

OFFICE OF THE GENERAL COUNSEL
LAPSE IN APPROPRIATIONS CONTINGENCY PLAN

In the event of a lapse in appropriations for the Department of Agriculture (USDA), the Office of the General Counsel (OGC) with 265 employees as of September 2018 will initiate the following actions:

- Provide direction to all employees in travel status to return to their duty stations;
- Issue notices of cancellation of ongoing activities with the assistance of the Office of Human Resources Management and the Office of Operations;
- Secure all personal and real property for appropriate disposition;
- Review court calendars, litigation deadlines, and other commitments in order to seek their cancellation or postponement as necessary;
- Determine whether it is necessary to engage in bargaining with OGC's bargaining unit with respect to impact and implementation of any furlough affecting bargaining unit members; and
- Adopt and implement a communications plan by which all OGC managers and staff, in Washington, D.C., and all field office locations, will be kept informed of developments during the course of any necessary furlough of employees.

Upon completion of the above items, all personnel who have not been determined to be excepted from furlough requirements, *i.e.*, all personnel who are not required for the performance of functions necessary for emergencies involving the safety of human life or the protection of property, who are not funded by user fees or no-year funds, or who are not required to accomplish an orderly shutdown of the normal functions of OGC, will be placed on immediate furlough. We anticipate working with other USDA agencies and offices to identify areas of legal services required to be continued in support of major excepted functions. Individual OGC attorneys, administrative personnel, and support staff will be excepted from the shutdown in areas where (1) their continued service is required for the provision of legal services to the Office of the Secretary, the Deputy, Under, and Assistant Secretaries, and other general officers concerning the shutdown; (2) the provision of legal services is required to support USDA functions related directly to activities respecting the safety of human life or the protection of property; (3) the provision of legal services is required for the continued performance of particular excepted functions of the Department; (4) continued service is implied from the Constitutional function of the judiciary for cases in litigation that are not postponed during the shutdown; and (5) continued service is required to accomplish the orderly shutdown of the Office of the General Counsel**.

After the steps described above have been taken, we anticipate that not more than seven OGC employees agency-wide will remain to provide the required legal services for the Department (falling to five by Day 10), and that four additional employees may continue to provide services in support of user fee funded programs which require no appropriation in advance, and thus fall within Category II.

Specific Actions to be Taken When OGC Appropriations Have Lapsed

Orderly shutdown activities of day 1 (first day funds are not available).

All employees will be directed either to report to their duty stations or to report to their supervisors by telephone to receive assignments of duties or other pertinent information to assure an orderly shutdown of activities. Managers and supervisors will coordinate the following activities intended to effect an orderly shutdown of OGC's operations:

- Communicate shutdown instructions and procedures to all employees.
- Distribute furlough notices at OGC headquarters and all OGC field offices to all employees who have not been determined to be necessary for OGC's shutdown activities.
- Contact any employees on leave and inform them that their leave is cancelled.
- Contact any employee in travel status and direct them to return to their duty stations.
- Ensure all records, personal property, and real property are secured.
- Cancel all meetings, hearings, and other previously scheduled OGC business.
- Validate existing OGC communications strategy and employee contact information for future communications requirements.
- Assure that all employees complete time and attendance reports for the portion of the pay period through the first day of the pay period as directed by OHRM or OCFO and that such time and attendance reports are certified. **

Second half of day 1.

Excepted employees will coordinate the following activities intended to effect an orderly shutdown of OGC's operations:

- Document the status of cases and projects so they can be resumed, transferred, or otherwise handled as required when OGC's ultimate funding situation is determined.
- Excepted managers will document justification and obtain General Counsel approval for additional employees to be retained or recalled to manage ongoing litigation or other matters necessarily implied from ongoing work of agencies. **
- Excepted managers will issue recall notices or additional subsequent furlough notices as appropriate. **
- Excepted managers will consult with the President of the union on ongoing issues related to the furlough as appropriate. **
- Complete identification of employees whose presence at work will be required to perform functions associated with the orderly cessation of OGC functions, including:

- Name of each employee required to continue shutdown operations.
- Title of each employee identified.
- The shutdown functions that each identified employee will perform.

Day 2+

- Only employees who have been (1) identified previously as required to perform excepted functions, (2) are needed to perform functions necessary for orderly shutdown of OGC functions and activities, or (3) that have been approved to be recalled for episodic work on cases continuing in litigation during the shutdown or other implied by law duties arising from the Category II or III activities of the agencies, will report to work.
- Employees performing work identified as excepted from shutdown procedures will continue to work.
- Employees will be directed to perform only those activities identified earlier.
- The General Counsel will report to appropriate Departmental contacts regarding the status of OGC's shutdown procedures.
- Excepted managers will document justification and obtain General Counsel approval for additional employees to be retained or recalled to manage ongoing litigation or other matters necessarily implied from ongoing work of agencies. **
- Excepted managers will issue recall notices or additional subsequent furlough notices as appropriate. **
- Excepted managers will consult with the President of the union on ongoing issues related to the furlough as appropriate. **

Day 3+ and continuing until the end of the lapse in appropriations .

- Only employees who have been (1) identified previously as required to perform excepted functions, (2) are needed to perform functions necessary for orderly shutdown of OGC functions and activities, or (3) that have been approved to be recalled for episodic work on cases continuing in litigation during the shutdown or other implied by law duties arising from the Category II or III activities of the agencies, will report to work.
- Employees performing work identified as excepted from shutdown procedures will continue to work.
- Employees will be directed to perform only those activities identified above.
- There will be daily communications by the General Counsel with appropriate Departmental contacts regarding the status of OGC's shutdown procedures.
- Excepted managers will document justification and obtain General Counsel approval for additional employees to be retained or recalled to manage ongoing litigation or other matters necessarily implied from ongoing work of agencies. **
- Excepted managers will issue recall notices or additional subsequent furlough notices as appropriate. **
- Excepted managers will consult with the President of the union on ongoing issues related to the furlough as appropriate. **

** Asterisked items denote lessons learned.

FY 2018
List of Excepted OGC Employees+

<u>Employees</u>	<u>Number</u>
Immediate Office	2
General Counsel (Excepted by statute)	
Executive Assistant to the General Counsel (communciations and support)	
Natural Resources and Environment*	1
Associate General Counsel (Forest Service emergency issues, including fire and law enforcement)	
General Law and Research Division	1
Associate General Counsel (appropriations, general law issues, and all litigation issues)	
Int'l Affairs, Food Assistance, and Farm and Rural Programs*	1
Associate General Counsel (SNAP, school lunch and other feeding programs, international food aid and disaster-related commodity purchase programs)	
Marketing, Regulatory, and Food Safety Programs*	1
Deputy Assistant General Counsel (food safety programs administered by the Food Safety Inspection Service)	
OGC's Regions (Kansas City Office)*	1
Regional Attorney (all field-based inquiries related to to foreclosures, Rural Development programs, and commodity Procurement issues)	
Marketing Regulatory, & Food Safety Attorneys Funded by User Fees	4
Deputy Assistant General Counsel	
Attorney	
Attorney	
Attorney	
TOTAL	11

*By day 10, these are estimated to be at best half day activities.

+Estimated number does not include staff that may need to be recalled for episodic work on cases continuing in litigation during the shutdown or other implied by law duties arising from the Category II or III activities of the agencies.

OGC Post-Lapse Startup Plan

Day before resumption of appropriations: Once OGC receives reliable notice that appropriations will be provided the next day:

- OGC will provide email notice to employees to report to work on normal schedules the next day.
- Ensure all IT functions are working properly.

First day agency is open after lapse:

- Employees will complete revised time and attendance reports for the shutdown period as directed by managers or supervisors.
- Managers will ensure that employees complete revised time and attendance reports for the shutdown period as directed by OHRM or OCFO and ensure such reports are certified.
- Employees will check on revised litigation schedules with DOJ counsel or per the directions of relevant administrative tribunals, and update their managers and supervisors as appropriate.
- Ensure all IT functions are working properly