The Office of the Special Trustee for American Indians (OST) has developed the FY 2019 Contingency Plan in the event of an absence of appropriations as required by OMB Circular A-11 (Circular), and in accordance with the Anti-deficiency Act, 31 U.S.C. 1341-1342, the Comptroller General’s opinion of March 3, 1980, and the Attorney General’s opinions of April 25, 1980, and January 16, 1981. This plan identifies excepted activities which will continue during the shutdown. It is expected that the shutdown process itself will be completed in less than one day.

I. EXECUTIVE SUMMARY

The OST provides fiduciary guidance, management, and leadership for Tribal Trust and Individual Indian Money (IIM) accounts. The OST oversees and coordinates the Department of the Interior’s (Interior) trust reform efforts to ensure the establishment of consistent policies, procedures, systems, and practices throughout Interior for the Indian fiduciary trust. The OST has also programmatic responsibilities for the management of financial trust assets, and fiduciary trust beneficiary services. The OST manages and discharges the Secretary of the Interior’s trust responsibility for nearly $5 billion in trust assets for American Indians and Alaska Natives.

Indian trust consists of 55 million surface acres and 57 million acres of subsurface mineral estates held in trust by the United States for American Indians, Indian tribes and Alaska Natives. Over 11 million acres belong to individual Indians and nearly 44 million acres are held in trust for Indian tribes. On these lands, Interior manages more than 124,300 leases. It also manages over $5 billion in trust funds. For fiscal year 2018, funds from leases, use permits, settlement and judgments, land sales, and income from financial assets, totaling over $1.45 billion were collected for about 409,500 open IIM and tribal accounts.

Unlike most commercial trusts, there was no trust document that created the Indian trust and articulated the fiduciary duties incumbent on the federal government in managing that trust. Instead the Indian trust gradually evolved from a series of Congressional actions—beginning with the General Allotment Act of 1887 (“Dawes Act”) and subsequent policy changes. This unusual history created uncertainties about how trust was to be managed, and about the very nature of the Indian trust whether it was more like common law trust or more like a government program. These ambiguities were gradually, if incompletely, resolved by case law, then finally by enactment of the American Indian Trust Fund Management Reform Act of 1994 (P.L. 103-412).

In December 2012, the Secretary of the Interior established the LBBP, in the Office of the Secretary, to implement the land consolidation aspects of the IIM Account Litigation Settlement (Settlement), formerly referred to as the Cobell v. Salazar lawsuit. The Settlement provides $1.9 billion for a Trust Land Consolidation Fund for Interior to acquire fractional interests in trust or restricted land within ten years, at fair market value, from willing individual Indian sellers. OST’s Field Operations has four positions that are funded by the LBBP; conducting this work are considered exempt.
In the event that funding measure is not enacted, the OST shall prepare for a lapse in appropriations and as such, has established an OST Contingency Plan for essential operations. The contingency plan establishes procedures and identifies resources legally required to continue OST functions during a possible government-wide shutdown. The plan addresses identification of both excepted and exempt employees and their responsibilities, including definition of operations at a minimum level.

The Principal Deputy Special Trustee is responsible for implementing and adjusting the Contingency Plan to respond to the length of the lapse in appropriations and changes in external circumstances.

Key components include those excepted employees necessary for the operation of systems vital to conducting fiduciary trust business and providing service to beneficiaries, and the level of support necessary from information technology, administration, and contractors.

A. OST’S ACTIVITIES DURING GOVERNMENT SHUTDOWN

Pursuant to the plan, only activities involving the safety of human life or the protection of property and necessary operations of systems vital to continued fiduciary trust services to beneficiaries will continue. Specifically, OST will:

1. Protect the safety and well-being of employees and contractors as well as the security of our offices and property;
2. Minimize excepted functions and determine the level at which they would operate;
3. Ensure continued leadership within OST;
4. Continue to litigate lawsuits where a continuance has not been granted; examine new charges to determine whether prompt judicial action is necessary to protect the federal government’s interest in tribal trust litigation cases and, if appropriate, provide litigation support to obtain preliminary relief, and;
5. Perform necessary administrative support to carry out those excepted functions. The bulk of these activities would be handled by staff in the Albuquerque and field offices.

OST critical functions include the receipt, investment, and disbursement of trust funds to Indian beneficiaries. The minimal level of functionality required to accomplish this activity include excepted staff that:

1. Maintain system integrity and operability
2. Ensure proper function of interfaces with Trust Asset and Accounting Management System and Trust Fund Accounting System
3. Approve transactions
4. Encode transactions
5. Operate the Trust Beneficiary Call Center
6. Continue document imaging and coding to meet discovery deadlines in ongoing litigation
7. Continue efforts related to the Cobell settlement claimant and class member database
Contracts
The OST will comply with all guidance provided from Interior, Office of Acquisition and
Property Management in conjunction with the DOI Interior Business Center, Acquisition
Services Directorate with regard to contractors supporting critical OST functions.

B. OST ACTIVITIES THAT WILL NOT OCCUR DURING A GOVERNMENT SHUTDOWN

The following activities will not occur during a government shutdown:
1. Staff will not be available to answer questions from the public, or respond to
correspondence from the public.
2. Insofar as the courts grant OST’s requests for extensions of time, OST will not
provide litigation support services for tribal trust litigation cases to the Department of
the Interior’s Solicitors Office and the Department of Justice.
3. Outreach and educational events will be cancelled.
4. No FOIA requests will be processed.

II. OST STAFFING

Section 124 of the Circular requires that agencies submit plans for an orderly shutdown in the
event of a lapse in appropriations to OMB. The Circular requires agencies include the number of
employees to be retained under the plan in the following three (3) categories of employees:
1. Employees engaged in military, law enforcement, or direct provision of health care
activities – OST would retain 0 employees.
2. Employees whose compensation is financed by a resource other than annual
appropriations – OST would retain 6 employees.
3. Employees who will protect life and property – OST would retain 49 employees and
contract personnel, many part-time or on-call.

To effectively shut down OST operations, the OST shall retain a very limited number of
employees under the third category to protect government and individual property rights (the
emergency exception.)

Personnel may only work on shutting down OST and must leave the workplace when their
shutdown responsibilities are completed. Shut down responsibilities include, among other
things, placing messages about the government shutdown on voicemail and email accounts,
canceling meetings and travel plans, requesting extensions in litigation, identifying excepted
personnel and their functions, and posting a notice on the website explaining the shutdown and
OST’s retained functions.

The OST excepted and exempt personnel list indicates staff required to report to duty from the
start/initial (I) or to be “On-Call” (OC). OST has a total of thirty-five (35) excepted and exempt
staff that are required to be at work while one hundred and one (101) staff are “On-Call”.

FY 2019 OST Contingency Plan in the Event of Lapsed Appropriations
III. **OST Contingency Plan Coverage**

The OST Contingency Plan covers all OST officers, employees and on-site contract personnel; except those noted below. All activities of OST are subject to shutdown provisions when invoked, except as noted below.

Exceptions:
In the event of lapsed appropriations, the OST is to prepare for an orderly shutdown by releasing through furlough all employees except for the following:

1. Presidential appointees, who are not subject to furlough provisions;
2. Employees and contract personnel engaged in shutdown activities. (Unless designated to perform excepted functions in accordance with section c., these employees and contract personnel are to be furloughed at the conclusion of their respective shutdown activities.)
3. Employees and contract personnel designated by OST Deputy Special Trustees and/Equivalents (DST/Es) to perform critical functions listed above. (Such employees are authorized to work only for that period of time in which they are performing excepted activities.)

IV. **OST Contingency Plan Core Team**

The OST Principal Deputy Special Trustee provides oversight and responsibility for implementing and adjusting the Contingency Plan to respond to the length of the lapse in appropriations and changes in external circumstances. OST’s Chief of Staff serves as the Team Lead for the Contingency Plan Core Team. The OST Contingency Plan core team consists of the:

- Acting Special Trustee
- Chief of Staff
- Director, Trust Operations

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<tr>
<th>TOTAL NUMBER OF OST EMPLOYEES (AS OF 12/06/18)</th>
<th>FURLoughed (includes On-Call Excepted – 106)</th>
<th>Initial Exempt</th>
<th>Initial Excepted</th>
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V. OST COMMUNICATIONS

With regard to a projected shutdown and in the event of lapsed appropriations, the OST will keep employees fully informed of developments, as known, that affect the status of their employment. If shutdown is unavoidable, the OST will follow this Contingency Plan in preparing for an orderly suspension of the OST operations and the maintenance of excepted functions. In accordance with OMB Frequently Asked Questions (FAQ) documents issued in April 2011 and December 2011, Agencies should make every effort to prepare in advance of a lapse so that orderly shutdown activities are minimized.

Twenty-four (24) hours prior, OST will:

- Advise all employees and contractors of any developments and final guidance provided by OMB.
- Prepare and distribute furlough letters and supplementary information to DST/Es, division chiefs, branch chiefs, and managers or their designees.
- Advise all employees and on-site contract personnel to report to duty the next business day after the shutdown or upon returning from scheduled leave for instructions and to engage in shutdown activities. It is anticipated that the majority of OST employees will complete their shutdown responsibilities in four (4) hours or less, but a small number of employees may require eight (8) to sixteen (16) hours. Furloughed employees will need to provide necessary notices and contact information, secure their files, complete time and attendance records, and otherwise make preparations to preserve their work.
- Determine which contracts may continue to operate and notify contractors of their status during the shutdown. For fully obligated contracts, the administrative functions normally performed by government employees (the contracting officer, the COR, and other contract administration) with respect to that contract CANNOT continue. However, in those situations the contractor CAN continue performance of fully obligated contracts if continued supervision or support by government personnel is not critical; for example, the contractor will be able to perform without government employee’s assistance, approvals, acceptance or similar support. OST will comply with all guidance provided from Interior, Office of Acquisition and Property Management in conjunction with the DOI Interior Business Center, Acquisition Services Directorate with regard to contractors supporting critical OST functions.
- Supervisors will request from their employees, and employees may voluntarily provide contact phone numbers and/or email addresses for internal communication purposes only. This information is subject to Privacy Act laws and regulations.
- Inform all OST employees to monitor local and national news reports via television, radio and newspaper for federal appropriation updates and when employees must return to work.
• Advise all employees that furloughed employees are prohibited from performing work outside of the office, including the use of mobile devices or remote computer connections. Further, the OST will not rely on using mobile devices or home access to work emails for providing notices of when to return to work. Subject to the supervisor’s discretion, he/she may direct their employees to turn in their mobile devices until they return to the office.

VI. OST TRAVEL

With respect to temporary duty travel away from their normal duty station at the time of the appropriation lapse, the OST will determine and apply reasonableness and practicability based on the length of the assignment and the time required for return travel, compared to the anticipated length of the lapse, so as to minimize the burden.

VII. AUTHORITIES

The American Indian Trust Fund Management Reform Act of 1994 (Public Law 103-412) requires the Secretary of Interior to account for the daily and annual balances of Indian Trust Funds deposited or invested.

Section 103 of the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103-412, Title I, Sec. 102, Oct. 25, 1994, 108 Stat 4240) requires the investment of individual Indian monies and deposit of interest in the individual Indian trust accounts.

Positions required to meet the requirements of the American Indian Trust Fund Management Reform Act of 1994 (Pub. L. 103-412, Title I, Sec. 102, Oct. 25, 1994, 108 Stat 4240) are identified as excepted. Carryover funds, when apportioned, will be used to fund these positions in the event of a Government shutdown.