

Office of Civil Rights 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 (<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 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 plan assumes that no Agency activities will continue during a lapse in appropriations.

We estimate it will take the agency half a day to complete orderly close down procedures.

Actions to close down the Office of the Assistant Secretary for Civil Rights (OASCR) include the following:

Prior to Day 1, the following actions will be completed:

The Deputy Assistant Secretary for Civil Rights (DASCR), Chief of Staff, and Associate Assistant Secretary for Civil Rights will identify those functions that must be performed which are solely associated with an orderly interruption of normal activities. Such functions may include but are not limited to:

- Identifying measures to secure records, personal property, real property, and facilities that will be maintained and protected until appropriate disposition is accomplished.
- Drafting a communication strategy for communicating with Agency employees.
- Identifying all potential meetings, hearings and other previously arranged Agency business that may need to be cancelled.
- Identifying all mission essential employees and ensure these employees have been identified consistently and fairly in compliance with applicable personnel regulations, including Departmental Directives and the Collective Bargaining Agreement with Local 3147 (see Article 33-RIFs, Furloughs, Reorganization, and Transfer of Function).
- Identifying employees whose presence at work will be required to perform functions associated with the orderly cessation of program activities to include the employees name, title, and function the employee will perform.
- Identifying what OASCR IT systems support is needed to maintain essential services and information technology infrastructure.
- Identifying what instructions and procedures OASCR's Human Resources Management liaison will provide to employees for the close down period.
- Identifying appropriate Department contacts for communications purposes and orderly close down of the agency.

First half of Day 1 (First Day funds are not available):

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 employees teleworking, "reporting" may be done by telephone.

OASCR Managers will coordinate the following activities intended to terminate Agency's operations:

- Communicate close down instructions and procedures to all employees.
- Distribute furlough notices at headquarters and all field units to all employees who have not been excepted from shutdown procedures.
- Contact any employees on leave and communicate their leave is cancelled.

- Contact any employee in travel status and direct them to return to duty station.
- Ensure all employees to be released complete timesheet entry and submit to approving official.
- Delay any employee transfer of station.
- Ensure all records; personal property and real property are secured.
- Cancel all meetings, hearings and previously arranged OASCR business.
- Validate existing communication strategy and employee contact information for future communication need.

The DASCRC will notify employees of the furloughs and close down.

There will be daily communications by the DASCRC's Office on the status of the close down procedures with the DASCRC's staff:

- Deputy Assistant Secretary for Civil Rights – ES
- Associate Assistant Secretary for Civil Rights – ES
- Chief of Staff – GS-14

Second half of Day 1:

Managers and supervisors will coordinate the following activities intended to terminate Agency's operations:

- Document the status of cases and ongoing projects so they can be resumed, transferred, or otherwise appropriately handled when OASCR's funding situation is resumed.
- Prepare files for permanent storage, transfer to related agencies, or other disposition.
- Complete identification of employees whose presence at work will be required to perform functions associated with the orderly cessation of program activities to include:
 - Name and title of each employee required to continue closedown operations, and
 - the termination function each identified employee is to perform.
- Ensure all Contracting Officer Representatives (CORs) contact all contractors and vendors to let them know of a work stoppage and provide notice of same issued by the Office of Contracting and Procurement.

Day 2:

Only employees who were previously identified as required to perform functions necessary for orderly shutdown of program activities will report for work.

As each shutdown function is completed, each OASCR Director notifies the DASCRC, of completion and identifies those employees who were responsible for the task.

Each employee whose shutdown function is completed will be furloughed immediately and formally notified by their supervisor via written digital communication.

There will be daily communications by the DASCRC's Office regarding the status of the shutdown procedures with the Department contacts previously identified.

There will be daily communications from the DASCRC's Office with the USDA Chief of Staff on the status of shutdown procedures via personal telephonic communication both verbal and via text.