Management and Budget (OMB) requirements; existing, applicable U.S. Department of Justice (DOJ) Office of Legal Counsel (OLC) opinions; and updated DOJ determinations regarding excepted law enforcement activities included in its April 7, 2011 contingency plan (attached.) This contingency plan is subject to change based on any future OMB guidance and/or DOJ determinations.

This contingency plan identifies excepted positions within limited categories of functions that the OIG has deemed essential during a Government shutdown. Described in detail below, those categories are: (1) functions excepted by statute; (2) management, operational and legal activities needed to support excepted functions; and, (3) law enforcement activities, the suspension of which DOJ has determined "*could constitute an imminent threat to the safety of human life and the protection of property.*"

In addition, the OIG recognizes that some employees may be needed on an ad hoc or "on-call" basis after the initial shutdown of operations, and those positions have also been identified within each category.

(1) Functions excepted by statute:

The position for the Presidentially-Appointed, Senate-Confirmed, Inspector General is not subject to furlough by statute.

Excepted Position:

- Scott S. Dahl - Inspector General

(2) Management, operational and legal activities needed to support excepted functions:

The OIG has excepted certain employees who perform management, operational and legal activities necessary to support excepted activities.

Excepted Positions:

- Counsel to the Inspector General
- Deputy Assistant Inspector General for Management and Policy
- Director of the Division of Human Resources Management
- Director of Technology and Administrative Services
- Chief, Branch of Information Technology
- Chief, Branch of Information Security
- Human Resources Specialist, Payroll

Intermittent/On-call Positions:

- Deputy Inspector General
- Assistant Inspector General for Audit
- Deputy Assistant Inspector General for Audit
- Assistant Inspector General for Management and Policy

- Director of Audit Operations
- Assistant Counsels to the Inspector General
- Director of Budget Management
- Director of Procurement
- Chief, Branch of Personnel Operations
- Human Resources Specialists - To be determined, based on need
- Information Technology Specialists - To be determined, based on need

(3) Law Enforcement Activities:

The OIG conducts criminal investigations relating to alleged violations of Federal laws, rules or regulations related to DOL programs and operations, as well as investigations of allegations of misconduct on the part of DOL employees. The OIG also conducts criminal investigations to combat the influence of labor racketeering and organized crime in the nation's labor unions in the areas of employee benefit plans, labor-management relations, and internal union affairs. The OIG has excepted all GS-1811 criminal investigators and limited investigative analysis staff needed to support excepted law enforcement activities.

Positions Excepted:

- Assistant Inspector General for Labor Racketeering and Fraud Investigations
- Deputy Assistant Inspector General for Labor Racketeering and Fraud Investigations
- Director of Administration
- Director of Labor Racketeering and Program Fraud Investigations
- Director of Computer Evidence Recovery Unit
- GS-1811 Criminal Investigators
- GS-1811 Criminal Investigator (International Organized Crime Task Force)

Intermittent/On-call Positions:

- Investigative Analysts - To be determined, based on need

Summary of Activities in the Event of a Government Shutdown

Current On-Board Staff (09/16/2013)	Number of Excepted Employees				Total Staff Excepted	Total Staff to be Furloughed
	Excepted by statute	Support of Excepted Functions	Law Enforcement Activities	Other Funding		
371	1	7	154	0	162	209

April 7, 2011

**U.S. Department of Justice
2011 Contingency Plan**

The Department of Justice has developed the following Contingency Plan, consistent with Office of Legal Counsel (OLC) opinions and Office of Management and Budget (OMB) guidance, to be implemented in the event of a lapse in appropriations. Pursuant to the requirements of OMB Circular A-11, Section 124 – Agency Operations in the Absence of Appropriations, the Department provides the following summary information regarding its plan for an orderly shutdown in the absence of appropriations:

- Estimated time to complete the shutdown: one-half day
- Number of employees estimated to be on-board before implementation: 117,579
- Number of employees to be retained under the plan: 94,261
 - Number engaged in military, law enforcement, or direct provision of health care activities: 88,206
 - Number where compensation is financed by a resource other than annual appropriations: 6,055
- Number of employees, not otherwise exempt, to be retained to protect life and property: None

The Antideficiency Act restricts the government's ability to obligate funds in advance of appropriations or beyond appropriated levels. If the Department is faced with a lapse in appropriations it will only be able to continue the following types of activities that qualify as exceptions to the Antideficiency Act restrictions:

1. Those needed for a brief time to ensure the orderly shutdown of functions that will not continue during the lapse;
2. Those related to "emergencies involving the safety of human life or the protection of property", *i.e.*, where there is a reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question.
3. Those funded through multi-year appropriations and permanent appropriations;
4. Those for which there is an express authority to continue during an appropriations lapse;
5. Those for which authority to continue during an appropriations lapse arises by necessary implication; and
6. Those related to the discharge of the President's constitutional duties and powers.

See, e.g., Memorandum for Alice Rivlin, Director, Office of Management and Budget, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Government Operations in the Event of a Lapse in Appropriations (Aug. 16, 1995) and opinions cited therein.

April 7, 2011

The Department of Justice is responsible for investigating and prosecuting federal crimes as well as detaining prisoners. Therefore, a significant portion of the Department's mission involves the protection of human life and property, and primarily for this reason the Department has a high percentage of activities and employees that are excepted from the Antideficiency Act restrictions and can continue during a lapse in appropriations. Other activities and employees are excepted because they are required to implement a shutdown by suspending operations in an orderly manner (including the filing of litigation extensions with the courts), they are funded with multi-year and no-year appropriations, or they are Presidential appointees who are exempt from furlough by statute. The Department's 2011 Contingency Plan has been formulated assuming a two week lapse in appropriations implemented after a hiring freeze has been in place for approximately three months.¹ Depending upon the duration of the shutdown, the Department may need to revisit the plan and submit an amended version.

The Department's plan is based on OLC opinions and OMB guidance and conforms to the following general principles:

The law enforcement capacity of the U.S. Government should not be impaired or perceived to be impaired. To do so could constitute an imminent threat to the safety of human life and the protection of property.

Component heads are to be conservative in designating employees as "excepted," especially those in headquarters or other "overhead" functions and occupations. Also, in the event of a prolonged furlough, it will be possible to bring some employees back to work if the need for their services becomes critical, and to furlough others as conditions change.

Ancillary support services will be maintained only to the extent necessary to support excepted operations. These ancillary functions include legislative affairs and other congressional support activities, public affairs activities, and community outreach, which may be conducted only to the extent the failure to perform those functions would prevent or significantly damage the functioning of a funded component, the operations of other funded parts of the government, or the performance of an otherwise excepted function.

Employees may not be reassigned or given new duties, and offices may not be restructured, in order to move individuals from a non-excepted function into an excepted function.

¹ The Federal Government is currently operating under a Continuing Resolution (CR) which expires on April 8, 2011. Operating the Department of Justice under a CR for over half of the fiscal year has been extremely challenging. The Department is already doing everything it can to maintain its mission requirements under the CR levels. To ensure efficient Departmental operations within the constrained CR funding levels, the Attorney General has ordered a Department-wide temporary hiring freeze and reductions to other non-essential spending.

April 7, 2011

With respect to litigation, the Department's plan assumes that the Judicial Branch will continue to operate through the furlough, therefore:

Criminal litigation will continue without interruption as an activity essential to the safety of human life and the protection of property.

Civil litigation will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life or the protection of property. Litigators will need to approach the courts and request that active cases, except for those in which postponement would compromise to a significant degree the safety of human life or the protection of property, be postponed until funding is available. If a court denies such a request and orders a case to continue, the government will comply with the court's order. Supervisors are reminded that they need to limit their staffing to the minimum level of essential activities to comply with the court's order and to protect life and property.

Assumptions relating to training activities are as follows:

In order to ensure the proper execution of the Department's emergency functions, components may determine that the training of new employees in positions that have been designated as "emergency" is an excepted function.

To the extent that the training of new "emergency" employees is in process or about to begin when a lapse occurs, components should consider whether a short delay (for example, over the weekend) in the training will compromise emergency functions. If such a delay will not compromise emergency functions, components should consider keeping the employees at the training center but delaying the training itself or not sending the employees to the training during the brief delay. If at any point the component determines that the delay in training might impact emergency functions the training should resume.

New employees who are not in positions designated as "emergency" should not start work during the lapse and should not be trained.

In-service training of current employees, even those excepted from furlough, will be cancelled.

Training of state and local officers will be discontinued for the duration of the lapse in appropriations.

The Department of Justice has determined that 94,261 of the 117,579 employees (80.2 percent) on-board at the Department of Justice (as of the pay period ending February 12, 2011) would be excepted from furlough because: they must be retained to protect life and property (for example, law enforcement); their compensation is financed by a resource

April 7, 2011

other than annual appropriations; there is express authority for them to continue their work during a lapse; authority for them to continue their work arises by necessary implication; they are needed to conduct an orderly shutdown; or because they are Presidential appointees remaining at work by statute.

Department of Justice programs funded with permanent indefinite appropriations, or other funding not subject to annual appropriation (e.g., Diversion Control, Health Care Fraud and Abuse Control mandatory, Debt Collection, Assets Forfeiture Fund, Federal Prison Industries), are displayed in the plan as excepted positions because their funding is not dependent upon congressional action. Also, BOP's Buildings and Facilities and Commissary accounts have multi-year authority and have adequate carry over funding to meet the expenses for the period covered in this plan. Employees paid from these funding sources are not dependent upon an enacted 2011 appropriation and are therefore considered excepted. A total of 6,055 of these employees will remain on duty in the event of an appropriations hiatus. Therefore, these employees, along with 88,206 employees excepted because they must be retained to protect life and property (such as law enforcement), will result in a total of 80.2 percent of the Department's workforce remaining on board during a lapse in appropriations. Included in these amounts are 222 authorized Presidential appointee positions, which by statute are not subject to furlough.

Given the mission of the Department and the tremendous responsibility it has in protecting life and property throughout this country and the world, the decision that 80.2 percent of our employees are excepted during an appropriations hiatus is reasonable and consistent with the articulated Office of Legal Counsel standards.

Following is a synopsis of the components' plans for the Department of Justice:

- **General Administration (GA):** accounts include the Department's Leadership and Senior Policy/Management Offices: 30 of 237 employees on-board are excepted. This includes 5 Presidentially Appointed positions, which are not subject to furlough by statute. The excepted employees will be providing overall Departmental leadership and policy management to ongoing emergency life and safety operations and other excepted activities during the lapse of appropriations.

The GA account also funds a portion of the functions and staff of the Justice Management Division (JMD). Portions of JMD are also funded by the Working Capital Fund, Debt Collection, and the Assets Forfeiture Fund, which are programs funded with permanent indefinite appropriations or other funding not subject to annual appropriation. The 173 excepted employees identified in JMD, of the total 988 on-board employees, will be performing such services as: overall direction for staffs providing support to emergency life, safety and property activities Department-wide; basic building services and property security at the Main Justice Building; and management functions that include law and policy, budget and finance, procurement, information technology, human resource administration, and security.

April 7, 2011

JMD also oversees the Justice Information Sharing Technology (JIST) and the Law Enforcement Wireless Communications (LEWC) accounts and has identified 16 of 85 employees funded from these accounts as excepted. These employees are needed to operate the 24/7 Justice Security Operations Center, which provides information security for the Department's systems. In addition, these employees are needed for contract oversight of the Integrated Wireless Network implementation in the National Capital Area, information technology operations, and systems that support ongoing law enforcement operations that will continue during any lapse in appropriations situation.

- **National Drug Intelligence Center (NDIC):** 38 of 216 employees on-board are excepted from furlough. These employees are primarily Intelligence Analysts who will continue to perform the Document and Media Exploitation (DOMEX) function in support of criminal investigations, as well as a small number of executive and support positions necessary for direct support of DOMEX operations.
- **Office of the Detention Trustee (OFDT):** none of 24 employees on-board are designated as excepted. Daily detention operations in the field would continue under the supervision of the U.S. Marshals Service during an appropriations hiatus.
- **Executive Office for Immigration Review (EOIR):** 380 of 1,511 employees on-board are excepted. These employees are needed to process all immigration cases and appeals involving detained aliens, including criminal aliens; provide Headquarters oversight of excepted functions; provide administrative support for excepted functions; and preserve jurisdictional viability of discrimination cases within the Administrative Law Judge function.
- **Office of the Pardon Attorney:** none of 13 employees on-board are excepted from furlough.
- **Office of the Inspector General (OIG):** 158 of 468 employees on-board are excepted. This includes the authorized position for the Presidentially Appointed Inspector General, which is not subject to furlough by statute. The excepted employees are needed to investigate allegations of bribery, fraud, abuse, civil rights violations and violations of other criminal laws and administrative procedures arising from the conduct of Department employees, contractors and grantees; support law enforcement functions; oversee emergency operations and provide legal advice and issue subpoenas; continue work on time-sensitive national security investigations; and provide security and administrative support for excepted personnel and emergency services.
- **U.S. Parole Commission (USPC):** 9 of 76 employees on-board are excepted. These employees are needed to respond to requests for emergency warrants and process parole certificates. Due to the constitutional prohibitions against the suspension of the writ of habeas corpus, the USPC is assuming that this litigation will continue in all judicial districts. The Chairman and 4 additional Commissioners, as Presidentially

Appointed positions, are not subject to furlough by statute and are included in the excepted employee count. They will be available to approve each warrant before issuance. USPC has jurisdiction over federal offenders who committed offenses before November 1, 1987, as well as all District of Columbia (DC) offenders. Much of the DC caseload is driven by requests for warrants as a result of violations of the terms and conditions of parole. In contrast to the federal system where the failure rate is about 20 percent, DC parolees have a failure rate of nearly 80 percent.

- **National Security Division:** 229 of 307 employees on-board are excepted. This includes the authorized position for the Presidentially Appointed Assistant Attorney General, which is not subject to furlough by statute. The excepted employees are needed to ensure the Department's national security investigations and prosecutions continue, that the Department's national security activities are coordinated both within the Department and with other government agencies, and to represent the Intelligence Community before the Foreign Intelligence Surveillance Court (FISC), which will remain open to facilitate the national security activities of United States in a manner consistent with the law. NSD will also provide legal advice to the Intelligence Community with respect to ongoing national security matters, and oversee the Department's administration of the U.S. Government's authorities under the Foreign Intelligence Surveillance Act (FISA). In addition, excepted employees will continue work on pending counterterrorism, espionage, export control, and sanctions violations; coordinate and supervise the Department's international terrorism, domestic terrorism, and weapons of mass destruction matters; and continue to review Committee on Foreign Investment in the United States matters, including responding to time-sensitive inquiries regarding the national security implications of corporate conduct in compliance with National Security Agreements.
- **General Legal Activities (GLA):** 1,818 of 4,724 employees on-board are excepted. They include the authorized positions for the Solicitor General and 6 Assistant Attorneys General, which are Presidentially Appointed and not subject to furlough by statute, and another 150 employees who are funded from resources unaffected by a lapse in appropriations. The GLA account includes the following components: Solicitor General, Tax Division, Criminal Division, Civil Division, Environment and Natural Resources Division, Legal Counsel, Civil Rights Division, INTERPOL Washington, and the Office of Dispute Resolution. The excepted employees are necessary to provide legal advice on ongoing excepted functions of the Executive Branch, including matters of national security and presidential authority to the Attorney General, the Deputy Attorney General, and others within the Department, the White House the National Security Council and the Departments of State and Defense and to review Attorney General Orders, Executive Orders and Proclamations, and presidential memoranda and directives; to ensure that criminal litigation continues uninterrupted; seek continuances for civil and appellate litigation, except as necessary for the immediate protection of property; proceed with civil and appellate litigation should attempts to secure continuances fail, or as otherwise necessary for the immediate protection of property; provide administrative advice and resource allocation guidance to Civil Rights Prosecution personnel and the Assistant

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Attorney General, Civil Rights Division, in the event of civil disorder; respond to and investigate complaints of alleged criminal civil rights violations involving endangerment of life or property and to handle complaints from institutionalized persons concerning life threatening situations. Excepted employees are also needed to continue the review process to meet statutory deadlines under Section 5 of the Voting Rights Act. Excepted employees will also continue to defend challenges to U.S. Government immigration procedures and regulations and to administrative determinations of EOIR. Also, excepted employees are needed to provide uninterrupted communications among federal, state, local and international law enforcement entities in furtherance of, among other things, criminal investigations and the apprehension of fugitives and criminal and illegal aliens.

- **Antitrust Division:** 234 of 790 employees on-board are excepted. This includes the authorized position for the Presidentially Appointed Assistant Attorney General, which is not subject to furlough by statute. The excepted employees are needed to provide direct support or conduct ongoing criminal trials, prepare for a criminal trial that has been scheduled for court (including the handling of arraignments, pleas, and sentencing hearings); provide support or conduct ongoing civil trials; participate in court-ordered hearings in a civil proceeding; or prepare for a civil trial or hearing that has been scheduled by the court, only when a continuance cannot be obtained. They will also prepare cases that must be filed due to Hart-Scott-Rodino or statute of limitations deadlines, only when an extension or waiver cannot be obtained and Antitrust Division leadership determines that allowing a proposed merger to go forward without objection would pose a reasonable likelihood of peril to property in which the United States has an immediate interest or a duty to perform.
- **U.S. Attorneys:** 6,300 of 12,244 employees are excepted. This includes the authorized positions for the 93 Presidentially Appointed U.S. Attorneys, which are not subject to furlough by statute, and another 360 employees funded from resources unaffected by the lapse in appropriations. The excepted employees are needed to address ongoing criminal matters and civil matters of urgency throughout the Nation. Criminal litigation will continue without interruption as an activity essential to the safety of human life and the protection of property. Civil litigation will be curtailed or postponed to the extent this can be done without compromising to a significant degree the safety of human life or the protection of property. If a court denies a litigator's request to postpone a case and orders it to continue, the litigation will become an excepted activity that can continue during the lapse. Headquarters support will be maintained only to the extent necessary to support essential operations.
- **U.S. Trustees Program:** 383 of 1,270 FTP employees on-board are excepted. These employees are needed to protect bankruptcy estate property through the appointment and oversight of fiduciaries and through other means. Excepted employees would be responsible for coordinating meetings of debtors and creditors as well as civil and criminal matters, including cases with the U.S. Attorneys and the Federal Bureau of Investigation. Attempts will be made to curtail or postpone appearances before the Bankruptcy Courts. Excepted employees would be limited to performing only those

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functions in which there is a definite risk of substantial property loss or violation of law.

- **Foreign Claims Settlement Commission:** 3 of 7 employees on-board are designated as excepted because they are the authorized positions for the 3 Presidentially Appointed Commissioners, which are not subject to furlough by statute.
- **U.S. Marshals Service (USMS):** 5,155 of 5,691 employees on-board are excepted, including the authorized positions for the Presidentially Appointed Director and the 94 U.S. Marshals, which are not subject to furlough by statute. A total of 100 percent of USMS field personnel and an overall total of 90.6 percent of USMS personnel are excepted. The excepted employees are needed to carry out duties associated with judicial security, prisoner security, prisoner transportation, and fugitive apprehension. Approximately 59 percent of headquarters employees will be required to provide overall direction and support to excepted activities. These functions are critical to the support of Deputy U.S. Marshals in the field – this support includes integrity assurance, oversight of investigative operations and judicial security, tactical operations, witness security, and management functions that include law and policy, budget and finance, procurement, information technology, human resource administration, and security.
- **Community Relations Service:** 3 of 44 employees on-board are excepted including the authorized position for the Presidentially Appointed Director, which is not subject to furlough by statute. CRS provides critical assistance in resolving and preventing racial, ethnic and national origin community conflicts, violence, and civil disorder and to help communities struggling to recover in the aftermath of an alleged violent hate crime committed on the basis of actual or perceived race, color, national origin, religion, disability, gender, gender identity, or sexual orientation. A minimum number of employees is necessary to respond to provide a rapid response to emergency situations to protect the safety of human life or the protection of property.
- **Interagency Crime and Drug Enforcement (ICDE):** 2 of 25 employees on-board in the Executive Office are excepted. Note that DOJ components participating in the Organized Crime Drug Enforcement Task Force program (OCDETF) have excepted their ICDE-funded personnel from furlough as appropriate within their agency designations. OCDETF provides reimbursable funding to the member agencies to support the salaries and expenses of their participating personnel. The two Executive Office employees are needed to provide day-to-day administrative support to the nine member agencies of the OCDETF Co-Located Strike Forces and to the OCDETF Fusion Center (OFC), which also houses the Department's International Organized Crime Intelligence Operations Center (IOC-2). The nine Co-Located Strike Forces are designed to serve a dual purpose: they aggressively target the highest-level drug trafficking organizations; and they also function as a central point for gathering intelligence and disseminating investigative leads throughout the neighboring areas. The OFC is a comprehensive data center containing all drug and related financial

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intelligence information from all OCDETF-member investigative agencies and the Financial Crimes Enforcement Network.

- **Federal Bureau of Investigation (FBI):** 30,208 of 35,267 employees on-board are excepted. These include the authorized position for the Presidentially Appointed Director, which is not subject to furlough by statute, plus 2,057 other employees funded from resources unaffected by a lapse in appropriations. A total of 100 percent of FBI field personnel and an overall total of 85.7 percent of FBI personnel are excepted. They are needed because all operations of the FBI are directed toward national security and investigations of violations of law involving protection of life and property. Thus, the FBI must be able to respond to all contingencies which might arise during a lapse of appropriations. Accordingly, all FBI agents and support personnel in the field are considered excepted from furlough. This includes the 56 domestic field offices, 400 resident agencies, 61 Legal Attaché (Legat) offices and 14 Legat sub-offices.

At FBI headquarters, a total of 59 percent of staff are excepted, including 90 percent of the agents, 88 percent of intelligence analysts, and approximately 49 percent of other support personnel are considered excepted to provide direction and investigative support to all field operations and excepted headquarters functions. This includes 63 percent of the Science and Technology Branch that encompasses the Criminal Justice Information Services Division, which provides fingerprint identification services to criminal and national security investigations, and the Laboratory Division. Personnel in the other branches and divisions would be reduced to the following levels: Criminal Cyber Response and Services Branch, which includes the Critical Incident Response Group (80 percent); Human Resources Branch (38 percent); National Security Branch (83 percent); Information and Technology Branch (27 percent); and other Divisions and Executive Offices (34 percent).

- **Drug Enforcement Administration (DEA):** 7,437 of 8,842 employees on-board are excepted, including the authorized position for the Presidentially Appointed Administrator, which is not subject to furlough by statute. A total of 92 percent of DEA field personnel and an overall total of 84.1 percent of DEA personnel are excepted. All agents in DEA field organizations are excepted from furlough because they support active counternarcotics investigations. This encompasses 21 domestic divisions, 7 regional foreign divisions, critical tactical support groups including the El Paso Intelligence Center and the Special Operations Division, forensic sciences, and technical surveillance support. DEA investigations need to continue uninterrupted so that cases are not compromised and the health and safety of the American public is not placed at risk. In addition, approximately 50 percent of headquarters personnel are critical to the support of agents actively engaged in investigative actions in the field – this support includes agency direction and priorities, legal support, integrity assurance and oversight of investigations, and critical support of emergency field functions, such as coordination of joint efforts involving other federal, state, local and foreign agencies; 24/7 tactical Command Center, tactical analytical support to investigations, programs and operations worldwide; as well as worldwide support in

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the areas of financial management, contract oversight, personnel, and basic training. Headquarters support will be maintained only to the extent necessary to support essential operations.

DEA Diversion Control Fee Account (DCFA): All of the 1,046 employees on-board are excepted since these positions are fully fee funded; therefore, all drug diversion control activities will continue. These activities include preventing, detecting, and investigating the diversion of controlled substances from legitimate channels, while ensuring an adequate and uninterrupted supply of controlled substances to meet legitimate needs.

- **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF):** 4,206 of 5,117 employees on-board are excepted, including the authorized position for the Presidentially Appointed Director, which is not subject to furlough by statute. A total of 92.1 percent of ATF field personnel and an overall total of 82.2 percent of ATF personnel are excepted. All agents in ATF's 25 field divisions are considered excepted from furlough to conduct the full range of criminal investigations in the firearms, arson, explosives, alcohol and tobacco program areas; Industry Operations Investigators who conduct compliance inspections of Federal firearms and Federal explosives licensees (including those mandated under the Safe Explosives Act), as well as application inspections; and other personnel who conduct collection, review and analysis of intelligence data in support of criminal investigations. Headquarters support will be maintained only to the extent necessary to support excepted operations.
- **Bureau of Prisons (BOP):** 34,187 of 35,522 employees on-board or 96.2 percent are excepted. These employees' salaries are paid from BOP's Salaries and Expenses Account. All staff at the 116 Federal prisons, including Public Health Service (PHS) Officers necessary to provide medical care of inmates, are considered excepted since they have direct daily inmate custody responsibilities. Employees are also needed to continue inmate custody responsibilities over some 38,700 inmates in contract facilities and process all new designations to federal prisons from the Courts. Regional and headquarters support will be maintained only to the extent necessary to support excepted operations. BOP's Buildings and Facilities, Prison Industries and Commissary accounts have multi-year authority and should have adequate carry over funding to meet the expenses for the period covered in this plan. Employees paid from these funding sources are not dependent upon an enacted 2011 appropriation and are therefore considered excepted.
- **Grant Programs:** While the grants awarded by the Department are funded from no-year appropriations, the employees who administer those grants are funded from current-year appropriations. Thus, the administration and related support of grants already awarded will continue only to the extent necessary to prevent significant damage to the execution of the terms of the statutory provision underlying the grant program, or to the extent necessary to protect the safety of human life. New grants will not be awarded during a lapse in appropriations.

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- **Office of Justice Programs (OJP):** 42 of 688 employees on-board are excepted including 6 Presidentially Appointed authorized positions, which are not subject to furlough by statute.
- **Office of Community Oriented Policing Services (COPS):** 16 of 137 employees on-board are excepted.
- **Office on Violence Against Women (OVW):** 7 of 64 employees on-board are excepted, including the authorized position for the Presidentially Appointed Director, which is not subject to furlough by statute.



September 25, 2015

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: MICHAEL J. HAYES *MJH*
Director

SUBJECT: OLMS Contingency Plan for Excepted Functions in the
Absence of FY 16 Appropriations

During any lapse in appropriations, OLMS would suspend all operations and its staff would be furloughed, except as described below.

- 1) Investigators subpoenaed to testify before a federal or state court only for the period of time required to prepare and present testimony and travel to the court.
- 2) Investigators performing criminal investigations in jeopardy of being lost due to the statute of limitations.
- 3) Investigators performing election investigations required by statute to be conducted within 60 days, absent a mutual agreement between the labor union and OLMS extending the 60 day filing deadline.
- 4) Investigators performing activities associated with a supervised election where postponement of the election would cause a violation of the statutory requirement with respect to the maximum time period for holding union officer elections or would result in a failure to meet a court-ordered deadline, absent an extension.

Additionally, OLMS would perform the following excepted activity: coordination and management of the above-described activities as they are or become necessary.

OLMS anticipates the possibility of job rotation in some instances to perform excepted functions. If unforeseen emergencies occur, additional employees would be identified and approved to work during the shutdown. The OLMS Director would fulfill the coordination and management role in the plan. Other employees may be called upon on an as-needed basis.

Enclosure

**U.S. DEPARTMENT OF LABOR
LIST OF EXCEPTED ACTIVITIES/ EMPLOYEES**

Agency/Office/Organizational Unit: Office of Labor-Management Standards Date: 09/25/15

Total Number of Employees on-board prior to implementation: 209

Number of Excepted Employees	Exception Code (I)	Regional	National	Total
Investigators (no. to be determined)	3	TBD	TBD	TBD
OLMS Director	3	0	1	1
Director of Field Operations	3	0	1	1
Chief, Division of Planning, Mgmt. & Tech. (OLMS Administrative Officer)	3	0	1	1

Total: Three and TBD investigators

In the event of government shutdown, OLMS would need exceptions for some investigative staff that would have to be determined at the time of the shutdown for the following purposes:

- 1) Investigators subpoenaed to testify before a federal or state court only for the period of time required to prepare and present testimony and travel to the court.
- 2) Investigators performing criminal investigations in jeopardy of being lost due to the statute of limitations.
- 3) Investigators performing election investigations required by statute to be conducted within 60 days, absent a mutual agreement between the labor union and OLMS extending the 60 day filing deadline.
- 4) Investigators performing activities associated with a supervised election where postponement of the election would cause a violation of the statutory requirement with respect to the maximum time period for holding union officer elections or would result in a failure to meet a court-ordered deadline, absent an extension.

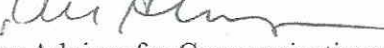
Exception Codes:

1. Obligations for employees/activities funded through multi-year, no-year and indefinite appropriations;
2. Obligations for employees/activities funded through express authorizations in the form of contracting authority or authority to borrow;
3. Obligations for employees/activities necessary to the lawful continuation of other activities, including the minimal obligations necessary for suspension of operations;
4. Obligations for employees/activities necessary to the discharge of the President's constitutional duties and powers; and
5. Obligations for employees/activities for emergencies involving the safety of human life or the protection of property.

These are the general guidelines to be applied when identifying excepted activities under the Anti-Deficiency Act, however, the Solicitor of Labor will make the final determination, based on information and justifications contained in agency requests, on excepted activities within the Department.



MEMORANDUM TO: M. Patricia Smith
Solicitor of Labor

FROM: Dori Henry, 
Acting Senior Advisor for Communications
and Public Affairs

DATE: September 25, 2015

During a lapse in appropriations, the Office of Public Affairs will suspend all operations and its staff will be furloughed, except as described below.

Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occurred, additional employees would be identified to work for the duration of the emergency.

This office normally provides a full range of public information (including the National Contact Center), media, social media, internal communications and technical communications support services to the Secretary and to agencies throughout the Department, employing a small staff of approximately 65, of which approximately 12 are located in regional offices.

At the outset, I would note the mission of this office is to assure the American people access to information about the Department of Labor, a component of their Government. It is critical that the public and Department of Labor employees get timely and accurate information about the status of our operations and permissible activities during a shutdown period. Our office will be expected to play a central role in such communications, both through traditional and electronic means. Having made this essential point, I would emphasize that this office has made a diligent effort to suspend and curtail its activities in conformity with applicable legal requirements.

The purpose of this memorandum is to request your approval of our designation of eight "excepted positions," solely in the national office, to serve as a minimal cadre during a lapse in appropriations. We believe that a narrow range of our proposed activities would be authorized under the recognized exception relating to the protection of life and property. In addition, we believe that all of the activities we identify below would be justified, as well, as implicitly necessary and essential to assure adequate effectuation of certain authorized Secretarial activities and certain other agency activities otherwise deemed excepted.

We propose, first, to minimally provide a narrow range of public information services to the Department during a shutdown, where such services would significantly further the Department's excepted activities relating to the protection of life and property. We believe such activities are authorized where the dissemination of public information can be expected



(1) to expeditiously inform employers/workers of a potentially life-threatening or maiming workplace hazard or risk to property or (2) to have the effect of deterring violations and enhancing compliance, during the period of shutdown, when public apprehensions about the continuity of life-protecting enforcement mechanisms is the greatest and when the credibility of such enforcement is most significantly undermined.

In addition, we propose to continue a minimal range of public information, web/social media and press support activities for the Secretary and for the Department with respect to the actual suspension of Departmental activities and its policy context. We would maintain minimal service in order to inform the public on which services the Department was continuing to provide and which services the Department had suspended. We would review the daily press, in order to identify misinformation to the public, and seek to obtain clarifications in the media. We further propose to maintain targeted, but minimal, public information services to the media through activities that are responsive to media requests and through other activities that organize forums for providing these services to groups of media representatives. These activities would be in support of otherwise authorized activities during the funding lapse, in connection with the impact of the shutdown; the policy context of the debate on budget and appropriations; and Departmental activities excepted and suspended.

The minimal staffing for these activities would be eight FTE: seven professional and one support, all located in the national office. This is the same number of FTE set forth in the Office of Public Affairs' March 2011 plan. OPA responsibilities include website management, management of the National Contact Center, news media, social media, internal communications, and Open Government efforts. In addition to the need to provide staffing to facilitate essential communications identified above during a shutdown through these means, an ongoing staffing presence for the website and other computer-based channels is necessary to monitor and guard against any possible hacking, malicious activity, or cyber terrorism. The occurrence of a government shutdown may be viewed as a vulnerable opportunity by those who want to do harm to those systems. A significant emergency involving one of the Department's excepted activities, such as a major mine disaster, might necessitate an additional professional staff member. Upon your approval of this request, we will identify to the Assistant Secretary for Administration and Management the individuals who would provide these services.

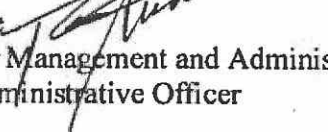
Thank you for your review of this request.

APPROVED by the Solicitor of Labor: _____



September 23, 2015

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: Rose Marie L. Audette 
Associate Solicitor for Management and Administrative Legal
Services, and SOL Administrative Officer

RE: Continuation of Certain Limited Activities of the Office of the
Solicitor during a Lapse in Appropriations

This SOL Contingency Plan supersedes prior plans regarding the identification of those activities and staff that are considered "exempt" or "excepted" from a cessation of operations and furlough during a lapse in appropriation for SOL, after the brief period of orderly shut down has been completed.

Pursuant to your directions about staffing of the Office of the Solicitor (SOL) during a lapse in appropriations, SOL will suspend all operations and its staff will be furloughed, except as described below. In accordance with the Department's directions and timelines, MALS will notify the Office of the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. We anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

In order to provide core legal services in support of exempt or excepted activities of the Secretary and client agencies, and provide those legal services involving the safety of human life or the protection of property necessary during the period of a lapse in appropriation, the exempt and excepted staff are as follows:

- Front Office: The Solicitor (a Presidential Appointee and exempt); Deputy Solicitor; Deputy Solicitors for National Operations; Deputy Solicitor for Regional Enforcement; one attorney; and one administrative/support staff person performing administrative and support functions for the entire National Office (total 1 staff exempt and 5 staff excepted).
- Divisions: Office of Legal Counsel; Black Lung and Longshore Legal Services; Civil Rights and Labor Management; Employment and Training Legal Services; Fair Labor Standards; Occupational Safety and Health; Plan Benefits Security: One attorney each (total 7 attorneys).

- Federal Employees' and Energy Workers' Compensation Division: one attorney on an excepted function basis, and all staff of the FECA Subrogation Unit directly funded by the Employees' Compensation Fund on an exempted function basis (including supervisor, attorneys, paralegals, legal assistants, and any administrative, support, and/or student interns), as funding for this function will continue, and staff of the Energy Unit directly funded by Energy Part E, which is a permanent indefinite appropriations (total consisting of 1 excepted attorney, plus the exempted staff of the FECA-Subrogation Unit and Energy/Part E, currently totaling 33 staff members, consisting of 8 attorneys and 25 support staff).
- Mine Safety and Health Division: four attorneys.
- Management and Administrative Legal Services Division: two appropriations law attorneys, one employment law/labor relations attorney, one contracts/procurement attorney, one attorney/Administrative Officer, and one IT/legal technology/ litigation support services staff (total 5 staff).
- All Regions: three attorneys in each Regional Office and one attorney in each Sub-regional Office (total 28 attorneys), and one administrative/support staff person in each region (total 7 administrative/support staff).

Total excepted staff (including the Solicitor): 33 exempted and 58 excepted staff.

In addition, a number of intermittent excepted staff will be rotated or recalled, as necessary, or have extended orderly shutdown periods. Further, in emergency situations that may develop during the period of a lapse in appropriation, other staff may be returned to paid status for the period necessary to meet the exigency.

This level of staffing will also permit SOL to respond to agency requests for legal assistance relating to shutdown issues during the pendency of shutdown itself, and for approval of additional requests for excepted functions or personnel. We will provide expedited approval of such requests in order for the Department to continue its operations within the boundaries of applicable law.

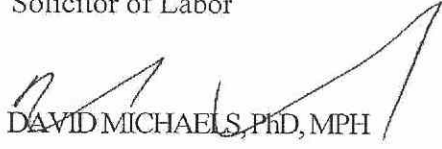
We do not know at this time whether, and to what extent the federal judiciary will continue to operate during a shutdown that affects the Department's funding. We plan to place additional SOL staff into excepted status to the extent that we are not able to adjust federal court litigation schedules or statutes of limitation. At this time, we cannot specify the number or location of such staff, since that would depend on the timing of a shutdown. We are monitoring carefully our deadlines on a nationwide basis and attorneys understand the need to try to obtain extensions as a shutdown becomes more likely.

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210



MEMORANDUM FOR: M. Patricia Smith
Solicitor of Labor

FROM: 
DAVID MICHAELS, PhD, MPH

SUBJECT: Revised Contingency Plan for Suspension of Agency Operations

OSHA is requesting that its current "Contingency Plan for Suspension of Agency Operations" (Plan) be revised as reflected in the proposed "Contingency Plan for Suspension of Agency Operations," included in Attachment I. The key Plan revisions are the addition of the following enforcement inspection categories not covered in the original Plan:

- Follow-up Inspections of Establishments with High Gravity Serious Violations and No Abatement

Following the issuance of a citation, employers are required to notify OSHA that they have completed abatement of the hazard or hazards. Some cited employers do not abate as required, and in the case of High Gravity Serious violations, there is a reasonable chance that this could result in the serious physical harm or death of one or more workers within the near future. It is imperative that OSHA revisit these worksites without delay to ensure that employers abate the identified High Gravity Serious Violations and do not persist in exposing workers to hazards that threaten human life. Based on the known connection between High Gravity Serious Violations and death/serious harm and the known compromise of human life by any delay in abatement, OSHA proposes to conduct these follow-up inspections in the event of a shutdown. Before inspecting, the OSHA Area Office would contact the employer telephonically to request the required evidence of abatement. An inspection would be conducted for those employers failing to respond effectively.

- Open Cases where the Agency Six Month Statutory Deadline Will Expire

OSHA proposes to conduct enforcement activities on open cases needed to meet the Agency six-month statutory deadlines where those cases establish employees are potentially exposed to hazardous conditions that present a high risk of death or serious

harm with the potential to cause death.

Upon approval of OSHA's revised Plan and in the event of a future lapse in appropriations, OSHA would suspend all operations and its staff will be furloughed, except as described in the revised "Contingency Plan for Suspension of Agency Operations". OSHA will also notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities detailed in the Plan.

Thank you for your consideration of this request.

Attachment

Attachment I

Occupational Safety and Health Administration (OSHA) Revised Contingency Plan for Suspension of Agency Operations

OSHA is authorized to continue functions in advance of appropriations on matters “of emergencies involving the safety of human life or protection of property.” Therefore, OSHA employees should be excepted from the suspension requirements in order to carry out emergency enforcement activity in the following areas:

1. Inspection of imminent danger situations under Section 13 of the Occupational Safety and Health Act;
2. Investigation of workplace fatalities and catastrophes;
3. Investigation of safety and health complaints or other information received from police, fire departments or other first responders, media sources or employers establishing that employees are potentially exposed to hazardous conditions that present a high risk of death or serious physical harm with the potential to cause death;
4. Follow-up inspections of establishments with high gravity serious violations and no abatement¹; and
5. Enforcement activities on open cases needed to meet agency six-month statutory deadlines where those cases establish employees are potentially exposed to hazardous conditions that present a high risk of death or serious physical harm with the potential to cause death.

A minimum number of OSHA employees necessary to provide the support for these emergency operations should be excepted. In this manner, OSHA can maintain a force permitting it to respond to emergency situations and to continue with the enforcement activity essential to protect workers' lives from the most severe occupational hazards.² Specifically, the OSHA employees deemed excepted are as follows:

¹ Before inspecting, the OSHA Area Office would contact the employer telephonically to request the required evidence of abatement. An inspection would be scheduled for those employers failing to respond effectively.

² Additionally, situations falling within those excepted activities may arise which require the recall of additional staff with special expertise needed to address “emergencies involving the safety of human life or protection of property” as defined above.



SEP 23 2013

File Number:

MEMORANDUM FOR THE SOLICITOR

A handwritten signature in black ink, appearing to read "Gary A. Steinberg", is written over a horizontal line.

FROM: GARY A. STEINBERG
Acting Director
Office of Workers' Compensation Programs

SUBJECT: Contingency Plan for Excepted Activities and Functions

During a lapse in appropriations, the Office of Workers' Compensation Programs (OWCP) will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occurred, additional employees would be identified to work for the duration of the emergency.

As detailed on the attachment, OWCP has some statutory authority to continue the payment of benefits for varying amounts of time during a lapse in annual appropriations in awarded claims under the Black Lung Benefits Act, the Energy Employees Occupational Illness Compensation Program Act, the Federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act and its extensions, and the War Hazards Compensation Act. In addition, it is expected that administrative activities that are not funded by annual appropriations would continue without change.

With respect to administrative expenses that are funded by annual appropriations, as long as benefit payments continue, OWCP also has the implied authority to incur obligations in advance of appropriations for administration of those benefits, including the authority to retain the staff, management and automated systems necessary to the check writing and distribution functions that are critical to the disbursement of the benefit payments themselves. In addition, OWCP is authorized by law to continue necessary claims management as a necessary implication of the continued funding for benefit payments and in order to protect the lives of the beneficiaries of the programs involved. These individuals potentially have suffered work-related injuries or illnesses that are compensable under one of the statutes within the agency's jurisdiction. Necessary claims management includes developing, adjudicating and administering new claims and new requests for benefits, as well as adjudicating requests for authorization of necessary medical procedures such as emergency medical care and other activities that are necessarily implied by continuation of the compensation programs involved.

The attachment outlines the parameters of OWCP's authority to continue paying benefits under these programs and describes the excepted administrative functions in greater detail.

During a funding lapse, OWCP would cease all other continuing, regular functions.

Attachment

cc: Deborah Greenfield

Office of Workers' Compensation Programs
EXCEPTED ACTIVITIES AND FUNCTIONS

I. Payment of benefits.

The Office of Workers' Compensation Programs (OWCP) is responsible for administering the Black Lung Benefits Act (BLBA), the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), the Federal Employees' Compensation Act (FECA), the Longshore and Harbor Workers' Compensation Act (LHWCA) and its extensions, and the War Hazards Compensation Act (WHCA). As detailed below, during a funding lapse, OWCP expects to have sufficient authority and funds to continue making benefit payments,¹ including monetary compensation and payment of medical benefits, under the above programs as detailed below:

A. BLBA:

1. Part B benefits are paid from annual appropriations; OWCP expects to be able to continue paying Part B benefits indefinitely, because OWCP's appropriation provides an advance for benefits payable during the first quarter of the next Fiscal Year and OWCP does not expect to exhaust this funding in the near future.

2. Part C benefits are paid from the Black Lung Disability Trust Fund (BLDTF). OWCP expects to be able to continue paying any benefits due from the BLDTF as long as the BLDTF contains sufficient funds to make payments. At this point, if there is a lapse in appropriations, OWCP can continue paying benefits until such time as all funding is completely expended

B. EEOICPA: OWCP expects to be able to continue paying all benefits due, whether under Part B or Part E, because benefits are paid from the Energy Employees Occupational Illness Compensation Fund, a permanent indefinite appropriation that is not dependent upon annual appropriations or authority provided in other appropriations laws.

C. FECA: OWCP expects to be able to continue paying all benefits as long as sufficient funds remain available in the Employees' Compensation Fund, a permanent appropriation. Although a significant portion of the money deposited into the Fund is from annual appropriations² received by employing agencies and transferred to the Fund pursuant to 5 U.S.C. § 8147(b), these funds do not expire and use of the funds to pay benefits is not dependent upon authority provided in annual appropriations. Upon a lapse in appropriations, OWCP can continue paying benefits for several months until such time as all available funding is expended. Estimates will be updated as transfers from other agencies are received.

D. LHWCA: OWCP expects to be able to continue paying any benefits due from the LHWCA Special Fund, as long as the Special Fund contains sufficient funds to make payments. At this time, OWCP expects to have sufficient funding in the Special Fund to continue paying benefits for approximately 12 months.

¹ This discussion applies only to benefits that are payable from funds controlled by the United States government. Under some programs, some benefits are paid directly by private parties (employers or their insurers). Those benefits should continue without interruption.

² Approximately 40% of the benefits paid from the Fund consist of payments made to employees of the United States Postal Service (USPS). USPS reimburses the Fund for those payments from a revolving fund which is not subject to a lapse in annual

E. WHCA: WHCA claims are paid from the Employees' Compensation Fund, discussed in Section C (above). As with FECA benefits, OWCP expects to be able to continue paying all benefits as long as sufficient funds remain available in the Employees' Compensation Fund, a permanent appropriation. OWCP expects to have sufficient funding in the Fund to continue paying benefits consistent with section C.

II. Administrative Expenses

A. EEOICPA: OWCP has sufficient funds for all administrative activities under Part E of EEOICPA because those activities are funded by a permanent indefinite appropriation rather than OWCP's annual appropriation. In addition, although Part B administrative expenses are funded by annual appropriation, OWCP's current fiscal year appropriation for Part B expenses remains available until it is expended and these funds would continue to be available during a lapse in appropriations. If carryover funds are exhausted, however, a lapse in appropriations would affect Part B administration. As discussed in more detail in Section IIC (below), OWCP would be authorized to continue necessary Part B claims management in order to continue administration of Part B benefits to the extent that funding remains available to pay those benefits.

B. BLBA Part B: BLBA Part B administrative expenses are funded through DOL's annual appropriation, and remain available until expended. OWCP does have some limited "carryover" funding which would remain available (until expended) during a lapse in appropriations; however this funding is not expected to be sufficient to cover all Part B administrative costs. As discussed in more detail in Section IIC (below), however, OWCP would be authorized to continue necessary Part B claims management in order to continue administration of Part B benefits to the extent that funding remains available to pay those benefits.

C. BLBA, LHWCA, FECA, and WHCA

In general, OWCP uses annual appropriations to fund administrative activities for BLBA Part C, FECA, LHWCA and WHCA.³ A lapse in annual appropriations would affect these activities. In addition, as discussed in Sections IIA and IIB, EEOICPA Part B and BLBA Part B administrative expenses are funded by annual appropriations that remain available until expended; FECA Fair Share administrative expenses are funded in the same way. If carryover funds are exhausted, a lapse in appropriations would affect these activities.

The Office of Legal Counsel (OLC) at the Department of Justice has opined that, "the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well." *Operations in the Event of a Lapse in Government Appropriations*, 1995 WL 17216091 (August 16, 1995) (citing 43 Op. Atty Gen. 293 (January 16, 1981)). In addition, OWCP expects certain necessary claims management activities under these statutes to fall within another exception to the Antideficiency Act "for emergencies involving the safety of human life or the

³ There are some limited exceptions to this general rule. Where the governing statute permits use of other funding to pay expenses that might otherwise be considered administrative expenses, the other source of funding may be used. For example, the Federal Employees' Compensation Act generally prohibits use of the Employees' Compensation Fund to pay for administrative activities, but excludes legal services related to FECA subrogation from this prohibition.

protection of property." See 31 U.S.C. 1342. Individuals receiving benefits under the above programs have suffered work-related injuries or illnesses that are compensable under one of the statutes within the agency's jurisdiction. Under these exceptions, OWCP is authorized to continue necessary claims management in order to continue administration of claims for benefits that have been awarded under these statutes to the extent that funding remains available to pay those benefits. This includes the authority to retain the staff, management and automated systems necessary to the check writing and distribution functions that are critical to the disbursement of the benefit payments themselves.

The OLC has specifically referenced benefit payments under entitlement programs when the funds for the payments themselves do not lapse as an area where it infers authority to continue the administration of the program to the extent of the remaining benefit funding despite a lapse of appropriations. Each of these programs constitutes such an entitlement program. Thus, the necessary implication of the authority to continue to pay benefits under the BLBA, EEOICPA, FECA, LHWCA and WHCA is that OWCP is authorized by law to incur obligations in advance of appropriations to develop, adjudicate and administer new claims and new requests for benefits in order to allow payment of such benefits. In addition, in order to protect the life and health of covered workers' requests relating to provision of medical services, such as authorizations required for certain medical treatments, services and supplies will have to continue to be reviewed and adjudicated. OWCP will continue to do so as required under each of the referenced statutory authorities. Necessary claims management includes the adjudication of requests for authorization of necessary medical procedures such as emergency medical care, as well as other activities that are necessarily implied by continuation of the compensation programs involved.

OWCP also will designate program officials in each geographical location where employees are performing the excepted activities described above to provide essential executive, managerial and supervisory direction and to provide information technology support to ongoing activities. This will ensure that the excepted activities as set forth above are provided appropriate supervision and technical support. Additionally, excepted employees will provide financial, contract management, and clerical duties in support of excepted activities; appear in court pursuant to lawful subpoenas served on them in their capacity as Federal employees, and perform all required technical support activities to ensure availability of the resources necessary to perform authorized functions.

National Office -- Excepted

Assistant Secretary, Office of Assistant Secretary
Deputy Assistant Secretary (Career), Office of Assistant Secretary
Deputy Assistant Secretary (Non-Career), Office of Assistant Secretary
Chief of Staff, Office of Assistant Secretary
Director, Directorate of Administrative Programs
Director, Directorate of Enforcement Programs
Deputy Director, Directorate of Enforcement Programs
Director of Health Enforcement Programs, Directorate of Enforcement Programs
Director, Directorate of Technical Support and Emergency Management
SLC Chemist for organic
SLC Physical Scientist for inorganic
Director, Directorate of Cooperative and State Programs (for State Plans and Consultation)
Supervisory Information Technology Specialist, Directorate of Administrative Programs
Lead Information Technology Specialist, Directorate of Administrative Programs
Information Technology Specialist, Directorate of Administrative Programs
Information Technology Specialist, Directorate of Administrative Programs
Director, Directorate of Construction
Supervisory Civil Engineer, Directorate of Construction
Civil Engineer (Structural), Directorate of Construction

Regional Staff – Excepted

All Regional Administrators
All Assistant Regional Administrators for Enforcement
All Assistant Regional Administrators for Administration and Management
All Assistant Regional Administrators for Technical Support
One Administrative Support person per Region
One Information Technology Specialists and/or System Administrator

Area Offices – Excepted

All Area Directors
One Senior Safety CSHO and one Senior Industrial Hygienist, per Area Office (these may be AAD's when appropriate)
One Administrative Support person, per Area Office



September 25, 2015

MEMORANDUM FOR M. PATRICIA SMITH

FROM:

Dr. DAVID WEIL *Patricia Davidson for*
Administrator, Wage and Hour Division

SUBJECT:

Updated Contingency Plan for a Shutdown of Operations

During a lapse in appropriation the Wage and Hour Division (WHD) will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary of Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

For WHD, the basis for the excepted personnel in DLMS 6-430 is the following criteria, "Necessary to respond to emergencies involving the safety of human life or the protection of property." The requested exception would be used to employ WHD staff to conduct an immediate investigation of any incidents involving serious injury or death of a minor while employed or any transportation accident or any housing safety violation involving serious injury or death of a farm worker.

To accomplish such, we would designate the Administrator as exempt and the five WHD Regional Administrators as excepted employees who would be continuously available to handle communications and coordinate responses to any emergency. We would also designate the Deputy Administrator for Program Operations, the Assistant Administrator for Administrative Operations, and the District Directors (or an individual acting in that capacity) as excepted-intermittent employees who would occasionally visit the offices to check mail and phone calls to determine whether an emergency situation has been reported which requires an immediate response. This category of employees would not report to work each day, but only on a pre-determined schedule or as needed to respond to an emergency.

WHD Exempt

Administrator

WHD Excepted Full-Time Position

Regional Administrator, Northeast Region (Philadelphia)
Regional Administrator, Southeast Region (Atlanta)
Regional Administrator, Midwest Region (Chicago)
Regional Administrator, Southwest Region (Dallas)
Regional Administrator, Western Region (San Francisco)

WHD Excepted Intermittent Positions

Deputy Administrator for the Office of Program Operations
Assistant Administrator for Administrative Operations
District Directors of the following offices:

Northeast Region:

Albany DO
Baltimore DO
Boston DO
Caribbean DO
Hartford DO
Long Island DO
New York City DO
Northern New Jersey DO
Philadelphia DO
Pittsburg DO
Richmond DO
Southern New Jersey DO
Wilkes-Barre DO

Southeast Region:

Atlanta DO
Columbia DO
Gulf Coast DO
Jackson DO
Jacksonville DO
Louisville DO
Miami DO
Nashville DO
Raleigh DO
Tampa DO
Midwest Region:
Chicago DO
Columbus DO
Des Moines DO

Detroit DO
Grand Rapids DO
Indianapolis DO
Kansas City DO
Minneapolis DO

Southwest Region:

Albuquerque DO
Clear Lake, TX
Dallas DO
Denver DO
Houston DO
Little Rock DO
McAllen DO
New Orleans DO
Oklahoma DO
Salt Lake City DO
San Antonio DO

Western Region:

Honolulu DO
Las Vegas DO
Los Angeles DO
Phoenix DO
Portland DO
Sacramento DO
San Diego DO
San Francisco DO
Seattle DO
West Covina DO