



SOCIAL SECURITY
Office of Budget, Finance, and Management

September 23, 2020

Mr. Russell Vought
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Vought:

This letter sets forth the contingency plan of the Social Security Administration (SSA) to continue activities during a potential lapse in Federal appropriations and resulting partial shutdown of agency operations.

Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	<i>0.5 days</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i>62,987</i>
Total number of agency employees expected to be furloughed under the plan (unduplicated counts):	<i>9,004</i>
Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):	
Compensation is financed by a resource other than annual appropriations:	<i>466</i>
Necessary to perform activities expressly authorized by law:	<i>0</i>
Necessary to perform activities necessarily implied by law:	<i>53,363</i>
Necessary to the discharge of the President's constitutional duties and powers:	<i>0</i>
Necessary to protect life and property:	<i>154</i>
	<i>53,983</i>
Brief summary of significant agency activities that will continue during a lapse:	
<i>We will continue activities critical to our direct-service operations and those needed to ensure accurate and timely payment of benefits. Please refer to Enclosure 1 for additional information.</i>	
Brief summary of significant agency activities that will cease during a lapse:	
<i>We will cease activities not directly related to the accurate and timely payment of benefits or not critical to our direct-service operations. Please refer to Enclosure 1 for additional information.</i>	

We are excepting about 54,000 employees from furloughs under applicable exceptions to the Antideficiency Act. The functions of the excepted employees will remain largely the same as those described in our most recent plans. We are also excepting additional staff to support our information technology (IT) programmatic applications and infrastructure, including those activities supported by carryover funds for our IT modernization, and our fraud prevention activities related to the timely and accurate payment of benefits to the public. Since our current appropriation extends the period of availability for dedicated program integrity funds to 18 months, any program integrity funds carried over would be available during a lapse in appropriations beginning the following fiscal year. Similarly, at the beginning of the fiscal year, to the extent we have funding and relevant work, we are excepting work under the Coronavirus Aid, Relief and Economic Security Act of 2020 as these appropriations last until September 2021. I have enclosed a chart setting forth our estimated total employee count by agency component and a brief description of the functions excepted employees from each component will perform in the event of a partial shutdown. This letter further explains our legal basis for conducting those functions during a partial shutdown.

During a lapse in appropriations, we must cease all activities for which our annual funding has expired, unless an exception to the Antideficiency Act applies. *See* 1980 and 1981 Opinions from Attorney General Civiletti (1980 and 1981 Opinions). Three exceptions apply to our work: the wind-down activities exception, the protection of life and property exception, and the Necessary Implication exception. *See id.* With respect to the wind-down exception, Attorney General Civiletti explained that, “[F]ederal officers [may] incur those minimal obligations [during a lapse in appropriations] necessary to closing their agencies.” 1980 Opinion. In 1981, Attorney General Civiletti advised that Federal agencies may obligate funds during a lapse under the protection of life and property exception by showing a “reasonable necessity” of the funded activity to ensure the safety of human life or protection of property. 1981 Opinion. Attorney General Civiletti also opined that the Necessary Implication exception allows a limited number of Government functions funded through annual appropriations to continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions continue as well. *Id.*

In 1995, the Department of Justice, Office of Legal Counsel (OLC), issued a memorandum specifically noting that the activities necessary for disbursing Social Security benefits that “operate under indefinite appropriations” are examples of activities permitted by necessary implication. Further, the 1995 OLC memorandum extended the Necessary Implication exception to those functions performed by one agency necessary to support the funded functions of another agency.

Funding for the programs under Titles II, XVI, and XVIII of the Social Security Act will continue, even in the event of a lapse in appropriations. Indefinite trust funds supply Title II and Title XVIII benefits. General revenues fund Title XVI payments. However, the current appropriation funds those payments through the first quarter of the following fiscal year. Because there is funding to pay these benefits, the Necessary Implication exception allows us to perform those activities needed to ensure that benefits are accurately and timely paid, despite a lapse in appropriations. Our continuing functions related to making accurate payments during a lapse in appropriations is consistent with our previous contingency plan and is legally justified

under the 1981 Opinion that permits us to “continue the administration of the program[s] to the extent of the remaining benefit funding.”

The enclosed charts detail the critical functions we would continue during a lapse in annual appropriations lasting between one and five days. Should a partial shutdown last longer than five days, we would reevaluate the number of excepted employees performing such functions and possibly increase the number of excepted employees as we did during the 2013 shutdown. Under the Necessary Implication exception, we will except only those employees critical to our direct-service operations and those employees whose work and oversight are critical to support those operations. Specifically, with respect to the Office of Hearings Operations, we will except decision writers, administrative law judges, and support staff necessary to conduct hearings. We will also retain a limited number of SSA employees and necessary law enforcement agents from our Office of the Inspector General under the protection of life and property exception. We anticipate allowing employees to conduct orderly wind-down activities for no more than four hours on the first day of a lapse in appropriations consistent with the guidance of your office.

If we have a lapse in appropriations, we will encourage the disability determination services (DDS) to continue limited services during a lapse under the Necessary Implication exception with the understanding that we will reimburse the DDSs for their work once we receive funding. However, because DDS employees are State employees, we cannot direct the States to except or furlough their employees during a lapse. Each State will have to determine whether it can maintain limited DDS operations and pay its employees during a lapse.

Once we received restored appropriations, we will resume normal operations by:

- Notifying employees that the shutdown furlough has ended and that they are to return to work on a specified date;
- Providing supervisors with flexibility regarding leave and attendance issues if employees encounter problems returning to work on the day specified;
- Ensuring that IT systems are running smoothly for employees returning to work; and
- Resuming program activities related to grants and contracts and other fiscal and financial matters.

We will keep your office informed about any other actions required to resume normal operations after a shutdown. We are committed to ensuring that, consistent with the constraints of a partial shutdown, we conform with applicable law, regulation, and guidance, yet continue to serve the American people in these difficult times.

Sincerely,



Michelle King
Deputy Commissioner
for Budget, Finance, and Management

Enclosures

Social Security Administration Contingency Plan – Fiscal Year 2021

Status of Service Activities During a Funding Lapse

To promote service to the public and fiscal responsibility, we will implement the following plans:

Operations Frontline Activities	
Continued Activities	Discontinued Activities
<ul style="list-style-type: none"> ▪ Application for benefits (including appointments; limited data exchanges and record corrections, including claims-related earnings, for mandatory benefits) ▪ Request for appeals (reconsiderations, hearings, Appeals Council) ▪ Post-entitlement actions (changes of address, Supplemental Security Income living arrangement changes, non-citizen verification/changes, direct deposit, death inputs, processing of remittances for overpayments and administrative fees, etc.) ▪ Non-receipts and critical payments ▪ Payee changes ▪ Direct contact reinstatement of benefits ▪ Issuance of original and replacement Social Security cards ▪ Prisoner activities—beneficiary-initiated reinstatement of benefits only ▪ Program integrity workloads (redeterminations and continuing disability reviews (CDR)) due to the extended availability of appropriations <i>(DCBFM will notify components at the time of a lapse as to the availability of funds)</i> ▪ Critical information technology (IT) support for daily processing activities ▪ Coronavirus Aid, Relief and Economic Security Act funded activities <i>(DCBFM will notify components at the time of a lapse as to the availability of funds)</i> 	<ul style="list-style-type: none"> ▪ Benefit verifications ▪ Earnings record corrections and updates ▪ Payee accountings ▪ Prisoner activities--suspension ▪ Requests from third parties for queries ▪ Freedom of Information Act (FOIA) requests ▪ IT enhancement activities, public relations, and training ▪ Replacement Medicare cards ▪ Overpayments processing

State Disability Determination Services Activities	
Continued Activities	Discontinued Activities
<ul style="list-style-type: none"> ▪ Initial claims, including terminally ill, compassionate allowances, quick disability determinations, dire need, and wounded warriors ▪ Reconsiderations ▪ Critical IT support for daily processing activities ▪ Program integrity workloads (redeterminations and CDRs) due to the extended availability of appropriations. <i>(DCBFM will notify components at the time of a lapse as to the availability of funds)</i> ▪ Assistance requests for hearings 	<ul style="list-style-type: none"> ▪ End-of-line quality assurance reviews, IT enhancements activities, public relations, and training

Hearings and Appeals Activities	
Continued Activities	Discontinued Activities
<ul style="list-style-type: none"> ▪ Hearing cases ▪ Deciding cases ▪ Drafting relevant notices for claimants ▪ Preparing electronic records for claimants and representatives ▪ Identifying missing evidence and developing the record ▪ Exhibiting case files for administrative law judges ▪ Decision writing ▪ Screening cases for on-the-record decisions ▪ Scheduling hearings ▪ Providing critical IT support for daily hearings ▪ Hearing appeals ▪ Deciding appeals ▪ Docketing and tracking new cases ▪ Adding new medical and vocational experts to blanket purchase agreements ▪ Conducting quality assurance review activities related to allowances 	<ul style="list-style-type: none"> ▪ Conducting quality assurance review activities other than those related to allowances ▪ Processing bias complaints from claimants and representatives ▪ Responding to congressional inquiries regarding support for casework on constituent hearings and appeals ▪ Conducting all activities dependent on Operations support, including enrollment of appointed representatives for eFolder access ▪ Responding to FOIA requests and public inquiries ▪ Providing training and IT support or enhancements for hearing offices

SSA Staff On Duty Exceptions and Furloughs for a Government Shutdown Lasting 5 Days or Less Estimated Numbers as of July 31, 2020						
Office	Total	Required for Wind-down	Exceptions	Authority for Exceptions	Furloughs	Explanation
Actuary	50	50	3	Necessary implication	47	Respond to shutdown-related inquiries as needed; and complete necessary work to update the cost of living adjustment
Analytics, Review, and Oversight	1,996	1,996	1,337	Necessary implication	659	Detecting, deterring, and mitigating fraud; facilitation and support of payment for potential allowances; and appeals work
Budget, Finance, and Management	880	880	272	Necessary implication; protection of life and property; other funds	608	Health and safety; budget and contract support for excepted activities; and benefit payment certification
Commissioner	27	27	6	Necessary implication	21	Executive leadership and press office support necessary for wind-down activities and continuity of operations
Communications	142	142	2	Necessary implication	140	Organizational guidance and leadership on all communications-related issues, including web and social media support
Hearings Operations	8,370	8,370	7,724	Necessary implication	646	Hearing and deciding cases; decision writing; and work necessary to support and conduct hearings
General Counsel	724	724	101	Necessary implication	623	Headquarters and regional offices for legal support and litigation
Human Resources	381	381	14	Necessary implication	367	Payroll, labor relations, benefits, and personnel policy support
HR - Reasonable Accommodations	212	212	171	Necessary implication	41	Accommodations under the Rehab Act to employees in DCO and DCHO who provide benefits to the public
Inspector General	542	542	100	Necessary implication; protection of life and property	442	Protection of field offices, responses to threats against employees and property; investigations of fraud, waste, and abuse against SSA programs
Legislation and Congressional Affairs	58	58	3	Necessary implication	55	Communication with Congress
Operations	45,927	45,927	43,621	Necessary implication; other funds	2,306	Frontline work
Retirement and Disability Policy	495	495	4	Necessary implication	491	Policy support of payment of benefits and reimbursable work
Systems/Chief Information Officer	3,183	3,183	625	Necessary implication; protection of life and property; other funds	2,558	Critical information technology infrastructure; programmatic and end user support; IT modernization; cybersecurity; and activities for annual/electronic wage reporting
Total	62,987	62,987	53,983		9,004	

Notes:

- Advisory Board count of 15 is not included.
- Budget, Finance, and Management (189) and Operations (29) total staffing counts include delegations (218).
- Staff counts estimated through pay period ending September 30, 2020.