

Office of Communications (OC) Contingency Funds

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.

This document describes the plan for shutdown of agency activities in the event of late appropriations or other similar situations requiring the discharge of all employees except those conducting essential activities.

Actions

The Office of Communications (OC) has two Category III excepted employees who will be funded when appropriations are made available - the Director of the Office of Communications and the Deputy Director for Press Operations. In the event of a shutdown, the Director or the Deputy Director will be available to provide communications assistance to the Secretary. OC has 47 total employees: 37 funded by appropriations and 10 funded through the Working Capital Fund. 45 employees are not excepted and will be asked to come to work for at least the first half day. After this, only the excepted employees will report.

On the first day, all employees will be directed to report to their supervisors to receive assignments of duties or other pertinent information for an orderly shutdown. For those teleworking, "reporting" maybe be done by telephone.

The voice mail message on the OC main contact number for reporters will be changed to reflect the shutdown.

Employees' auto reply email will be updated and employees will also change their voice mail messages to reflect the shutdown.

Unless otherwise directed by OMB, the USDA.gov website will remain live with supporting resources or in a cached state. This means the site will not be updated during the shutdown but will allow for full access to USDA.gov pages and resources in a frozen state of the last operational day before the shutdown. USDA websites granted as 'excepted' will continue normal operations. This disposition will be communicated to all agency heads, web masters, and public affairs directors.

Any OC staff on travel will be notified to return prior to the lapse in appropriations.

All records, personal property, real property, and facilities will be maintained and protected by those entities charged with security for the Jamie L. Whitten and South buildings until such time as funds are appropriated.

When it is determined that an employee is no longer needed to perform activities to accomplish the orderly shutdown, the employee(s) will be notified and placed on furlough or other personnel action as appropriate.

As employees are about to be released, the employee should enter their time for the pay period up to the time of their release in the WebTA system.

Other instructions and specific guidance will be issued as circumstances require at each occurrence of a potential shutdown situation.

Throughout this period, the Director will evaluate the need for continued attendance by these two employees. All other employees will continue on furlough, except as provided below:

- The Director will continually evaluate the need to bring staff out of furloughed status based on the needs of the office to conduct excepted activities. Employees brought out of furloughed status for excepted activities will be returned to furlough status when the need for the excepted activity ceases.

Program Impact

Press releases will not be generated as normal, nor will there be regular USDA contact with the media. Therefore, the media will not have access to USDA data, information, and/or personnel. Information on USDA policies and programs will not be available to the public.

Timely updates to the website will stop, thus valuable agricultural reports and materials will not be available to agricultural economic community, and the agriculture and consumer publics. Hosting and support of the website platform supporting USDA.GOV and a dozen more USDA agency and program websites would be at risk in a cached state.

Visual production, printing and editing of USDA documents will stop. Television and radio transmission will also be stopped.

Requests for information and publications that provide advice and assistance to the public will not be processed.

Direct and sustained public and media contact with organizations, groups and individuals will cease. This will prevent this office from providing responses to requests for clarification and information on national agricultural policies and programs that ultimately impact on the agricultural economy and general well-being of the nation.

The following is a partial list of services that will not be provided in the event of a shutdown:

- i. USDA reports
- j. Policy guidance and direction on public affairs issues and programs
- k. Video production
- l. Design services
- m. Photographic Services
- n. Radio and television transmissions
- o. Printing Services
- p. Publications and information distribution