

Office of Hearings and Appeals 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.

The following plan addresses shutdown and start-up procedures in the absence of appropriations. This plan assumes that no full-time Office of Hearings and Appeals (OHA) activities will continue in the absence of appropriations. However, there may be a requirement for temporary OHA services in the event that the shutdown is prolonged or that customers OHA serves, who are not shutdown, require temporary services. While these situations are not expected to arise frequently, OHA needs the flexibility to conduct bare essential activities as the need arises. The following are hypothetical examples of activities that may require OHA personnel to report for short time periods:

- A National Appeals Division (NAD) Regional Director may need to analyze and decide that scheduled hearings for appellants are canceled for the next two weeks.
- The Chief Judge of the Office of Administrative Law Judges (OALJ) may need to authorize an off-site adjudication of a case that involves the compliance of a rule or regulation that affects public safety.
- After a significantly long shutdown period, the Judicial Officer may need to adjudicate late cases that fall under the Perishable Agriculture Commodities Act, administered by a program staff not subject to the federal appropriations or the shutdown.

As no OHA activities will continue during a shutdown for other than temporary periods (2 hours or less), for the purposes of this plan, OHA does not designate any excepted employees. However, if the furlough is extended beyond a period or adjudication is required for an activity

that requires public health and safety, certain employee may be required to complete limited essential administrative tasks for a prescribed time period.

Excepted Employees:

None.

Employees permitted to perform temporary duties (less than two hours per week).

- NAD Eastern Regional Assistant Director
 - Makes determinations about whether to notify appellants whether future hearings are cancelled.
- OHA Director
 - Makes determinations about emergency adjudications or makes decisions affecting all OHA employees.
- OHA Assistant Director of Administration
 - Miscellaneous administrative task supporting all OHA activities.
- OHA Continuity of Operations (COOP) Director
 - Ensures overall readiness and communication protocols in preparation for the shutdown; receives and disseminates information during the shutdown; notifies OHA when shutdown ends.
- OHA COOP coordinator
 - Notifies OHA employees about shutdown and startup guidance.
- Chief Judge, Office of Administrative Law Judges (OALJ)
 - Authorizes off-site adjudication issues in the event of health or safety issue.
- Judicial Officer, Office of the Judicial Officer (OJO)
 - Performs emergency adjudications for agencies not subject to the shutdown or appropriations.

Non-excepted employees include:

- All NAD Administrative Judges
- All NAD Appeals Officer
- All NAD Regional Office Staff (except as listed above as Emergency Employees)
- All OHA National Office Staff (except as listed above as Emergency Employees)
- All OALJ Office Staff
- All OALJ ALJs (except as listed above as Emergency Employees)
- The Judicial Officer (except as listed above as Emergency Employees)

We estimate it will take OHA four hours to complete orderly shutdown procedures.

Concept of the Operation for Shutdown

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

The OHA Director, OALJ Chief Judge, the Judicial Officer, Deputy Directors, Assistant Director of Administration, and the Regional Assistant Directors will identify those functions that need to be performed that are solely associated with an orderly interruption of normal activities. Such functions may include but are not limited to the following:

- Identifying measures to secure records, personal property, real property, and facilities that will be maintained and protected until appropriate disposition is accomplished. OALJ staff will coordinate with the USDA Office of Operations for building and office security issues.
- Drafting communication strategy for communicating with OHA employees.
- Drafting communication strategy for making contacts outside OHA that is necessary to communicate our status.
- Identify all potential meetings, hearings travel and other previously arranged OHA business that may need to be cancelled.
- Identify all non-excepted employees and ensure that employees have been identified consistently and fairly in compliance with applicable personnel regulations. Coordinate with the Union.
- Identify employees whose presence at work will be required to perform functions associated with the orderly cessation of program activities. This includes employee name, title and function the employee will perform. In past experiences, employees that enter timesheet data require additional duty time in shutdown activities.
- Identify what information technology systems support is needed to maintain essential services and information technology infrastructure.
- Identify all employees in travel status.
- Identify what instructions and procedures NFC personnel will provide to employees for the close down period.
- Identify appropriate Department contacts for communications purposes and orderly close down of the agency.
- Inform and include the Union in pre-planning and during shutdown bargaining over furlough related topics.

Plan for Initial notification:

OHA Headquarters will provide the initial notification that OHA expects an upcoming absence of appropriations. The notification will define the time period to prepare for furlough implementation. (For the remainder of this plan, the term “time period” will refer to the precise dates identified in the initial notification.) In that notification, OHA will ask employees to make final preparations to implement the following furlough activities:

- Appropriate NAD and OALJ administrative staffs will print out NADTrack schedules of hearing activities (prehearings, hearings and determinations) scheduled for the time period. OJO will assess inventory of PACA cases.
- Employees will begin to secure property in their offices.

- Depending on the dates of anticipated furlough, appropriate personnel will complete T&A activities as described in the initial notification instructions.
- Appropriate personnel will submit and approve all GovTrip actions.
- COOP Plan coordinator will verify the phone tree in order bring employees back to operating status, when appropriate.
- Supervisors will ensure furloughed employees are advised of their benefits and rights. Employees with TSP loans will review basic agreements for non-pay status during the furlough and also when returning to pay status.
- Supervisors will ensure all training and travel has stopped and that no leave is approved for the time period.
- OHA COTRs will contact contractors to implement stop work activities.

First half of Day 1:

In the absence of continuing appropriations, the following steps will occur:

- All employees shall be directed to report to work and receive instructions to shutdown their activities. Non-expected employees as discussed herein will be released on furlough by mid-day of their workday.
- Administrative Judges and ALJs will notify parties about cancelling proceedings scheduled within the identified timeframe. At the end of notifications, Administrative Judges and ALJs will inform their offices / supervisors of appellants they were not able to reach directly.
- NAD Administrative Judges will email their Regional Directors with appellant contact information for prehearings and/or hearings scheduled beyond the identified timeframe.
- Regional office staff and Administrative Judges will advise Postal Service and UPS not to deliver until notified to resume deliveries.
- Employees will set up the voicemail extended absence greeting and email out of office automatic reply for the identified timeframe. Employees will cease answering office phones and travelling to the Post Office during the furlough.
- Contact any employees on leave and communicate that their leave is cancelled.
- Contact any employee in travel status and direct 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.
- Validate existing communication strategy and employee contact information for future communication need.
- Post message on websites to indicate that no updates will be posted during lapse in appropriations.
- Post website messages and / or orders for NAD and OALJ that filing deadlines will be tolled during the shutdown time period.
- Send test messages by email and text to all OHA employees to ensure that phone trees are up-to-date and accurate; make adjustments.

Second half of Day 1:

Shutdown activities will be completed by the second half of day 1. At this time, and throughout the shutdown, employees should not access government informational technology systems.

Day 2 until end of furlough time period:

OHA will be closed down

End of Furlough Activities (Call-Backs):

The COOP coordinator will implement phone tree procedures to inform staff when they should return to operating status.

Start up

This section establishes a plan of action to execute an orderly start-up of OHA operations following the approval of fiscal year fiscal year funding. This plan will be enacted through a notification to all employees from the OHA Coop team. The OHA Shutdown Plan instructed employees to monitor the status of the government shutdown and agency operations via the Office of Personnel Management (OPM) website (www.opm.gov) and news sources.

- Unless it is a regularly scheduled non-duty day or an employee is on approved leave or leave without pay under the Family and Medical Leave Act (FMLA), employees are expected to return to work the next workday following the President signing a bill funding the agency. Any delay in reporting for duty requires a request for leave that must be approved by the supervisor.
- An orderly start-up of agency operations is expected to take place as expeditiously as possible, so that service to customers can resume quickly.

Initial Communications Timeline

OHA has prepared for an agency start-up following an approval of FY funding. In order to keep the agency informed during this start-up process the following communications will occur (note: Day 1 is the first full day of operations upon restoration of funding):

- Following approval of FY funding: Federal employees receive notification either from the OHA Coop team, OPM website, or the news media that they should report for work on the next workday.
- Following approval of FY funding: The NAD Assistant Director of Administration will conduct a Labor-Management Teleconference to provide advance notice to union leadership.
- Day 1: 11:00 a.m.: OHA video conference with all supervisors to prioritize start-up activities. Based upon the length of the shutdown and the number of cancelled proceedings and delays of issuing written determinations, the NAD Director will extend all statutory deadlines for appellant, pursuant to his statutory authority found in 7 U.S.C § 6997 (d). This extension will be posted on the NAD website. Finally, notifications will be sent to USDA agencies with cases pending.
- Based upon the length of the shutdown and the number of cancelled proceedings and delays of issuing written determinations, the OALJ will extend all statutory deadlines for

proceedings pursuant to applicable statutory authority. This extension will be posted on the OALJ / OJO website. Finally, notifications will be sent to USDA agencies with cases pending.

- General Start-Up Procedures: All employees are responsible for taking necessary actions to restore the agency to a fully operational status. Key items to address include, but are not limited to:
 - Turn off the out-of-office message for your Outlook email.
 - Reset your voice mail message.
 - Remove all signage indicating the office was closed because of the funding lapse.
 - Restart computers and other IT devices according to guidance outlined in the Information Technology section of this plan.
 - Resume use of transit benefits.
 - Resume use of government-issued mobile devices, including cell and smart phones, tablets, and/or laptops for approved purposes.
 - Resume use of government purchase and travel cards for appropriate government use.
- Customer Service for Start-Up of OHA Operations: The re-start of OHA operations will be accompanied by many employee, customer, and partner questions and concerns. It is important for OHA to provide timely and consistent information that is in keeping with statute, regulation, and policy, and that this information is accessible throughout OHA.
- The OHA Information Technology Specialist, Financial Manager, and the Human Resources Specialist will perform liaison with administrative support partners to ensure priorities for startup are established.
- Travelers should complete any outstanding travel vouchers immediately after OHA has confirmed the operational status of all associated IT systems.
- Daily video conferences at 11 am will continue until operations return to normal.