U.S. DEPARTMENT OF LABOR

PLAN FOR THE CONTINUATION OF LIMITED ACTIVITIES DURING A LAPSE IN APPROPRIATIONS

DECEMBER 18, 2020

The Department of Labor (Department or DOL) is committed to fostering, promoting, and developing the welfare of the wage earners, job seekers, and retirees of the United States; improving working conditions; advancing opportunities for profitable employment; and assuring work-related benefits and rights. As required by section 124 of the Office of Management and Budget Circular A-11, this document (DOL Plan) outlines the Department’s plan for operating in the event of a lapse in appropriations. The purpose of the DOL Plan is to ensure that DOL agencies can perform an orderly suspension of programs and operations should a lapse occur, while continuing those limited activities authorized to continue during a lapse.

Lapse Plan Summary Overview

| Estimated time (to nearest half day) required to complete shutdown activities:* | .5 days |
| Total number of agency employees expected to be on board before implementation of the plan: | 13,980 |
| Total number of employees to be retained under the plan for each of the following categories:** | |
| Presidential appointee not subject to furlough: | 18 |
| Compensation is financed by a resource other than annual appropriations: | 433 |
| Necessary to perform activities expressly authorized by law: | 0 |
| Necessary to perform activities necessarily implied by law: | 1,376 |
| Necessary to the discharge of the President's constitutional duties and powers: | 0 |
| Necessary to protect life and property: | 1,183 |

Brief summary of significant agency activities that will continue during a lapse:

As reflected in more detail in the attached plans for each DOL component, the Department’s primary activities during a lapse in appropriations will be the provision of benefits to workers under entitlement programs, the protection of life and property in cases of imminent threat, and activities authorized to continue by necessary implication to carry out those functions. For example:

Agencies will monitor and respond to imminent threats to human life, child labor investigations, or process disaster Dislocated Worker grant applications. Statutory above ground/underground mine investigations will continue, as will inspections of targeted mines and specific hazards, and workplace inspections in high-hazard industries.

Relevant agencies will pursue and handle legal cases or investigations in jeopardy of being lost due to statute of limitations.

DOL will continue to provide support for the payment of benefits for which funding has not lapsed, including under the Coronavirus Aid Relief and Economic Security (CARES) Act, United States-Mexico-Canada Agreement (USMCA), Black Lung Benefits Act, Federal Employees’ Compensation Act, Energy Employees Occupational Illness Compensation Program Act, Longshore and Harbor Workers’ Compensation Act, War Hazards Compensation Act, and Trade Adjustment Assistance (TAA) Program. DOL will also provide support to states and other Federal agencies for the administration and payment of unemployment insurance benefits.
Job Corps centers are operated under contracts that are funded by appropriations available on a program year (as opposed to fiscal year) basis. Accordingly, Job Corps centers housing students will remain in operation while funds remain available. In addition, federal oversight of those centers related to safety and property will continue.

### Brief summary of significant agency activities that will cease during a lapse:


All worker protection agency investigations will cease, other than those that involve responding to or preventing fatalities, catastrophes, or imminent danger.

Agencies’ technical assistance, compliance assistance, regulatory, policy, research, advisories, responding to inquiries, most oversight, hearing preparation, and cooperative activities will cease.

DOL will not process foreign labor certifications or new TAA determinations.

*As reflected in the attached plan for the Bureau of Labor Statistics, shutdown activities related to backing up of systems may take up to three days.*

**The number of staff on-board during a lapse could fluctuate as result of unforeseen circumstances arising during a lapse, or the occurrence of an emergency.**

The following table sets forth for each DOL component the total number of employees expected to be on board prior to implementation of the DOL Plan and the total number of employees to be retained during a lapse under each category listed above.
<table>
<thead>
<tr>
<th>DOL Agency Name</th>
<th>“On Board” Prior to Lapse</th>
<th>Full-time During a Lapse</th>
<th>Not subject to furlough</th>
<th>Compensation is financed by a resource other than annual appropriations:</th>
<th>Necessary to perform activities expressly authorized by law:</th>
<th>Necessary to perform activities necessarily implied by law:</th>
<th>Necessary to the discharge of the President's constitutional duties and powers:</th>
<th>Necessary to protect life and property:</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administrative Review Board</td>
<td>14</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Benefits Review Board</td>
<td>51</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Bureau of Labor Statistics</td>
<td>2,106</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Employee Benefits Security Administration</td>
<td>814</td>
<td>48</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>47</td>
</tr>
<tr>
<td>Employee Compensation Appeals Board</td>
<td>31</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Employment and Training Administration</td>
<td>949</td>
<td>46</td>
<td>1</td>
<td>25</td>
<td>0</td>
<td>20</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>International Labor Affairs Bureau</td>
<td>122</td>
<td>9</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Mine Safety and Health Administration</td>
<td>1,715</td>
<td>996</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>272</td>
<td>0</td>
<td>723</td>
</tr>
<tr>
<td>Occupational Safety and Health Administration</td>
<td>1,890</td>
<td>439</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>180</td>
<td>0</td>
<td>258</td>
</tr>
<tr>
<td>Office of Administrative Law Judges</td>
<td>150</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of Congressional and Intergovernmental Affairs</td>
<td>30</td>
<td>4</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>3</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of Disability Employment Policy</td>
<td>49</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of EEOICPA Ombudsman</td>
<td>2</td>
<td>2</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of Federal Contract Compliance Programs</td>
<td>435</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of Inspector General</td>
<td>310</td>
<td>164</td>
<td>1</td>
<td>23</td>
<td>0</td>
<td>13</td>
<td>0</td>
<td>127</td>
</tr>
<tr>
<td>Office of Labor-Management Standards</td>
<td>193</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of Public Affairs</td>
<td>47</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of the Assistant Secretary for Administration and Management</td>
<td>1,065</td>
<td>108</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>86</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>Office of the Assistant Secretary for Policy</td>
<td>45</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>DOL Agency Name</td>
<td>“On Board” Prior to Lapse</td>
<td>Full-time During a Lapse</td>
<td>Not subject to furlough</td>
<td>Compensation is financed by a resource other than annual appropriations:</td>
<td>Necessary to perform activities expressly authorized by law:</td>
<td>Necessary to perform activities necessarily implied by law:</td>
<td>Necessary to the discharge of the President's constitutional duties and powers:</td>
<td>Necessary to protect life and property:</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>--------------------------</td>
<td>--------------------------</td>
<td>-------------------------</td>
<td>-------------------------------------------------------------------------</td>
<td>-----------------------------------------------------------</td>
<td>-------------------------------------------------------------</td>
<td>--------------------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------</td>
</tr>
<tr>
<td>Office of the Chief Financial Officer</td>
<td>92</td>
<td>10</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>9</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of the Secretary</td>
<td>64</td>
<td>13</td>
<td>2</td>
<td>0</td>
<td>0</td>
<td>11</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of the Solicitor</td>
<td>650</td>
<td>88</td>
<td>1</td>
<td>29</td>
<td>0</td>
<td>58</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Office of Workers’ Compensation Programs</td>
<td>1335</td>
<td>1,074</td>
<td>0</td>
<td>352</td>
<td>0</td>
<td>722</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Veterans’ Employment and Training Administration</td>
<td>228</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Wage and Hour Division</td>
<td>1557</td>
<td>8</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>7</td>
</tr>
<tr>
<td>Women’s Bureau</td>
<td>36</td>
<td>1</td>
<td>1</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td><strong>DOL Total</strong></td>
<td><strong>13,980</strong></td>
<td><strong>3,023</strong></td>
<td><strong>18</strong></td>
<td><strong>433</strong></td>
<td><strong>0</strong></td>
<td><strong>1,376</strong></td>
<td><strong>0</strong></td>
<td><strong>1,183</strong></td>
</tr>
</tbody>
</table>
MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: JAMES D. McGINLEY
Chair, Administrative Review Board

SUBJECT: Administrative Review Board (ARB) Shutdown Contingency Plan

1. General. This plan addresses the actions and proceedings the ARB will take in the event of a lapse in appropriations.

2. Specifics.

   a. The ARB will suspend all operations and furlough all assigned employees except for the ARB Chair.

   b. The Chair is designated as Excepted Intermittent for the limited purpose of overseeing the ARB’s shutdown activities, acting as the Board’s liaison with Department senior management on matters related to Department operations during the shutdown as they apply to the ARB, and initiating the recovery-restarting of Board operations upon termination of the shutdown.

   c. Judge Thomas Burrell will assume the Chair’s Excepted Intermittent duties in the event the Chair position is vacant or an unforeseen emergency prevents the incumbent from doing so.

3. POC. Direct questions regarding this plan to either the ARB Chair (202-693-6222, McGinley.James.D@dol.gov) or Judge Thomas Burrell, Member, ARB (202-693-6413, Burrell.Thomas@dol.gov).
30 October 2020

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: JUDITH BOGGS
Chair
Benefits Review Board

SUBJECT: Benefits Review Board (BRB) Shutdown Contingency Plan

1. General. This plan addresses the actions and proceedings the BRB will take in the event of a lapse in appropriations.

2. Specifics.

   a. The BRB will suspend all operations and furlough all assigned employees except for the following:

      1) Excepted Full-Time
         • Clerk of the Appellate Boards (T. Shepherd)

      2) Excepted Intermittent
         • BRB Chair and Chief Administrative Appeals Judge (J. Boggs)
         • BRB Vice Chair and Administrative Appeals Judge (D. Gresh)
         • Member and Administrative Appeals Judge (G. Buzzard)
         • Member and Administrative Appeals Judge (J. Rolfe)
         • Enterprise Program Manager (M. Patel)

   b. The primary responsibility for the above listed Excepted Full-Time and Excepted Intermittent employees is to either adjudicate or to perform administrative or technical tasks in support of the processing of Motions for Stay of Payments.

   c. Their secondary responsibility is:
      • Overseeing BRB shutdown activities.
      • Communicating with Department senior management on matters related to Department operations during the shutdown as they apply to BRB.
      • Initiating the recovery-restarting of BRB operations upon termination of the shutdown.

This process is for obligations that are necessary for the protection of property. The narrow category of activities described below will permit the protection of property interests that would otherwise be lost.

a. Pursuant to 33 U.S.C. §914(f), an employer must pay an award ordered by the Administrative Law Judge within 10 days after it becomes “due.” If employer/carrier does not pay, it is liable for an additional assessment of 20% of the amount due. See also 20 C.F.R. §702.350.

b. An award becomes “due” at the time it becomes “effective” pursuant to 33 U.S.C. §919(e), which is when the Administrative Law Judge’s compensation order is “filed” in the Office of the District Director. See also 33 U.S.C. §921(a); 20 C.F.R. §702.350.

c. The last clause of 33 U.S.C. §921(b)(3) provides the compensation required by the award must be paid even while the case is on appeal, unless a stay of payments is granted by BRB. Section 921(b)(3) states that a stay of payments shall not be issued unless the employer/carrier can establish “irreparable injury” will ensue if it is required to pay the award. See also 20 C.F.R. §802.105. If BRB grants a stay of payments, its order must contain specific findings regarding the nature and extent of the irreparable injury that would ensue to the employer/carrier. 20 C.F.R. §802.105(a)

d. Thus, in order for the employer/carrier to obtain complete, albeit possibly temporary relief, it must apply for, and BRB must grant, a stay of accrued and prospective payments within 10 days of the date the compensation order is filed by the District Director. Employer/Carrier, however, may apply for a stay of payments at any time, and after the initial 10-day period, any stay granted would apply only to prospective benefits.

4. Justification for Excepted Full-Time. The Clerk of the Appellate Boards provides essential administrative support in the processing of Motions for Stay of Payments. The Clerk of the Appellate Boards will:

a. Screen all incoming mail for any Motions for Stay of Payments.

b. Prepare a recommendation on the motion for BRB’s consideration in the event any such motions are found.

c. Prepare an order for the BRB Judges-Members to sign, and timely issue that order when directed.
5. **Justification for Excepted Intermittent**

   a. BRB Chair, Vice Chair, and Members. Three BRB Judges-Members may be required to report to work intermittently to rule because a panel of three Judges-Members is required to address and rule on Motions for Stay of Payments.

   b. Enterprise Program Manager. The Enterprise PM provides essential support in the processing of Motions for Stay of Payments to include BRB’s:

       1) Internal Help Desk for DOL Appeals Management System (AMS) operations.

       2) Liaison with the Department’s Office of the Chief Information Officer (OCIO) on e-mail, network, mobile devices, and telecommunications (includes VOIP telephones) matters.

6. **POC.** Direct questions regarding this plan to either the BRB Chair (202-693-6225, Boggs.Judith@dol.gov) or to the BRB vice Chair (202-693-6271, Gresh.Daniel@dol.gov).
July 30, 2019

MEMORANDUM FOR: KATE O’SCANNLAIN
Solicitor

FROM: WILLIAM W. BEACH
Commissioner

SUBJECT: Contingency Plan for Excepted Functions
In the Absence of Appropriations

During a lapse in appropriation, the Bureau of Labor Statistics (BLS) will suspend all operations and all staff will be furloughed, except as described below. The BLS Commissioner is a Presidential appointee that is not subject to furlough. In the event the position of Commissioner is vacant, the Acting Commissioner or other senior-level employee will be excepted on an intermittent basis for the limited purpose of overseeing the agency’s shutdown activities, communicating with the Department of Labor (DOL) leadership and employees regarding the status of DOL operation during a lapse and the restarting of agency operations.

During a shutdown, all survey and other program operations will cease and the public website will not be updated. As part of orderly shutdown activities, data scheduled to be released will be posted as scheduled. In addition, for command and control purposes, mobile devices and email service will be maintained only for those in work status. I anticipate the possibility of job rotations in some instances. If unforeseen emergencies or administration requests occur, additional employees would be identified to work on these matters.

In order to maintain program operations as long as possible leading up to a shutdown, we will need to back up our systems, verify successful backup, and then shut them down. We consider this a necessary part of the orderly cessation of operations. This process will take up to 3 days, and will vary by program.

While GSA manages physical security in the building, it is possible that any incidents that might pose a risk to the security of protected data will require staff to report to work on an as-needed basis.

A list of our intermittent- excepted individuals will be sent to the Assistant Secretary for Administration and Management. As mentioned, some staff not listed may be required depending on the timing of a shutdown or unforeseen emergencies.
November 24, 2020

MEMORANDUM FOR KATE O’SCANNLAIN
Solicitor of Labor

FROM: JEANNE KLINEFELTER WILSON
Acting Assistant Secretary, EBSA

SUBJECT: Suspension of Operation Plans

Based upon an analysis of EBSA’s responsibilities, we propose that 87 of our field and National Office staff be declared “excepted” or “intermittent excepted.” In FY 1995, we received approval from the Solicitor’s Office for these same activities. In FY 2013, FY 2015, FY 2018 and FY 2019, these same activities were reaffirmed by the Solicitor’s Office. This limited number of staff is needed in order to continue to perform excepted and “by necessary implication” activities arising from the Secretary’s criminal authority under ERISA and to otherwise respond to situations which require immediate action under the statutory civil remedies provided to the Secretary to prevent an imminent threat to property as well as to address imminent threats to human life when medical benefits are denied in life threatening situations.

During a lapse in appropriations the Employee Benefits Security Administration will suspend all operations and its staff will be furloughed, except as described in the attached. Upon approval of this request a member of my staff will notify the Assistant Secretary for Administration and Management of the name of the individuals performing the excepted and/or excepted by “necessary implication” activities set forth above. I anticipate the possibility that additional or intermittent employees may be required to in some instances. If unforeseen emergencies occur, these additional employees would be identified and a request for their exception requested.

If you have any questions or further clarification is necessary please contact me at your earliest convenience.
Agency: EMPLOYEE BENEFITS SECURITY ADMINISTRATION

**Exempt**

**National Office**

Acting Assistant Secretary, Office of the Assistant Secretary 693-8303

**Excepted Full Time**

The following employees’ continued service is needed on an ongoing basis to perform excepted activities that arise from the Secretary’s authority to i) pursue criminal cases involving ERISA plans, ii) pursue civil proceedings and remedies necessary to prevent an imminent threat to property, particularly including plan assets, and iii) address situations posing an imminent threat to human life due to the denial of health or disability benefits by an ERISA-covered plan.

**National Office**

Principal Deputy Assistant Secretary, Office of the Assistant Secretary 693-8303
Chief of Staff, Office of the Assistant Secretary 693-8305
Policy Advisor, Office of the Assistant Secretary 693-8595
Deputy AS for Nat Office Operations, Office of the Assistant Secretary 693-8315
Deputy AS for Reg Office Operations, Office of the Assistant Secretary 693-8315
Director, Office of Program Planning 693-8480
Director, Office of Enforcement 693-8440
Chief, Division of Financial Investigations 693-8476
Chief, Division of Health Investigations 693-8726
Chief, Division of Criminal Investigations 693-8470
Chief, Division of Field Operations and Support 693-8453
Director, Office of Outreach Education & Assistance 693-8337
Deputy Director, Office of Outreach Education & Assistance 693-8680

Subtotal: 13

**Field Offices**

Each of the 10 Regions designates their Regional Director, Deputy Regional Director, and the Regional Criminal Coordinator. In the 3 District Offices, the District Supervisor is designated.

Subtotal: 33

**Agency Total:** 47
**Excepted Intermittent (Agency Total: 40)**

In addition there is a requirement that the below listed employees be excepted in order to perform the excepted activities described.

1 IT staff to support various IT systems to operate without disruption in support of excepted employee work in our National Office and Field Offices.

**EBSA Regional Offices:** 39 Investigators to handle trial and grand jury matters.

**Employees funded by non-lapsed funding source.**

NONE
01 October 2020

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: ALEC J. KOROMILAS
Chairman
Employees’ Compensation Appeals Board

SUBJECT: Employees’ Compensation Appeals Board (ECAB) Shutdown Contingency Plan

1. **General.** This plan addresses the actions and proceedings the ECAB will take in the event of a lapse in appropriations.

2. **Specifics.**

   a. The ECAB will suspend all operations and furlough all assigned employees except for the Chairman.

   b. The Chairman is designated as Excepted Intermittent for the limited purposes of:
      - Overseeing the ECAB’s shutdown activities.
      - Communicating with Department senior management on matters related to Department operations during the shutdown as they apply to the ECAB.
      - Initiating the recovery-restarting of Board operations upon termination of the shutdown.

   c. The ECAB’s vice Chair will assume the Chairman’s Excepted Intermittent duties in the event the Chairman’s position is vacant or an unforeseen emergency prevents the incumbent from doing so.

3. **POC.** Direct questions regarding this plan to either Alec Koromilas, ECAB Chairman (202-693-6403, Koromilas.Alec@dol.gov) or to Christopher Godfrey, vice Chair (202-693-6410, Godfrey.Christopher@dol.gov).
December 18, 2020

MEMORANDUM FOR:  KATE S. O’SCANNLAIN
Solicitor of Labor

FROM:  JOHN PALLASCH
Assistant Secretary for Employment and Training

SUBJECT:  FY 2021 Funding Interruptions:
Designation of Exempt and Excepted Activities and Personnel

The purpose of this memo is to identify certain Employment and Training Administration (ETA) activities that could be maintained throughout any extended shutdown. During a lapse in appropriations, ETA will suspend all operations and its staff will be furloughed, except as described below. ETA’s plan meets the Department of Justice tests for the continuation of UI benefits that do not lapse and for the protection of life and property. The plan is based upon the following assumptions and provides a list of Exempt and Excepted Personnel in Attachment B:

- No foreign labor certifications will be processed.
- No grantee inquiries will be answered and no requests for assistance will be provided.
- No program performance or financial reports will be received from grantees.
- No ETA Advisories will be issued.
- No Trade Adjustment Assistance determinations will be made.
- Because there is no lapse in the payment of UI benefits to unemployed workers or in the payment of income support paid to dislocated workers receiving Trade Readjustment Allowances (TRA) and Reemployment Trade Adjustment Assistance (RTAA) benefits under the Trade Adjustment Assistance (TAA) program, it will be necessary to cover the following UI/TA benefits: 1) Support to states and Federal agencies for payment of UI benefits for Federal and Military personnel (UCFE and UCX); 2) Support for payments of UI, TRA, and RTAA benefits; 3) Support to states for payment of Extended Benefits (EB) if a state has triggered on to EB prior to the lapse in appropriations; 4) Support for the payment of Disaster Unemployment Assistance; 5) Support to states in implementing the UI benefit programs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act; 6) Ensure money transfers to states and among the various trust fund accounts are managed; and 7) Information technology functions in collaboration with the Office of the Chief Information Officer.
- The operations of all Job Corps centers are maintained by contracts that utilize Program Year (PY) funds. For that reason, and in order to protect the lives and safety of students and facilities, Job Corps will maintain operations of all centers housing students. This will require a number of excepted employees during the shutdown. Center-related contracts are funded, but if the shutdown progresses, ETA may be required to provide additional funds to maintain center operations, security and safety.
• Daily checks of the Dislocated Worker Electronic System and grants.gov will be made to verify if a disaster application has been submitted.
• Electronic systems will be maintained to process any Job Corps, Dislocated Worker Grants (DWG) for declared disasters, advance funding for Workforce Innovation and Opportunity Act (WIOA) funding, UI funding, or other items.
• Personnel may be called to work upon request – for example, in the case of a FEMA-declared disaster to help process a DWG application, WIOA funding, or UI funding.

Attachment A describes in more detail ETA’s exempt and excepted functions and activities; Attachment B identifies the minimum number of exempt and excepted employees (including those subject to call-back) who will be required to carry out these functions and activities. There are a number of additional employees on the excepted list termed as “alternate” to ensure that excepted work is covered during periods when excepted staff is off duty on unpaid status. Those alternate individuals will not increase the total number of excepted employees on duty at any given time, since they are only on duty to substitute for another excepted employee.

Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

Attachments
Attachment A – List of Exempt/Excepted Functions and Activities
Attachment B – List of Excepted/Intermittent Excepted Positions
December 18, 2020

Attachment A: Exempt/ Excepted Functions and Activities

ETA functions and activities that would be maintained throughout a shutdown are summarized below:

**Job Corps: Necessary to Prevent Significant Harm to Funded Programs** – ETA administers the Job Corps program, a network of 123 Centers nationwide. The funding for all Job Corps center operations is through the Program Year (PY) appropriation. The current PY runs from July 1 through June 30. At any point in time, about 30,000 Job Corps students reside at these Centers operated by Job Corps contractors, attending academic and occupational training, and centers operated by the U.S. Forest Service under an agreement between the Departments of Labor and Agriculture. ETA retains responsibility for the life and safety of the students, and for the protection of center property. FY 2020 appropriations authorize Job Corps to fully operate until June 30.

Excepted personnel in the national and regional offices will provide minimum acceptable oversight of the Centers, perform financial, procurement and related administrative functions to insure the Centers protect student life and safety as well as protection of facility property; and monitor electronic systems to prevent failure or malfunction and insure system availability.

The continuation of Job Corps services is key to the safety and health of the students. Shutting down a center because of the lack of funding or because of a non-extension will place many students in situations of elevated risk for life and health. ETA notes that the staff required to close down a center and handle the contract and related student issues is far greater than that required to extend or modify a contract. If ETA is not allowed to address these anomalies when they occur, it will need authorization to bring in more staff than currently requested to handle the shutdown in an orderly manner. ETA also will be required to act before the funding runs out so as to be able to pay the severance and travel costs associated with a shutdown. Since these costs are unbudgeted, ETA also will need to adjust its projection of students served and modify contracts to ensure that the cost of the shutdown does not cause other budget issues.

**Unemployment Insurance and TRA, RTAA Benefits: Continuing Functions Not Funded with Expiring Annual Appropriations** – ETA will continue to provide essential functions. These include direction to Federal agencies and administration of UI benefits for unemployed Federal and military personnel (UCFE & UCX). ETA will also continue to process Disaster Unemployment Assistance provided by the Federal Emergency Management Agency for declared disasters.

UI benefits will continue to be paid since funds are available as long as state UI agencies have sufficient administrative funding to operate and process claims. The Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISSA) funds will be used for the administration activities and CARES Act benefits. Additional administrative funding has not been appropriated and will not be available for state UI agencies. Similarly, TRA, and RTA benefits under the TAA program will continue to be paid since funds are available. Excepted personnel in the national and regional offices will oversee UI activities related to the fiscal and financial aspects of administering the UI program; interface with Treasury and the states should there be issues that surface with regard to states drawing down funds to pay benefits and/or repaying trust fund advances.
Excepted personnel will also interface between the states and the Department of Homeland Security, Federal Emergency Management Agency, to facilitate funds flowing to states to pay disaster unemployment benefits; oversee the operations of the UCFE and UCX programs; provide information and guidance to Federal agencies, furloughed federal workers, and states relating to UCFE and UCX.

**Dislocated Worker Grants: Protecting Life and Property** – A small group of national and regional office personnel will assist states in completing DWG applications to address declared disasters under the Stafford Act. These activities are critical to help states and localities address unexpected labor market dislocations caused by natural or man-made disasters.

**Financial and Technology Support** – A small number of ETA personnel who perform a range of procurement, grant, and financial functions such as authorizing and obligating necessary federal funds, process shopping carts, and oversee drawdowns will be retained on a full and intermittent basis. In addition, ETA will provide adequate support for its electronic systems to assure they are protected from physical harm or cyber-attack. Support for ETA’s user applications will be limited to only those systems that are determined to be necessary to support authorized “excepted” activities.

**Amendment of the Plan** – In the event a lapse in funding extends beyond 1 – 5 days or in the event of an emergency or other unforeseen circumstances that require additional excepted work be performed, or require excepted work to cease, ETA will submit an appropriate request to amend this plan. In addition, the number of intermittent excepted employees will be rotated or recalled, as necessary, or have extended orderly shutdown periods.
December 4, 2020

MEMORANDUM FOR THE SOLICITOR

FROM: Grant Lebens  
Chief of Staff, Bureau of International Labor Affairs

SUBJECT: Continuation of Limited Activities in the Event of Lapse in Appropriations

In the event of a lapse in appropriations, the Bureau of International Labor Affairs (ILAB) would perform only those functions that are obligations necessary to discharge the President’s constitutional duties and powers, and that are necessary, by implication, to support those functions. Specifically, the functions are necessary to the President’s responsibility to receive ambassadors and other public ministers and to conduct foreign relations.

Fulfilling these functions would require a minimum number of staff to attend or support senior leadership in any international meetings and/or negotiations taking place during such lapse where the Department of Labor/ILAB serves as the sole or lead USG representative on labor and employment issues at the meeting. This will be determined on a case-by-case basis, considering the importance of the meeting but would involve the minimum number of staff necessary to address the most crucial meetings and issues. In addition, ILAB staff may be called upon to support the President’s travel and/or initiatives.

The titled of those ILAB staff that could be called upon depending on the meeting or event are:

Deputy Undersecretary (Vacant)  
Associate Deputy Undersecretary – Non-Career SES (Acting DUS)  
Associate Deputy Undersecretary  
Senior Counselor  
Chief of Staff  
Policy Advisor  
Director, Office of Trade and Labor Affairs (OTLA), and/or subject matter expert designated from OTLA staff  
Director, Office of International Relations and Economic Affairs (OIRER), and/or subject matter expert designated from OIRER staff  
Director, Office of Child Labor, Forced Labor and Human Trafficking (OCFT), and/or subject matter expert designated from OCFT staff

Additional Staff funded through USMCA multi-year authority:  
Labor Attaché (Mexico City), OTLA  
Labor Attaché (Mexico City), OCFT
Attachment
MEMORANDUM FOR KATE S. O’SCANNLAIN
Solicitor of Labor

FROM: DAVID G. ZATEZALO
Assistant Secretary of Labor for
Mine Safety and Health Administration

SUBJECT: Contingency Plan for Excepted Functions
In the Absence of Appropriations

If there is no FY 2021 appropriations bill for the Department of Labor or FY 2021 Continuing Resolution, the Mine Safety and Health Administration (MSHA) would continue key functions which directly involve protecting against imminent threats to human life in the Nation’s mines, and which are necessary for the protection of government property. Mining is an inherently dangerous activity, and Congress recognized the need for effective means and measures to prevent death and serious physical harm resulting from dangerous mining conditions and practices, including imminent dangers. Accordingly, in Section 103(a) of the Mine Act, Congress provided that MSHA “shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times per year.” These regular inspections, known as “two’s and four’s,” are required by statute. MSHA will continue to conduct these mandated inspections during a lapse of funding. In addition, MSHA will continue to perform priority inspections of targeted mines and specific hazards, as well as perform supporting activities such as lab analysis and plan reviews. In our opinion, these excepted functions meet the Department of Justice test of reasonable likelihood that safety of life and property would be compromised if the functions are not performed.

The attachment describes excepted activities, and identifies the approximate number of excepted employees who will be required to perform these functions. If unforeseen emergencies occur, such as a mine disaster, additional employees would be identified to work for the duration of the emergency.

During a lapse in appropriations, MSHA will suspend all other operations and its staff will be furloughed. I have been notified of the names of the individuals performing the activities set forth below.
Excepted Activities:

I. Mandated mine inspections ("two’s and four’s"); inspection of targeted mines and specific hazards; investigations of accidents and miners’ complaints; and sample analysis.

During a funding lapse, MSHA will perform certain activities which, if not performed would significantly compromise the safety of human life in the Nation’s mines. Mining is an inherently dangerous activity, and Congress recognized the need for effective means and measures to prevent death and serious physical harm resulting from dangerous mining conditions and practices, including imminent dangers. Accordingly, in Section 103(a) of the Mine Act, Congress provided that MSHA “shall make inspections of each underground coal or other mine in its entirety at least four times a year, and of each surface coal or other mine in its entirety at least two times per year.” MSHA will continue to conduct regular mandated inspections—“two’s and four’s”—during a lapse of funding. Additionally, investigations of targeted mines, specific hazards, accidents and miners’ safety complaints will be performed. Select sample analysis, such as dust and air samples, will continue since they represent potentially serious and imminent safety problems.

<table>
<thead>
<tr>
<th>Number of Excepted Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

II. Executive/managerial/supervisory direction; staff support.

MSHA will designate program officials to provide executive/managerial/supervisory direction in each geographical location where employees are performing the excepted activities described in section one above. Additionally, a limited number of excepted employees will provide administrative duties in support of excepted activities. The excepted positions below represent the minimum numbers needed to adequately support the functions described in section one.

<table>
<thead>
<tr>
<th>Number of Excepted Employees</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal</td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

III. Building security activities.

To ensure the protection of two MSHA-owned properties and proprietary product documentation housed at one of the facilities, MSHA will provide 24 hour security services at the Mine Academy and Triadelphia, WV facility.
Number of Excepted Employees

<table>
<thead>
<tr>
<th></th>
<th>Regional</th>
<th>National</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal</td>
<td>5</td>
<td>0</td>
<td>5</td>
</tr>
</tbody>
</table>

IV. Information Technology Support.

MSHA will designate an information technology support liaison to coordinate with the OCIO for network infrastructure and to maintain connectivity required for continuity of emergency operations and continuing mine inspections.

Number of Excepted Employees

<table>
<thead>
<tr>
<th></th>
<th>Regional</th>
<th>National</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>

V. Mine Plan Approvals.

MSHA performs certain plan review and approval activities which have a direct impact on miner health and safety. Plan revisions, as well as new plans dictated by changes in the mine conditions and mining practices, must be reviewed and approved for operators to continue safe operations.

Number of Excepted Employees

<table>
<thead>
<tr>
<th></th>
<th>Regional</th>
<th>National</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal</td>
<td>45</td>
<td>0</td>
<td>45</td>
</tr>
</tbody>
</table>

VI. Mine Emergency Operations Readiness.

MSHA’s quick response to a mine emergency situation is critical in order to protect the safety and health of our Nation’s miners. Excepted personnel are needed in order to ensure that vehicles and equipment are ready for deployment in the event of a mine emergency.

Number of Excepted Employees

<table>
<thead>
<tr>
<th></th>
<th>Regional</th>
<th>National</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal</td>
<td>1</td>
<td>0</td>
<td>1</td>
</tr>
</tbody>
</table>
MINE SAFETY AND HEALTH ADMINISTRATION
EXPECTED ACTIVITIES AN EMPLOYEES
December 9, 2020

Grand Total, MSHA Excepted Employees:

<table>
<thead>
<tr>
<th>Number of Excepted Employees</th>
<th>Regional</th>
<th>National</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Subtotal</td>
<td>983</td>
<td>13</td>
<td>996</td>
</tr>
</tbody>
</table>

Bcc: MSHA File Code: ORM 11-2
AM

T:\AM\Director\A&M correspondence\2020 Correspondence\ Contingency Plan for Excepted Functions In the Absence of Appropriations
October 9, 2020

MEMORANDUM FOR: SOLICITOR OF LABOR

FROM: LOREN SWEATT
Principal Deputy Assistant Secretary

SUBJECT: Revised Contingency Plan for the Continuation of Limited Agency Operations during a Lapse in Appropriations

During a lapse in appropriations, the Occupational Safety and Health Administration (OSHA) will suspend all operations and its staff will be furloughed, except as described in this memorandum.

OSHA is authorized to continue functions in advance of appropriations on matters "of emergencies involving the safety of human life or protection of property." We believe that OSHA employees involved in enforcing imminent danger situations under Section 13 of the Occupational Safety and Health Act, and those involved in responding to workplace fatalities and catastrophes, should be excepted from the suspension requirements. OSHA employees should be able to respond to safety and health complaints or other information when employees are potentially exposed to hazardous conditions that present a high risk of death or serious physical harm. In addition, we believe that a minimum number of OSHA employees necessary to provide essential support for these operations may, by necessary implication, be excepted. In this manner, OSHA can maintain a force permitting it to respond to emergency situations. The Assistant Secretary is Presidentially appointed and not subject to furlough, and a minimum number of employees excepted from furlough will carry out the following limited activities, the suspension of which is reasonably likely to result in an imminent threat to the safety of human life or the protection of property:

1. Inspections of imminent danger situations under Section 13 of the Occupational Safety and Health Act;

2. Investigations of workplace fatalities and catastrophes;

3. Investigations of safety and health complaints or other information, including Serious Injury Reporting, received from police, fire departments or other first responders, media
sources or employers establishing that employees are potentially exposed to hazardous conditions that present a high risk of death or serious physical harm with the potential to cause death;

4. Review whistleblower complaints received during a shutdown in order to identify, and promptly refer to the appropriate agency or agencies, any complaint that identifies a workplace or public safety and/or health condition that poses, or if not referred or acted upon, is reasonably likely to pose, an imminent threat to the safety of human life or the protection of property, thus requiring an immediate response. These referrals should be made to either OSHA's safety or health enforcement team or to any of the partner agencies that have the authority to investigate the actual safety and/or health concern (e.g., FRA, FMCSA, FTA, FAA, EPA, DOE, NRC, etc.);

5. Follow-up inspections of establishments that have been cited for high gravity serious violations and have not abated\(^1\); and

6. Enforcement activities on open cases needed to meet agency six-month statutory deadlines where those cases establish a reasonable likelihood that employees are exposed to hazardous conditions that present a high risk of death or serious physical harm with the potential to cause death.

In addition, a minimum number of OSHA employees necessary to provide the support for these emergency operations may, by necessary implication, be excepted. In this manner, OSHA can maintain a force permitting it to respond to emergency situations and to continue with the enforcement activity essential to protect workers' lives from the most severe occupational hazards.\(^2\) The attached Summary Overview identifies the number of employees OSHA expects to have on board full time during a lapse.

---

\(^1\)Before inspecting, the OSHA Area Office would contact the employer telephonically to request the required evidence of abatement. An inspection would be scheduled for those employers failing to respond effectively.

\(^2\)Additionally, situations falling within those excepted activities may arise which require the recall of additional staff with special expertise needed to address "emergencies involving the safety of human life or protection of property" as defined above.
National Office – Excepted

Assistant Secretary, Office of Assistant Secretary
Deputy Assistant Secretary (Career), Office of Assistant Secretary Deputy
Assistant Secretary (Non-Career), Office of Assistant Secretary
Chief of Staff, Office of Assistant Secretary
Director, Directorate of Administrative Programs
Director, Directorate of Enforcement Programs
Deputy Director, Directorate of Enforcement Programs
Director of Health Enforcement Programs, Directorate of Enforcement Programs
Director, Directorate of Technical Support and Emergency Management
SLC Chemist for organic
SLC Physical Scientist for inorganic
Director, Directorate of Cooperative and State Programs (for State Plans and Consultation)
Director, Directorate of Construction
Supervisory Civil Engineer, Directorate of Construction
Civil Engineer (Structural), Directorate of Construction

Regional Staff – Excepted

All Regional Administrators
All Assistant Regional Administrators for Enforcement
All Assistant Regional Administrators for Administration and Management
All Assistant Regional Administrators for Technical Support
All Assistant Regional Administrators for Whistleblower Programs
One Administrative Support person per Region

Area Offices - Excepted

All Area Directors
One Senior Safety CSHO and one Senior Industrial Hygienist, per Area Office (these may be AAD's when appropriate)
One Administrative Support person, per Area Office

Additionally, certain situations falling within those excepted activities may arise that require the recall of additional staff to address particular emergencies.
MEMORANDUM FOR:  KATE S. O’SCANNLAIN  
Solicitor of Labor  

FROM:  STEPHEN R. HENLEY  
Chief Judge  

SUBJECT:  SUSPENSION OF OPERATIONS PLAN  

During a lapse in appropriations, the Office of Administrative Law Judges (OALJ) will suspend all non-essential operations. All staff will be furloughed until such time as appropriations are authorized, except as provided below and approved by your office.

Upon the approval of OALJ’s plan, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals who are needed to perform the activities set forth below. I anticipate the possibility of intermittent work and job rotation for all of these activities. If unforeseen emergencies occur during any suspension of operations, additional employees would be identified to work solely for the duration of the emergency.

OALJ adjudicates approximately 6,000 cases each fiscal year and in doing so holds hearings in many of them. Hearings are typically scheduled 60 to 180 days in advance. Due to the impact of the ongoing pandemic, nearly all hearings are currently being held remotely. For each week that the government suspends operations, the agency must cancel the hearings scheduled for that week. OALJ requires access to its Case Tracking System (CTS) to determine where and when hearings are scheduled. Only an Administrative Law Judge can order a hearing be cancelled and the paper case files, which contain some of the information needed to cancel these hearings, remain in the National Office and the eight District Offices while the electronic case files reside on the CTS system. The National Office requires the Chief Judge and Associate Chief Judges to handle the tasks of cancelling hearings and responding to emergency motions and the District Chief Judges would also be responsible with the same tasks in the District Offices. Support staff are also needed to contact the parties in these cases, and these duties will be handled by the Administrative Specialist in each office. These activities will constitute weekly intermittent work.

In addition, administrative functions, such as time and attendance submissions or responding to emergency phone calls, will be handled on an intermittent basis by the Director of Program Operations and the Deputy Director of Program Operations.
The OALJ’s National and District Offices routinely receive the majority of the parties’ filings, submissions and facsimile transmissions electronically. However, a small number may be received by mail and would need to be opened and read to ensure there is no emergency motion or petition that must be addressed. This activity would be minimal and would require the Chief Docket Clerk and the Administrative Specialists to work approximately 1-4 hours per week.

OALJ is serviced by the Office of the Chief Information Officer (OCIO) and all of its network and application servers are managed by the OCIO. The application servers must continue operations to allow access to the CTS and the network. The application is needed to cancel or postpone hearings as discussed above. Ensuring data center performance during any government shutdown will require that the Business Product Owner (BPO) spend 1-2 hours daily checking emails for security and accessibility issues and identifying work that may require additional employees to be called in to perform. The BPO will also be required to spend 1-2 hours each day to insure that the CTS application is secure and available for use by other intermittent employees.

OALJ’s Suspension of Operations Plan identifies 23 positions as essential during the suspension of operations in light of the fact that each of the eight District Offices operates independently from the National Office with respect to the cases assigned to those offices.

The plan devised by OALJ is intended to comply with our obligation to furlough all non-essential personnel during any suspension of functions caused by a lapse in appropriations. I am available should you need clarification or additional information with regard to any elements of the plan. Thank you for your consideration.
December 4, 2020

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: JOE WHEELER
Deputy Assistant Secretary for OCIA

SUBJECT: OCIA “Excepted” Activities During a Shutdown

The mission of the Office of Congressional and Intergovernmental Affairs (OCIA) is to provide direction for legislative and intergovernmental programs of the Department of Labor and to implement decisions by and for the Secretary and Deputy Secretary for all policy and operation matters which affect legislative programs, proposals, and priorities. OCIA acts as the liaison between the Department of Labor and stakeholders that have an interest in the Department's overall goals and objectives. The Assistant Secretary provides overall guidance, coordination, and supervision as well as advises the Secretary on all matters relating to congressional and intergovernmental affairs. Included among these responsibilities is the management of the congressional response pertaining to the responsibilities of the Secretary as principal advisor to the President on labor matters. OCIA also serves as the Secretary’s liaison with Members of Congress, White House staff, officials at the Office of Management and Budget (OMB), House and Senate leadership, and committees of jurisdiction, as well as other Federal, state and local government agencies. OCIA works directly with the Department’s component agencies to assess pending legislation and respond to congressional oversight requests.

I understand that the Department’s activities must be curtailed during a funding lapse. I further understand that even OCIA’s support for the Secretary’s core functions must be curtailed to conform to applicable legal requirements. During a lapse in appropriations, OCIA will suspend all operations and its staff will be furloughed, except as described below. We have identified certain activities for which we believe exist both the need and the authority to continue, for the duration of the shutdown. Upon approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I request your approval of our designation of a minimum of three “excepted positions” to provide congressional, intergovernmental, and oversight activity support to the Secretary. All of the activities we identify below would be justified as implicitly necessary to assure necessary effectuation of authorized
Secretarial activities deemed “excepted.” I fully anticipate the possibility of job rotation in some instances. If unforeseen emergencies occurred, additional employees would be identified to work for the duration of the emergency.

OCIA’s functions are critical in serving the Secretary who, in turn, is advising the President during the appropriation of funding deliberation with Congress. To serve the Secretary during this time, OCIA would require at least a core number of staff support the Secretary’s work with the legislative branch.

We propose to continue all legislative activities congressional and intergovernmental communications, and oversight on behalf of the Secretary with respect to legislation on appropriations and continuing resolutions, budget/budget reconciliation, debt ceiling and other legislation with a close nexus to the suspension of funding. In addition, this office would continue its involvement with respect to any other legislation, when directed by OMB.

The minimal staffing for these activities would be 3 FTE (3 professional staff). In the event of a significant emergency involving one of the Department’s excepted activities, such as a major mining disaster, this office might require additional staff. In addition, in the event of substantial progress, during a shutdown, in congressional consideration of significant legislation, this office might also, upon the request of OMB, recall the minimum level of additional staff necessary to assure proper effectuation of the Secretary’s legal role as principal labor advisor to the President.

Upon your approval of this request, we will identify to the Assistant Secretary for Administration and Management the individuals who would provide these approved responsibilities and necessary support.

Thank you for your review of this request.
July 30, 2019

MEMORANDUM TO: KATE O’SCANNLAIN
Solicitor

FROM: JENNIFER SHEEHY
Deputy Assistant Secretary, Office of Disability Employment Policy

SUBJECT: Plan for Agency Operations During a Lapse in Appropriations

In the event of a lapse of appropriations, the Office of Disability Employment Policy (ODEP) will suspend all operations and its staff will be furloughed, except for the Assistant Secretary for the Office of Disability Employment Policy, who is a Presidential-appointee that is not subject to furlough. If the position of Assistant Secretary is vacant, the agency’s highest ranking official will be excepted on an intermittent basis for the limited purpose of performing any excepted activities that may arise during a lapse in appropriations, such as communicating with Department of Labor (DOL) leadership and ODEP employees regarding the restarting of agency operations.
16 December 2020

MEMORANDUM FOR THE SOLICITOR OF LABOR

Frank Clubb

FROM: FRANK W. CLUBB
Continuity Coordinator
Adjudicatory Boards

SUBJECT: Office of the Ombudsman Shutdown Contingency Plan

1. General. This plan addresses the actions and proceedings the Office of the Ombudsman will take in the event of a lapse in appropriations.

2. Specifics. The Office of the Ombudsman will continue all operations as funding is from the Department’s permanent indefinite appropriation for Part E administrative expenses (see 42 U.S.C. § 7385s-13) and the Department’s annual appropriation for the administration of Part B benefits which are “no year” funds and will continue to operate for as long as these appropriations remain available.

3. POC. Direct questions regarding this plan to Frank Clubb, Continuity Coordinator, Adjudicatory Boards (202-693-6234, Clubb.Frank@dol.gov).
September 28, 2020

MEMORANDUM FOR:  KATE S. O’SCANNLAIN
                 SOLICITOR OF LABOR

FROM:  CRAIG E. LEEN
        DIRECTOR

SUBJECT:  Office of Federal Contract Compliance Programs (OFCCP)
               Shutdown Contingency Plan

During a lapse in appropriation, the OFCCP will suspend all operations and all staff will be furloughed. Notwithstanding the suspension of all operations, the Director of OFCCP will be excepted on an intermittent basis for the limited purpose of overseeing the agency’s shutdown activities and communicating with Department of Labor (DOL) leadership and DOL employees regarding the status of DOL operations during a lapse, and the restarting of agency operations.

If you have any questions, please contact me at (202) 693-1115 or Kelley Smith, Director, Division of Management and Administrative Programs at 202-693-1101.
The U.S. Department of Labor (DOL) Office of Inspector General (OIG), has developed the following Contingency Plan in the event of a lapse in appropriations. This plan was developed consistent with Office of Management and Budget (OMB) requirements; existing, applicable U.S. Department of Justice (DOJ) Office of Legal Counsel (OLC) opinions; and updated DOJ determinations regarding excepted law enforcement activities. This contingency plan is subject to change based on any future OMB guidance and or DOJ determinations.

This contingency plan identifies excepted positions within limited categories of functions that the OIG has deemed essential during a Government shutdown. Described in detail below, those categories are: (1) functions excepted by statute; (2) management, operational and legal activities needed to support excepted functions; and, (3) law enforcement activities, the suspension of which DOJ has determined "could constitute an imminent threat to the safety of human life and the protection of property."

In addition, the OIG recognizes that some employees may be needed on an ad-hoc or "on-call" basis after the initial shutdown of operations, and those positions have also been identified within each category.

(1) **Functions excepted by statute:**

The position for the Presidentially-Appointed, Senate-Confirmed, Inspector General is not subject to furlough by statute.

Excepted Position:
- Vacant – Inspector General

(2) **Functions supported by non-lapsing CARES Act Supplemental Funding**

In FY2020, the OIG received $25 million in supplemental funding under the CARES Act to conduct oversight and investigative activities associated with fraud in the Unemployment Insurance programs. These funds are non-lapsing and available until expended. Currently, these supplemental funds are supporting 23 employees that are conducting these aforementioned activities. Those positions are:

- 7 Supervisory Auditors
- 10 Auditors
- 2 Criminal Investigators
- 4 Program Analysts

As oversight and fraud investigations increase in FY2021, the CARES Act supplemental funds may support additional OIG staff.
(3) **Management, operational and legal activities needed to support excepted functions:**

The OIG has excepted certain employees who perform management, operational and legal activities necessary to support excepted activities.

**Excepted Positions:**
- Deputy Inspector General/Acting Inspector General
- Counsel to the Inspector General
- Assistant Inspector General for Management and Policy
- Deputy Assistant Inspector General for Management and Policy
- Director, Division of Information Technology – Vacant
- Chief, Branch of Database Management Applications
- Chief, Branch of Information Systems
- Director, Division of Procurement and Administrative Services – Vacant
- Chief, Branch of Procurement
- Chief, Branch of Administrative Services
- Management Services Specialists
- Director, Division of Human Resources Management
- Human Resources Specialist, Payroll
- Director, Budget and Financial Management
- Program Analyst for COOP, Travel, Fleet Management, and Safety

**Intermittent/On-call Positions:**
- Assistant Inspector General for Audit
- Deputy Assistant Inspector Generals for Audit
- Assistant Inspector General for Congressional and Public Relations
- Assistant Counsels to the Inspector General
- Chief, Branch of Personnel Operations
- Chief, Branch of Information Security
- Information Technology Specialists – To be determined, based on need
- Human Resources Specialists – To be determined, based on need
- Financial Management Specialists – To be determined, based on need
- Contract Specialists – To be determined, based on need

(4) **Law Enforcement Activities:**

The OIG conducts criminal investigations relating to alleged violations of Federal laws, rules or regulations related to DOL programs and operations, as well as investigations of allegations of misconduct on the part of DOL employees. The OIG also conducts criminal investigations to combat the influence of labor racketeering and organized crime in the nation's labor unions in the areas of employee benefit plans, labor-management relations, and internal union affairs. The OIG has excepted all GS-1811 criminal investigators and limited investigative analysis staff needed to support excepted law enforcement activities.

**Positions Excepted:**
- Assistant Inspector General for Investigations – Labor Racketeering and Fraud – Vacant
- Deputy Assistant Inspector General for Investigations – Labor Racketeering and Fraud – Vacant
• Director, Investigations and Administration
• Director, Advance Technology and Analytics
• Director, Computer Evidence Recovery Unit
• GS-1811 Criminal Investigators
• GS-1811 Criminal Investigator (International Organized Crime Task Force)

Intermittent/On-call Positions:
• Investigative Analysts – To be determined, based on need

### Summary of Activities in the Event of a Government Shutdown

<table>
<thead>
<tr>
<th>Current On-Board Staff (09/30/20)</th>
<th>Excepted by Statute</th>
<th>Support of Excepted Functions</th>
<th>Law Enforcement Activities</th>
<th>Other Funding</th>
<th>Total Staff Excepted</th>
<th>Total Staff to be Furloughed</th>
</tr>
</thead>
<tbody>
<tr>
<td>310</td>
<td>1</td>
<td>13</td>
<td>127</td>
<td>23</td>
<td>164</td>
<td>146</td>
</tr>
</tbody>
</table>
December 7, 2020

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: ANDREW AUERBACH
Acting Director

SUBJECT: OLMS Contingency Plan for Excepted Functions in the Absence of Appropriations

During any lapse in appropriations, OLMS would suspend all operations and its staff would be furloughed, except as described below.

1) Investigators subpoenaed to testify before a federal or state court only for the period of time required to prepare and present testimony and travel to the court.

2) Investigators performing criminal investigations in jeopardy of being lost due to the statute of limitations.

3) Investigators performing election investigations required by statute to be conducted within 60 days, absent a mutual agreement between the labor union and OLMS extending the 60 day filing deadline.

4) Investigators performing activities associated with a supervised election where postponement of the election would cause a violation of the statutory requirement with respect to the maximum time period for holding union officer elections or would result in a failure to meet a court-ordered deadline absent an extension. This includes conducting supervised elections pursuant to voluntary compliance agreements, which are enforceable by court order, where the deadlines cannot be extended by mutual agreement.

Additionally, OLMS would perform the following excepted activity: coordination and management of the above-described activities as they are or become necessary.

OLMS anticipates the possibility of job rotation in some instances to perform excepted functions. If unforeseen emergencies occur, additional employees would be identified and approved to work during the shutdown. The OLMS Director would fulfill the coordination and management role in the plan. Other employees may be called upon on an as-needed basis.

Enclosure
During a lapse in appropriations, the Office of Public Affairs (OPA) will suspend all operations and its staff will be furloughed, except as described below.

Upon the approval of this request, OPA will notify the Assistant Secretary for Administration and Management of the names of staff members who will be designated to perform the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees will be identified to work for the duration of the emergency.

OPA is the Department’s primary agency for the dissemination of public information, encompassing traditional and social media; internal communications; support services for the Office of the Secretary and to departmental agencies; and the National Contact Center. OPA employs approximately 51 staff members, of which approximately 12 are located in regional offices.

OPA’s mission is to provide the American people access to information about the Department of Labor, a component of their Government. It is critical that the public and Department of Labor employees have timely and accurate information about the status of departmental operations and permissible activities during a lapse in appropriations. OPA will be expected to play a central role in such communications, both through traditional and electronic means. With OPA’s function clearly defined, this office will suspend and curtail its activities in conformity with applicable legal requirements.

The purpose of this memorandum is to request your approval of OPA’s designation of seven “excepted positions,” solely in the national office, to serve as a minimal staff during a lapse in appropriations. This narrow range of proposed activities would be authorized under the recognized exception relating to the protection of life and property. In addition, all of the activities identified below would be justified, as well, as implicitly necessary and essential to ensure adequate effectuation of certain authorized Secretarial activities and certain other agency activities otherwise deemed excepted.

OPA proposes, first, to minimally provide a narrow range of public information services to the Department during a shutdown, where such services would significantly further the Department’s excepted activities relating to the protection of life and property. Such activities
are authorized where the dissemination of public information can be expected (1) to expeditiously inform employers/workers of a potentially life-threatening or maiming workplace hazard or risk to property or (2) to have the effect of deterring violations and enhancing compliance, during the period of a lapse in appropriations.

In addition, OPA proposes to continue a minimal range of public information, web/social media and press support activities for the Secretary and for the Department with respect to the actual suspension of Departmental activities and its policy context. OPA will maintain minimal service in order to inform the public on which services the Department continues to provide and which services the Department has suspended. OPA will review daily press coverage to identify misinformation to the public, and seek to obtain clarifications in the media. OPA further proposes to maintain targeted, but minimal, public information services to the media through activities that are responsive to media requests and through other activities that organize forums for providing these services to groups of media representatives. These activities would be in support of otherwise authorized activities during the funding lapse, in connection with the impact of the shutdown; the policy context of the debate on budget and appropriations; and Departmental activities excepted and suspended.

The minimal staffing for these activities would be seven FTE: six professional and one support, all located in the national office. This is a reduction in the number of FTE set forth in OPA’s previously-approved 2011 and 2019 plans as a result of the consolidation of IT within OCIO. OPA responsibilities include engagement with news media; management of the National Contact Center; and online communications. A significant emergency involving one of the Department’s excepted activities, such as a major disaster, might necessitate an additional professional staff member. Upon your approval of this request, we will identify to the Assistant Secretary for Administration and Management the individuals who would provide these services.

Thank you for your review of this request.
MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: BRYAN SLATER
     Assistant Secretary for
     Administration and Management

SUBJECT: OASAM Lapse Plan for Excepted Functions in the
         Absence of Appropriations

OASAM’s mission requires it to provide support services to Department of Labor (DOL)
agencies. In the event of a government-wide shutdown, excepted personnel from DOL agencies
will need basic support services in order to perform their duties. In general, the services
OASAM will provide include Human Resources (HR), Information Technology (IT), Facilities
Management (including minimal mail services), Procurement, Security, and support for the
Department’s shutdown activities. OASAM’s lapse plan identifies one exempt employee
(Assistant Secretary for Administration and Management) and 107 Federal employees as
“excepted/full-time.”

Shutdown Activities
National Office: 6 employees
Regional Offices: 6 employees

OASAM will have key staff available in the National Office and regions to assist in supporting
Departmental-wide shutdown activities. This includes the implementation of orderly shutdown
and the resumption of operations, as well as internal and external coordination among exempt
and excepted staff.

Human Resources
7 OHR employees

By maintaining a small staff of Office of Human Resource (OHR) managers and OHR
specialists, OASAM will provide basic HR services to support excepted or exempt DOL
personnel. OASAM requires additional HR staff to process payroll. In addition, minimal staff
will be available on an as-needed basis to address and resolve any issues that may prevent
payroll from properly running. This also includes labor-management relations services and HR
systems services for excepted or exempt activities.
**Information Technology**
*49 OCIO employees*

OASAM has identified a minimal IT staff in the Office of the Chief Information Officer (OCIO) who will ensure DOL’s technology services, applications, website management, and IT security responsibilities continue without disruption to support excepted and exempt staff from other DOL agencies. The services provided include e-mail, network, mobile devices, unified communications, help desks, and IT systems (financial, procurement, excepted activities).

**Facilities Management**
*National Office: 5 employees*
*Regional Offices: 6 employees*

In order to ensure the Department’s Frances Perkins Building is operational for excepted or exempt DOL personnel, four building engineers will alternate shifts to monitor building operations, including heat, air conditioning, electricity, and sanitation services provided by contract staff. Additionally, two mail clerks will provide limited mail collection and delivery during a shutdown. One employee from each of OASAM’s regional offices will coordinate these functions in the field. This will involve coordinating with GSA or the building manager to ensure operations of excepted and exempt staff from other agencies is unimpeded.

**Procurement / Finance (Region)**
*OSPE: 3 employees*
*Regional Offices: 3 employees*

In addition to the Senior Procurement Executive, two Contracting Officers will be designated as excepted in order to provide contracting/procurement services as necessary in support of excepted and exempt staff. If, for example, an agency needs to modify a contract during the shutdown because of excepted activities, the Contracting Officer will execute that process. In the field, a Finance Manager will continue providing invoicing services in support of excepted employees.

**Security & Emergency Management**
*National Office: 21 employees*

Even in the event of a shutdown, maintaining the safety and security of the Secretary of Labor and the Department’s excepted and exempt personnel, as well as securing the Department’s property, will be a high priority. Seventeen special agents will maintain the security and protective services provided to the Secretary of Labor. Three federal employees will supervise a skeletal staff of contract security guards, three shifts per day – who will provide basic coverage in the Frances Perkins Building and South Garage for parking and adequate coverage at the main employee entrance and oversee emergency response activities in the National Office.

Additionally, to ensure the Department receives timely notification from Federal law enforcement sources and the White House on any emergency situations and to manage national
security communications, the Emergency Management Center will remain minimally operational both in Washington, DC and at the National Mine Health and Safety Academy.

**Appropriations Guidance**

*National Office: 1 employee*

Departmental Budget Center will provide expertise for all budget matters for the Department, including monitoring and providing guidance on the appropriate use of funds during the shutdown and exempt/excepted work during the shutdown. They will ensure senior exempt and excepted staff are kept apprised of budget developments. Additional employees may be recalled as needed should appropriations and apportionment issues arise.

We believe we have appropriately identified the staff we would need to facilitate an orderly shutdown of OASAM and still be able to adequately support exempt and excepted personnel from other DOL agencies who will continue to work.

If you have any questions, please contact OASAM’s Deputy Assistant Secretary for Operations.

cc: Al Stewart, Deputy Assistant Secretary for Operations  
    David Langhaim, Deputy Assistant Secretary for Policy  
    Geoff Kenyon, Deputy Assistant Secretary for Performance and Budget  
    Braye Cloud, Administrative Officer
September 28, 2020

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: Jonathan Wolfson
deputy assistant secretary

SUBJECT: OASP Contingency Plan for a Lapse in Appropriations

The Office of the Assistant Secretary for Policy (OASP) will suspend operations and furlough all agency personnel when there is a lapse in government appropriations. The Assistant Secretary for Policy is Presidentially appointed, Senate-confirmed, and not subject to furlough. In the event the position of Assistant Secretary is vacant, the non-career Deputy Assistant Secretary or other senior level employee will work on an excepted intermittent basis for the limited purpose of overseeing the agency's shutdown activities, communicating with Department of Labor (DOL) leadership and DOL employees regarding the status of DOL operations during a lapse, and the restarting of agency operations.
December 3, 2020

MEMORANDUM FOR SOLICITOR OF LABOR

FROM: JAMES WILLIAMS  
Chief Financial Officer

SUBJECT: Excepted Personnel in the Event of a Lapse in Appropriations

During a lapse in appropriations the Office of the Chief Financial Officer (OCFO) will suspend all operations and its staff will be furloughed, except for fifteen (15) employees declared in Attachment A as excepted “full-time” or excepted “intermittent.” Since submission of OCFO’s last Plan in August 2019, there have been no significant changes. The only change made to the plan is to replace one excepted “full-time” employee. Upon approval of this request, a member of my staff will notify the Deputy Assistant Secretary for Administration and Management of the names of the individuals performing the “excepted” activities. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees will be identified to work for the duration of the emergency.

The individuals identified are the minimum staff by “necessary implication” required to support excepted Agency activities. The Office of the Chief Financial Officer provides administrative support for activities throughout the Department, therefore a complete list of staff that may be needed to fulfill that role is derivative of what the Department determines as “excepted” programmatic activities and therefore may be adjusted based upon the programmatic activities that are ultimately determined to continue in the event of a funding lapse. We have considered the activities/employees necessary to the lawful continuation of other activities, including minimal obligations necessary for suspension of operations. The exception for activities that must occur by “necessary implication” applies to all OCFO excepted staff listed.

The employees recommended as excepted will ensure that the integrity of the Department’s financial information is not compromised.

Attachment: as stated

cc: Marella Turner, Administrative Officer
Title/Function (Excepted “Full-Time” Employees)

Chief Financial Officer – will identify and manage funding for excepted activities.

Deputy Chief Financial Officer - will identify and manage funding for excepted activities.

Budget Officer - will provide budget execution support for “excepted” activities.

Administrative Officer - will provide oversight for “excepted” activities.

Acting Associate Deputy Chief Financial Officer for Financial Systems - will provide system support for grants, contracts and travel systems for “excepted” activities.

Director, Security and Technology - will oversee systems security.

Information Technology Specialist – Provide critical file and data collection for records that would be rendered irretrievable without timely action by the Department.

Director, Travel Division - will provide travel support to “excepted” staff throughout the Department.

Financial Management Specialist – will provide travel support to “excepted” staff throughout the Department.

Supervisory Financial Management Specialist – Senior Contracting Officer’s Representative (COR) will manage contractual activities that are deemed “excepted”.

Title/Function (Excepted “Intermittent” Employees)

Director of Division of Central Accounting Operations and Division of Business Process Improvement - will provide budget execution support for “excepted” activities and will provide funding support for “excepted” activities required by other agencies within the Department.

Accountant - will provide funding support for “excepted” activities required by other agencies within the Department.

Financial Management Specialist - will provide budget execution support for “excepted” activities.

Financial Management Specialist – will provide certifying payment support.

Fiscal Operations Specialist – will provide certifying payment support.

Supervisory Financial Management Specialist - will provide travel policy support to “excepted” staff throughout the Department.
October 16, 2020

MEMORANDUM FOR THE SOLICITOR

FROM: Rachel Mondl  
Chief of Staff

SUBJECT: Proposed Excepted Activities During a Lapse in Appropriations

The following plan outlines the staffing requirements for the Office of the Secretary in the event of a lapse in appropriations resulting in a shutdown of government operations.

**Immediate Office of the Secretary (1 exempt and up to 7 excepted full-time staff)**

The Secretary of Labor is a Presidially-Appointed, Senate confirmed (PAS) member of the President’s cabinet and performs statutory duties and fundamental responsibilities for, and on behalf of, the President. Under normal conditions, the staff in the Immediate Office of the Secretary supports the Secretary in the execution of statutorily mandated obligations. Without support of this staff, the ability of the Secretary to fulfill these obligations to the President would be seriously impeded, if not obstructed.

During a lapse in appropriations, the Secretary remains responsible for carrying out duties to and for the President and prescribed by law, including all activities related to the Department’s “exempt” and “excepted” functions. Within the boundaries of applicable law, it is imperative that the Secretary have a minimal core of staff to support the Secretary in the performance of activities designated as “exempt” or “excepted” in the Department, as well as support Secretarial-specific needs, to include the structure and maintenance of the Secretary’s schedule and providing advice and counsel to the Secretary.

Other staff could be recalled on an intermittent basis should the lapse exceed five days or the volume of duties with respect to the lapse of appropriations warrant additional staffing. This would include the occurrence of a serious emergency or major initiative, e.g., legislative, legal, or programmatic subsequently authorized as an excepted activity.

**Office of the Deputy Secretary (1 exempt and up to 3 excepted full-time)**

The Deputy Secretary occupies a PAS position. During a lapse in appropriations, excepted staff in the Office of the Deputy Secretary will limit their activities to those that support the Secretary and Deputy Secretary in the performance of their duties, which include Departmental excepted...
activities, activities arising from the fact that the funding lapse has occurred, and executive branch efforts to resolve the impasse with Congress.

In the absence of special needs during a lapse in appropriations, one support staff would be utilized to perform excepted activities supporting the Deputy Secretary. Like in the Immediate Office of the Secretary, other staff could be recalled on an intermittent basis should the lapse in appropriations extend beyond five days or the volume of duties with respect to the lapse of appropriations warrant additional staffing. This would include the occurrence of a serious emergency or major initiative, e.g., legislative, legal, or programmatic subsequently authorized as an excepted activity.

**Office of the Executive Secretariat** (*I excepted full-time staff*)

The Office of the Executive Secretariat is charged with managing and implementing the Secretary’s internal communications process. During a lapse in appropriations, this office, to the extent necessary to support departmental exempt and excepted activities, will (1) perform triage of correspondence and other communication for the appropriate Secretarial, PAS and staff attention, and (2) assume quality control and correspondence management for all written communications relating to the authorized functioning of the Department.

In the event of a lapse in appropriations, one staff member will be utilized to ensure necessary activities are performed. Other staff could be recalled on an intermittent basis should the lapse exceed five days or the volume of duties with respect to the lapse of appropriations warrant additional staffing. This would include the occurrence of a serious emergency or major initiative, e.g., legislative, legal, or programmatic subsequently authorized as an excepted activity.

**Centers for Faith and Opportunity Initiatives** (*no excepted full-time staff*)

During a lapse in appropriations, the Centers for Faith and Opportunity Initiatives will suspend operations.

**Office of Public Liaison** (*no excepted full-time staff*)

During a lapse in appropriations, the Office of Public Liaison will suspend operations.
November 10, 2020

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: Rose Marie L. Audette
Associate Solicitor for Management and Administrative Legal Services, and SOL Administrative Officer

RE: Continuation of Certain Limited Activities of the Office of the Solicitor (SOL) during a Lapse in Appropriations

This SOL Contingency Plan supersedes prior plans regarding the identification of those SOL activities and staff that are considered “exempt” or “excepted” from a cessation of operations and furlough in the event of and during a lapse in appropriations for SOL, after the brief period of orderly shut down has been completed.

Pursuant to your directions about SOL staffing during a lapse in appropriations, SOL will suspend all operations and its staff will be furloughed, except as described below. In accordance with the Department’s directions and timelines, I or staff in the MALS Division will notify the Office of the Assistant Secretary for Administration and Management (OASAM) of the names of the specific individuals performing the full-time exempt and excepted staff activities set forth below. We anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for a period of time or for the duration of the emergency.

Should a lapse in appropriations occur, SOL will need sufficient exempt and excepted staff available to provide core legal services in support of exempt or excepted activities of the Secretary and client agencies, and to provide those legal services involving the safety of human life or the protection of property necessary during the period of a lapse in appropriation. SOL will also need sufficient staffing to permit SOL to respond to agency requests for legal assistance relating to shutdown issues during the pendency of shutdown itself, and for approval of additional requests for excepted functions or personnel. We will provide expedited approval of such requests in order for the Department to continue its operations within the boundaries of applicable law.

In order to meet these legal objectives, the SOL exempt and excepted staff positions are as follows:

- **Front Office**: The Solicitor (a Presidentially Appointed and Senate Confirmed or PAS position, and exempt); Deputy Solicitor; Deputy Solicitor for National Operations; Deputy Solicitor for Regional Enforcement; one attorney; and one administrative/support staff person performing administrative and support
functions for the entire National Office (total 1 staff exempt and 5 staff excepted).

- Divisions: Office of Legal Counsel; Black Lung and Longshore Legal Services; Civil Rights and Labor Management; Employment and Training Legal Services; Fair Labor Standards; Occupational Safety and Health; Plan Benefits Security: One attorney each (total 7 staff excepted attorneys).

- Federal Employees’ and Energy Workers’ Compensation Division: one attorney on an excepted function basis; and all staff of the FECA Subrogation Unit directly funded by the Employees’ Compensation Fund on an excepted function basis (including supervisor, attorneys, paralegals, legal assistants, and any administrative, support, and/or student interns), as funding for this function will continue; and staff of the Energy Unit directly funded by Energy Part E, which is a permanent indefinite appropriation (total consisting of 1 excepted attorney, plus the exempted staff of the FECA Subrogation Unit and Energy/Part E, currently totaling 27 exempt staff members, consisting of 6 attorneys and 21 paralegal and support staff).

- Mine Safety and Health Division: four excepted staff.

- Management and Administrative Legal Services Division: two appropriations law attorneys, one employment law/labor relations attorney, one contracts/procurement attorney, one attorney/Administrative Officer, and one legal technology/litigation support services staff to perform work that must continue to be performed by SOL, despite the SOL IT transition to OCIO under Enterprise-wide Shared Services (ESS) (total 6 excepted staff).

- Each SOL Region: three attorneys for each Region with one additional attorney for each Sub-regional Office in that Region (total 28 excepted attorneys), and one administrative/support staff person for each Region (total 7 excepted administrative/support staff). (Note: attorneys and support staff may be located in any of a Region’s offices.)

Total excepted staff (including the Solicitor): 28 exempted and 58 excepted staff.

In addition, a number of intermittent excepted staff will be rotated or recalled, as necessary, or have extended orderly shutdown periods. Further, in emergency situations that may develop during the period of a lapse in appropriation, other staff may be returned to paid status for the period necessary to meet the exigency.

We do not know whether, and to what extent, the federal judiciary will continue to operate during a shutdown that affects the Department’s funding. In advance of a potential lapse, SOL will identify and place additional SOL staff into excepted intermittent status to the extent that we are not able to adjust federal court litigation schedules or statutes of limitation. At this time, we cannot specify the number or location of such staff, since that would depend on the timing of a shutdown. In advance of a
potential lapse, SOL will monitor carefully upcoming litigation and other legal deadlines on a nationwide basis and attorneys understand the need to try to obtain extensions as a shutdown becomes more likely.

Cc: Deputy Solicitor Timothy Taylor
   Deputy Solicitor for National Operations Stanley E. Keen
   Deputy Solicitor for Regional Enforcement Katherine E. Bissell
October 29, 2020

MEMORANDUM FOR THE SOLICITOR

FROM: JULIA K. HEARTHWAY
 Director
 Office of Workers’ Compensation Programs

SUBJECT: Contingency Plan for Excepted Activities and Functions

During a lapse in appropriations, the Office of Workers’ Compensation Programs (OWCP) will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occurred, additional employees would be identified to work for the duration of the emergency.

As detailed on the attachment, OWCP has some statutory authority to continue the payment of benefits for varying amounts of time during a lapse in annual appropriations in awarded claims under the Black Lung Benefits Act, the Energy Employees Occupational Illness Compensation Program Act, the Federal Employees’ Compensation Act, the Longshore and Harbor Workers’ Compensation Act and its extensions, and the War Hazards Compensation Act. In addition, it is expected that administrative activities that are not funded by annual appropriations would continue without change.

With respect to administrative expenses that are funded by annual appropriations, as long as benefit payment continue, OWCP also has the implied authority to incur obligations in advance of appropriations for administration of those benefits, including the authority to retain the staff, management and automated systems necessary to the check writing and distribution functions that are needed for the disbursement of the benefit payments themselves. In addition, OWCP is authorized by law to continue necessary claims management as a necessary implication of the continued funding for benefit payments and in order to protect the lives of the beneficiaries of the programs involved. These individuals potentially have suffered work-related injuries or illnesses that are compensable under one of the statutes within the agency’s jurisdiction. Necessary claims management includes developing, adjudicating and administering new claims and new requests for benefits, as well as adjudicating requests for authorization of necessary medical procedures.

The attachment outlines the parameters of OWCP’s authority to continue paying benefits under these programs and describes the excepted administrative functions in greater detail.

During a funding lapse, OWCP would cease all other continuing, regular functions.

Attachment
Office of Workers’ Compensation Programs
EXCEPTED ACTIVITIES AND FUNCTIONS

I. Payment of Benefits

The Office of Workers’ Compensation Programs (OWCP) is responsible for administering the Black Lung Benefits Act (BLBA), the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), the Federal Employees’ Compensation Act (FECA), the Longshore and Harbor Workers’ Compensation Act (LHWCA) and its extensions, and the War Hazards Compensation Act (WHCA). As detailed below, during a funding lapse, OWCP expects to have sufficient authority and funds to continue making benefit payments, including monetary compensation and payment of medical benefits, under the above programs as detailed below:

A. BLBA:

1. Part B benefits are paid from annual appropriations; OWCP expects to be able to continue paying Part B benefits indefinitely, because OWCP’s appropriation provides an advance for benefits payable during the first quarter of the next Fiscal Year and OWCP does not expect to exhaust this funding in the near future.

2. Part C benefits are paid from the Black Lung Disability Trust Fund (BLDTF). OWCP expects to be able to continue paying any benefits due from the BLDTF as long as the BLDTF contains sufficient funds to make payments. At this point, if there is a lapse in appropriations, OWCP can continue paying benefits until such time as all funding is completely expended.

B. EEOICPA: OWCP expects to be able to continue paying all benefits due, whether under Part B or Part E, because benefits are paid from the Energy Employees Occupational Illness Compensation Fund, a permanent indefinite appropriation that is not dependent upon annual appropriations or authority provided in other appropriations laws.

C. FECA: OWCP expects to be able to continue paying all benefits as long as sufficient funds remain available in the Employees’ Compensation Fund, a permanent appropriation. Although a significant portion of the money deposited into the Fund is from annual appropriations received by employing agencies and transferred to the Fund pursuant to 5 U.S.C. § 8147 (b), these funds do not expire and use of the funds to pay benefits is not dependent upon authority provided in annual appropriations. Upon a lapse in appropriations, OWCP can continue paying benefits for several months until such time as all available funding

---

1 This discussion applies only to benefits that are payable from funds controlled by the United States government. Under some programs, some benefits are paid directly by private parties (employers or their insurers). Those benefits should continue without interruption.

2 Approximately 40% of the benefits paid from the fund consist of payments made to employees of the United States Postal Service (USPS). USPS reimburses the Fund for those payments from a revolving fund which is not subject to a lapse in annual appropriations.
is expended. Estimates will be updated as transfers from other agencies are received.

D. LHWCA: OWCP expects to be able to continue paying any benefits due from the LHWCA Special Fund, as long as the Special Fund contains sufficient funds to make payments. At this time, OWCP expects to have sufficient funding in the Special Fund to continue paying benefits for approximately 12 months.

E. WHCA: WHCA claims are paid from the Employees’ Compensation Fund, discussed in Section C (above). As with FECA benefits, OWCP expects to be able to continue paying all benefits as long as sufficient funds remain available in the Employees’ Compensation Fund, a permanent appropriation. OWCP expects to have sufficient funding in the fund to continue paying benefits consistent with section C.

II. Administrative Expenses

A. EEOICPA: OWCP has sufficient funds for all administrative activities under Part E of EEOICPA because those activities are funded by a permanent indefinite appropriation rather than OWCP’s annual appropriation. In addition, although Part B administrative expenses are funded by annual appropriation, OWCP’s current fiscal year appropriation for Part B expenses remains available until it is expended and these funds would continue to be available during a lapse in appropriations. If carryover funds are exhausted, however, a lapse in appropriations would affect Part B administration. As discussed in more detail in Section IIC (below), OWCP would be authorized to continue necessary Part B claims management in order to continue administration of Part B benefits to the extent that funding remains available to pay those benefits.

B. BLBA Part B: BLBA Part B administrative expenses are funded through DOL’s annual appropriation, and remain available until expended. OWCP does have some limited “carryover” funding which would remain available (until expended) during a lapse in appropriations; however this funding is not expected to be sufficient to cover all Part B administrative costs. As discussed in more detail in Section IIC (below), however, OWCP would be authorized to continue necessary Part B claims management in order to continue administration of Part B benefits to the extent that funding remains available to pay those benefits.

C. BLBA, LHWCA, FECA, and WHCA

In general, OWCP uses annual appropriations to fund administrative activities for BLBA Part C, FECA, LHWCA and WHCA. A lapse in annual appropriations would affect these activities. In addition, as discussed in Sections IIA and IIB, EEOICPA Part B and BLBA Part B administrative expenses are funded by annual appropriations that remain available until expended; FECA Fair Share administrative expenses are funded in the same way. If carryover

\[3\] There are some limited exceptions to this general rule. Where the governing statute permits use of other funding to pay expenses that might otherwise be considered administrative expenses, the other source of funding may be used. For example, the Federal Employees’ Compensation Act generally prohibits use of the Employees’ Compensation Fund to pay for administrative activities, but excludes legal services related to FECA subrogation from this prohibition.
funds are exhausted, a lapse in appropriations would affect these activities.

The Office of Legal Counsel (OLC) at the Department of Justice has opined that, “the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well.” Operations in the Event of a Lapse in Government Appropriations, 1955 WL 17216091 (August 16, 1995) (citing 43 Op. Atty Gen. 293 (January 16, 1981)). In addition, OWCP expects certain necessary claims management activities under these statutes to fall within another exception to the Antideficiency Act “for emergencies involving the safety of human life or the protection of property.” See 31 U.S.C. 1342. Individuals receiving benefits under the above programs have suffered work-related injuries or illnesses that are compensable under one of the statutes within the agency’s jurisdiction. Under these exceptions, OWCP is authorized to continue necessary claims management in order to continue administration of claims for benefits that have been awarded under these statutes to the extent that funding remains available to pay those benefits. This includes the authority to retain the staff, management and automated systems necessary to the check writing and distribution functions that are critical to the disbursement of the benefit payments themselves.

The OLC has specifically referenced benefit payments under entitlement programs when the funds for the payments themselves do not lapse as an area where it infers authority to continue the administration of the program to the extent of the remaining benefit funding despite a lapse of appropriations. Each of these programs constitutes such an entitlement program. Thus, the necessary implication of the authority to continue to pay benefits under the BLBA, EEOICPA, FECA, LHWCA and WHCA is that OWCP is authorized by law to incur obligations in advance of appropriations to develop, adjudicate and administer new claims and new requests for benefits in order to allow payment of such benefits. Necessary claims management includes the adjudication of requests for authorization of necessary medical procedures as well as other activities that are necessarily implied by continuation of the compensation programs involved. In addition, in order to protect the life and health of covered workers, requests relating to provision of medical services where the necessary implication exception may not apply will have to continue to be reviewed and adjudicated.

OWCP also will designate program officials in each geographical location where employees are performing the excepted activities described above to provide essential executive, managerial and supervisory direction. This will ensure that the excepted activities as set forth above are provided appropriate supervision. Additionally, excepted employees will provide financial, contract management, and clerical duties in support of excepted activities; and appear in court pursuant to lawful subpoenas served on them in their capacity as Federal employees to ensure availability of the resources necessary to perform authorized functions. Information technology support and technical support functions previously provided by OWCP for all four programs are now the responsibility of the Office of the Chief Information Officer and are/will be addressed in the Office of the Assistant Secretary for Administration & Management’s contingency plan.
MEMORANDUM TO: KATE S. O’SCANNLAIN  
Solicitor of Labor

FROM: JOHN LOWRY  
Assistant Secretary

SUBJECT: Contingency Plan for Excepted Functions in the Absence of Appropriations

In the event of lapse of appropriations, the Veterans’ Employment and Training Service (VETS) will suspend all operations and its staff will be furloughed, except the Assistant Secretary for Veterans’ Employment and Training. The Assistant Secretary is a Presidential Appointed Senate confirmed appointee who is not subject to furlough. VETS does not have “excepted” or “limited excepted” personnel.

If the Assistant Secretary and non-career Deputy Assistant Secretary positions are vacant, the career Deputy Assistant Secretary will work on an expected intermittent basis for the limited purpose of overseeing the agency’s shutdown activities, communicating with Department of Labor (DOL) leadership and employees regarding the status of DOL operations during a lapse, and the restarting of agency operations.

Upon approval of this request, a member of my staff will notify the DOL’s Assistant Secretary for Administration and Management of the name of the expected intermittent individual as set forth above.
October 23, 2020

MEMORANDUM FOR KATE O’SCANNLAIN
Solicitor

FROM: CHERYL M. STANTON
Administrator

SUBJECT: Updated Contingency Plan for a Shutdown of Operations

During a lapse in appropriation the Wage and Hour Division (WHD) will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary of Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

For WHD, the basis for the excepted personnel in DLMS 6-430 is the following criteria, “Necessary to respond to emergencies involving the safety of human life or the protection of property.” The requested exception would be used to employ WHD staff to monitor incoming complaints and responds to emergencies in order to prevent irreparable harm. WHD will respond to and investigate any incidents involving child labor violations, including those that involve serious injury or death of a minor. Additionally, WHD will respond to and investigate any transportation accident or housing safety violations involving serious injury or death of a farm worker.

To accomplish such, we would designate the Administrator as exempt and the five WHD Regional Administrators, Deputy Administrator, and the Chief of Staff as excepted employees who would be continuously available to handle communications and coordinate responses to any emergency. We would also designate the Associate Administrator for Regional Enforcement and Support, the Associate Administrator for Administrative Operations, and the District Directors (or an individual acting in that capacity) as excepted-intermittent employees who would occasionally visit the offices to check mail and phone calls to determine whether an emergency situation has been reported which requires an immediate response. This category of employees would not report to work each day, but only on a pre-determined schedule or as needed to respond to an emergency.
WHD Exempt
Administrator

WHD Exempted Full-Time Position
Deputy Administrator
Chief of Staff
Regional Administrator, Northeast Region (Philadelphia)
Regional Administrator, Southeast Region (Atlanta)
Regional Administrator, Midwest Region (Chicago)
Regional Administrator, Southwest Region (Dallas)
Regional Administrator, Western Region (San Francisco)

WHD Exempted Intermittent Positions
Associate Administrator for Regional Enforcement and Support
Associate Administrator for Administrative Operations
District Directors of the following offices:


Southeast Region: Atlanta DO, Columbia DO, Gulf Coast DO, Jackson DO, Jacksonville DO, Louisville DO, Miami DO, Nashville DO, Raleigh DO, Tampa DO

Midwest Region: Chicago DO, Columbus DO, Des Moines DO, Detroit DO, Grand Rapids DO, Indianapolis DO, Kansas City DO, Minneapolis DO

Southwest Region: Albuquerque DO, Dallas DO, Denver DO, Houston DO, Little Rock DO, McAllen DO, New Orleans DO, Oklahoma DO, Salt Lake City DO, San Antonio DO

Western Region: Honolulu DO, Las Vegas DO, Los Angeles DO, Phoenix DO, Portland DO, Sacramento DO, San Diego DO, San Francisco DO, Seattle DO, West Covina DO
September 24, 2020

MEMORANDUM FOR:    KATE O’SCANLAIN
                    SOLICITOR OF LABOR

FROM:          Laurie Todd-Smith
               DIRECTOR

SUBJECT:       Women’s Bureau (WB) Shutdown Contingency Plan

During a lapse in appropriation, the WB will suspend all operations and all staff will be furloughed. However, the Director of the WB will be exempt. In the event the position of Director is vacant, the Deputy Director or other senior-level employee will be excepted on an intermittent basis for the limited purpose of overseeing the agency’s shutdown activities, communicating with Department of Labor (DOL) leadership and WB’s employees regarding the status of DOL operation during a lapse and the restarting of agency operations.

If you have any questions, please contact me at (202) 693-6710 or Joan Harrigan-Farrelly, Deputy Director at (202) 693-6712.