

Office of Budget and Program Analysis  
Contingency Plan

## Scope

This plan of action is developed based on the latest guidance for shutdown planning and activities for this organization, as relayed by the Office of Management and Budget (OMB) and the Department. This plan is subject to amendment as developments require and provided such amendments are consistent with applicable law.

The Department is subject to seasonal variations and at one time up to 80 percent of employees may need to report to work during a furlough, but this would be on an intermittent basis. When Category I funding is no longer available those employees listed in this category will either be furloughed or moved to either Excepted or Exempted and will show in either Category III or Category IV.

The functions and activities described herein are to be executed in accordance with all applicable statutes, regulations, policies, and delegations of authority.

OMB provides guidance on how to prepare for and operate during a funding gap in OMB Circular A-11. The circular establishes two policies regarding the absence of appropriations:

- 1) A prohibition on incurring obligations unless the obligations are otherwise authorized by law; and
- 2) Permission to incur obligations “as necessary for orderly termination of an agency’s functions,” but prohibition of any disbursement (i.e., payment).

The Anti-Deficiency Act (<http://www.gao.gov/legal/lawresources/antideficiency.html>) prohibits agencies from incurring obligations in advance of, or that exceed, an appropriation. Thus, with certain limited exceptions, an agency cannot incur obligations when the funding source for the obligation is an appropriation that has lapsed. Any activities that would incur a new obligation must be suspended and are prohibited. Activities that are under way that would lead to an increased obligation or incurred costs must cease.

There are, however, limited exceptions to this general rule, including obligations incurred performing activities that protect life and/or property, incurred to accomplish an orderly shutdown of the normal functions of the agency, or where such payment activity is necessarily implied.

An agency must otherwise continue certain activities despite a lapse in their appropriations because the lawful continuation of other funded or excepted activities “necessarily implies” that these additional activities will continue as well. A "necessary implication" can arise when an

agency needs to incur obligations, even though there has been a lapse in the appropriation against which those obligations would be charged, in order to implement:

- 1) An “orderly shutdown” when there has been a lapse in appropriations (as the Department of Justice has explained, “authority may be inferred from the Anti-deficiency Act itself for federal officers to incur those minimal obligations necessary to closing their agencies”);
- 2) "Excepted" activities including functions:
  - a. Authorized by statute or other legal requirement expressly authorizing an agency to obligate funds in advance of appropriations;
  - b. That address emergency circumstances such that the suspension of the function would imminently threaten the safety of human life or the protection of property;  
or
  - c. That are necessary to the discharge of the President’s constitutional duties and powers.
- 3) Congressionally authorized or appropriated functions for which Congress has provided funding that remains available during the lapse (including funds already obligated from the current fiscal year) where the suspension of the related activity (during the funding lapse) would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation.

In the event of a lapse in appropriations for the Department of Agriculture (USDA), the following procedures will be followed by the Office of Budget and Program Analysis (OBPA).

#### First Half of Day One

All employees will be directed either to report to their duty stations or to report to their supervisors by telephone to receive assignments of duties or other pertinent information to assure an orderly shutdown of activities. Managers and supervisors will coordinate the following activities intended to affect an orderly shutdown of OBPA's operations:

- Communicate shutdown instructions and procedures to all employees.
- Distribute furlough notices to all employees who have not been determined to be necessary for shutdown activities.
- Contact any employees on leave and inform them that their leave is cancelled.
- Contact any employee in travel status and direct them to return to their duty stations.
- Ensure all records, personal property, and real property are secured.
- Validate existing OBPA communications strategy and employee contact information for future communication requirements.

#### Second through Fifth Day

The Director will report to appropriate Departmental contacts regarding the status of OBPA's shutdown procedures.

The following staff will report to work each day to provide support to policy officials managing the continuation of excepted government activities:

- Director;
- Deputy Directors (4)

#### Thereafter

If the absence of appropriations continues, the Director will then reevaluate the status on the fifth day to make decisions on the necessity for continued attendance by these four employees. All other employees will continue on furlough.

For the period of the lapse, the Director will evaluate the need to bring furloughed staff back based on the needs of the office to conduct excepted activities. Employees brought back from furlough for excepted activities will be put back in furlough status when the need for the excepted activity ceases.

#### Post Shutdown Plan

Employees will be required to monitor the status of the government shutdown and agency operations via the Office of Personnel Management (OPM) Website ([www.opm.gov](http://www.opm.gov)), USDA operations website ([www.dm.usda.gov/beprepared](http://www.dm.usda.gov/beprepared)), and news sources for updated information. Employees are required to return to work within 24 hours of notification.