

## Office of the Secretary 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.

## **Contingency Plan for Agency Close Down Procedures**

The Secretary of Agriculture requires maximum flexibility in managing the orderly shutdown of USDA. In the event of an interruption of fund availability, all functions and resources of the Office of the Secretary (OSEC) including all Mission Area and Executive Offices would be centralized into the Immediate Office of the Secretary. Specifically, for the purposes of planning for a shutdown at the conclusion of FY23, the Offices that fold into the Office of the Secretary and are thus in this plan are:

- Office of the Secretary and Deputy Secretary
- White House Liaison's Office and Staff
- Chief Diversity, Equity, Inclusion, and Accessibility Officer and DEIA Office Staff
- Office of Tribal Relations
- Office of Congressional Relations
- Office of the Assistant Secretary for Administration
- Office of the Assistant Secretary for Civil Rights
- Eight Mission Area Front Offices
- U.S. Codex Office

The Secretary will assign priorities and shift resources as needed to address national concerns utilizing no-year appropriations, permanent funds, and Working Capital Funds which are available without time limitations. Decisions on the size and specialties of the staff pool will be made on an as needed basis.

On the first day of the shutdown, all OSEC employees will report for duty as scheduled and proceed with orderly shutdown including securing files, cancelling schedules, and certifying sub-agency orderly shutdown procedures. OSEC employees will be notified by call or automated system with future instructions for reporting to work, if any. OSEC employees are to follow these special instructions:

- Employees in travel status must return to their duty station. Exceptions are the Secretary and any excepted employees assigned to him (i.e., protective detail, etc.).
- Excepted functions for Codex activities are preparation for and participation in critical international negotiations that cannot be postponed or cancelled. Excepted functions would also include critical actions following the negotiating sessions. Examples include regular and extraordinary sessions of the Codex Alimentarius Commission and/or subsidiary bodies and previously scheduled and funded multilateral engagements with foreign governments related to Codex issues.
- Excepted employee communication will be conducted through the Watch Center.
- Issue notices of cancellations of ongoing scheduled activities until further notice.
- All phones will be programmed with an appropriate message once shutdown is complete. Employees should not be using handheld electronic devices, e.g., iPhones, Blackberries, Droids, etc., for communications during shutdown for official business other than for the purposes of shutdown or as required by the Secretary.

- OSEC is part of the critical operations of USDA and personnel are expected to be on-call to ensure that critical missions are met.

Excepted employees at the end of orderly shutdown:

- Secretary (1)
- Deputy Secretary (1)
- Chief of Staff to the Secretary (1)
- Deputy Chief of Staff to the Secretary (2)
- Chief of Staff to the Deputy Secretary (1)
- Senior Advisor, Immediate Office of the Secretary and Deputy Secretary (6)
- Director of Scheduling (1)
- Scheduler (2)
- Presidentially Appointed, Senate Confirmed (PAS) Assistant Secretary for Congressional Relations (1)
- Deputy Assistant Secretary for Congressional Relations (1)
- Deputy Assistant Secretary for External and Intergovernmental Affairs (1)
- Special Advisor, External and Intergovernmental Affairs (1)
- Assistant Secretary for Administration (1)
- Deputy Assistant Secretary for Administration (2)
- Presidentially Appointed, Senate Confirmed (PAS) Under Secretary (8)
- Deputy Under Secretary (8)
- Mission Area Chief of Staff (8)
- Mission Area Senior Advisor (3)
- Chief Operating Officer, Rural Development (1)
- Director of State Operations, Rural Development (1)
- U.S. Manager for Codex Alimentarius (1)

In the event that staff in the designated positions are out or the position is vacant, the activities of the position can be undertaken by an acting.

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