

Office of the Chief Economist 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, provided such amendments are consistent with applicable law.

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 (<https://www.gao.gov/legal/appropriations-law/resources>) 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 by 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.

Shutdown Plan

The purpose of this plan is to prescribe the actions to be followed by the Office of the Chief Economist (OCE) for an orderly shutdown of the organization in the event of a lack of appropriations to permit continuation of programs. OCE includes all staff assigned to the OCE's Immediate Office, Office of Energy and Environmental Policy, Office of Risk Assessment and Cost-Benefit Analysis, World Agricultural Outlook Board, and Office of Pest Management Policy.

Actions to close down OCE include the following:

1. All employees will be directed to report to their supervisors for assignment of duties or other pertinent information for an orderly shutdown. This may also be accomplished by e-mail or phone.
2. All OCE contractors will be informed of their status by their federal point of contact.
3. All records, personal property, real property, and facilities will be maintained and protected until appropriate disposition is accomplished.
4. When an employee is no longer needed to perform activities to accomplish the orderly shutdown, the employee(s) will be notified and placed on furlough.
5. Employees should complete timesheets and submit them to the approving authority. Timesheet will be submitted by the master Timekeeper at the appropriate time.
6. Implementation status reports will be provided to the Chief Economist and OCE leadership, as needed.
7. Other instructions and specific guidance will be issued as circumstances require at each occurrence of a potential shutdown situation.

OCE shutdown activities will take no more than half a day. Staff on board at implementation of the plan is estimated at 66. Two (2) staff—the Chief Economist and the Chair of the World Agricultural Outlook Board (WAOB)—will be retained under the plan in the category of protecting public health, safety, or the economy, as described below.

The Chief Economist and the Chairperson of the WAOB are deemed to be excepted for the purpose of supporting critical activities of the Office of the Secretary, including representing the Department and/or the Secretary in critical international negotiations and responding to requests by the Secretary for agricultural and economic intelligence or analysis in support of decision making that may impact public health, safety, or the economy.

Additionally, there are six employees (Deputy Director for Climate and Environmental Markets, two economists, a resources management specialist, and two natural resources specialists) paid with supplemental funds (IRA) that will be managing contracts and carrying out mission critical work. In addition, two employees supporting Food Loss and Waste activities will be on detail to NIFA and be funded by NIFA's supplemental funding (ARP).

All other OCE employees are deemed to be neither excepted nor exempt and will be furloughed for the duration of any shutdown. However, if additional staff is required during the period of the shutdown, the Chief Economist may change the designation of an employee to excepted, only until such time as the emergency need is concluded, upon which time the individual will again be placed on furlough status.