



THE DEPUTY SECRETARY OF THE INTERIOR
WASHINGTON

FEB 24 2011

Memorandum

To: Solicitor
Inspector General
Assistant Secretaries
Heads of Bureaus and Offices

From: Deputy Secretary

Subject: Contingency Planning
(Due Date: Monday, February 28, 2011)

As you know, we are currently operating under a continuing resolution that funds Government operations through midnight Friday, March 4, 2011. The House has passed a full year continuing resolution and the Senate is at work on a continuing resolution to fund operations for the remainder of the fiscal year. We are confident the House and Senate will take action to continue funding and there will be no lapse in appropriations.

However, we want to be prudent and ask that you prepare a draft contingency plan that would be used in the event there is a gap in availability of appropriations. Contingency plans are required by Office of Management and Budget Circular A-11. Consistent with that guidance and as instructed in Attachment A, please submit a contingency plan to the Office of the Assistant Secretary – Policy, Management and Budget, by close of business Monday, February 28, 2011.

Your plan should identify the essential activities that would continue to operate and personnel that would be on duty in case there is a lapse in appropriations. For purposes of this request, please plan on a 3 week period of operations. If necessary, you may want to plan for an immediate phase with incremental reductions in operations and staffing over time. Please report programs and individuals that would continue to operate, your rationale for the continuation of these activities, and the source of funding you anticipate would fund these activities and individuals. Attachment B includes guidance on funding availability for your reference. Attachment C includes a set of questions and answers and Attachment D is a sample format (the format is not required but suggested).

Please keep this information as limited in distribution as possible so as to avoid causing undue concern among employees. In the event there is a need to shutdown, we will have a communications strategy to inform employees. You can tell employees we are making contingency plans and we will know more before March 4th about the potential for appropriations. We will keep you informed about action on the 2011 continuing resolution.

If you have questions, please contact Deputy Assistant Secretary – Budget, Finance, Performance and Acquisition Pam Haze at (202) 208-4775. Thank you for your attention to this request for updated contingency plans.

Attachments

CONTINGENCY PLANNING FOR A POSSIBLE LAPSE IN APPROPRIATIONS

Issue: Office of Management and Budget Circular A-11 (Section 124) requires maintenance of plans for operating in the case there is a lapse in appropriations.

Background: This guidance provides direction for the preparation of contingency plans for the organizations that report to you.

Contingency Plan for Lapse in Appropriations: By February 28, 2011, each bureau and office director should review and update contingency plans. The plans should be developed based on facility-level COOP plans, which designate ongoing essential operations and personnel. The plan should include the following:

- **General:** Plans are to continue essential activities and functions set out below. All other activities that would be supported by FY 2011 annual appropriations are to be suspended in the case of a lapse of appropriations. Staffing requirements should be based on the number and skills of personnel needed to perform essential functions. Your plan should also outline the activities that would continue that are funded by mandatory and carryover funding.
- **Essential Activities:** The Primary Mission Essential Functions (PMEFs) and Essential Support Activities (ESAs) of the Department are contained in the following tables. The DOI COOP plan defines additional Mission Essential Functions (MEFs) as they relate to bureau and office programs and functions. PMEFs, MEFs, and ESAs are not to be used as the sole determination factors for activities to be continued during a lapse in funding, but as a starting point and should be interpreted narrowly as they are related to criticality and used to identify essential personnel.

DOI's Primary Mission Essential Functions

No.	Primary Mission Essential Function
1.	Coordinate Federal emergency response and provide emergency response capability on Department of the Interior administered public lands and work with tribes to coordinate same on tribal and individually owned Indian lands
2.	Provide essential law enforcement and critical infrastructure protection services on Department of the Interior administered public lands and on tribal and individually owned Indian lands
3.	Provide emergency response and recovery support to the Nation including: 1) firefighting, 2) search and rescue, 3) detection and analysis of zoonotic threats in wildlife, 4) detection of threats in water supplies, 5) essential geospatial data and analysis, and 6) geological hazard warnings
4.	Ensure continued critical intergovernmental relations with and support to Insular Areas (U.S. territories and Freely Associated States) and tribes
5.	Provide water and electric power for critical use and expedite energy/mineral production

DOI's Essential Support Activities

No.	Essential Support Activities
1.	Provide finance and accounting activities, including payroll, purchasing, and reporting
2.	Provide acquisition and logistics support for emergency activities
3.	Coordinate emergency travel support as needed to execute mission essential functions
4.	Continue vital human resources operations including emergency hiring and employee assistance
5.	Communicate with DOI employees, providing information on the status of departmental and bureau operations
6.	Provide timely and accurate information to the media and the public detailing the impact of incidents on DOI lands and facilities as well as DOI response activities
7.	Operate and maintain facilities required to execute MEFs
8.	Provide occupational safety and health guidance and support for emergency responders and other employees
9.	Account for status of the workforce and recall employees to duty, as required
10.	Protect and provide access to vital records to support emergency operations and to fulfill legal, financial, and trust management responsibilities of the Department
11.	Provide communications and information technology service to support execution of the Department's Mission Essential Functions
12.	Interpret legal authorities and provide legal services to departmental officials
13.	Provide legal services and policy guidance in connection with the formulation of proposed legislation
14.	Coordinate approval of emergency funding transfers, supplemental, and reprogramming requests to ensure funding is in place to sustain emergency operations
15.	Collect, assess, analyze, process, display, and disseminate incident and recovery related information to perform critical missions, support decision making, and maintain situational awareness

- Essential Personnel:** It is intended that only those personnel who are absolutely required to perform essential functions are to report for duty in the event of a lapse of appropriations. Essential personnel will be asked to stay on duty in the event of a shutdown and will not be furloughed. Other personnel should report to work under the conditions of their normal tour of duty unless they are told otherwise. In the absence of specific guidance they should report to complete shutdown. Employees that are not deemed essential will receive furlough notices. Time and attendance information will be reported consistent with the status of each individual for tracking purposes.

The designation of essential personnel who would need to work during a shutdown include personnel performing duties involved in National Defense, public health and safety or other crucial operations. **The Emergency Response Official designation on a Federal ID card is not necessarily a factor in determining essential personnel.** OPM has defined essential Government services and personnel as follows (in some cases these overlap the mission essential functions listed above):

- Providing for national security, including the conduct of foreign relations essential to the national security or the safety of life and property;
- Providing for the benefit payments and the performance of contract obligations under no-year, multi-year, or other funds remaining available for those purposes;
- Conducting essential activities to the extent that they protect life and property, including:
 - Medical care of patients;
 - Activities essential to ensure continued public health and safety including safe use of food, drugs, and hazardous materials;
 - Continuance of air traffic control and other transportation safety functions and the protection of transport property;
 - Border and coastal protection and surveillance;
 - Protection of Federal lands, buildings, waterways, equipment, and other property owned by the United States;
 - Care of prisoners and other persons in the custody of the United States;
 - Law enforcement and criminal investigations;
 - Emergency and disaster assistance;
 - Activities that ensure production of power and maintenance of the power distribution system;
 - Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury; and
 - Activities necessary to maintain protection of research property.

DOI augments this direction and defines essential personnel to include the following:

- All Presidentially-appointed, Senate-confirmed (PAS) personnel and no more than one support staff for each;
- Minimum personnel necessary to assist in resolving outstanding issues in the FY 2011 appropriations bills;
- Minimum personnel needed to provide security and safety/life-support functions in the Main Interior Building and any other building where employees are at work or visitors or non-employees are present (e.g. commercial activities);
- Minimum personnel needed to provide support services for employees and systems (e.g. email, network support, etc.);
- Minimum personnel needed to communicate with employees and the public about the status of Department of the Interior headquarters activities; and
- Any minimum personnel needed to perform other approved essential functions as determined by the Assistant Secretary – Policy, Management and Budget.

Non-Appropriated Programs: Personnel and activities that are funded by carryover and/or mandatory authorizations that are not subject to the annual appropriations process may continue to

operate as normal. These programs and employees should be clearly identified as exempt from shutdown. Each bureau and office will need to resolve issues relating to the support of these programs by personnel that are funded through annual appropriations.

Grants, Contracts, and Cooperative Agreements: Bureaus need to evaluate existing contracts and identify necessary scenarios as follows:

- Contracts may continue — Existing contracts that have obligated amounts remaining or are funded through mandatory or carryover funding that would continue without interruption.
- Contracts to consider for suspension or stop-work –
 - Contracts for goods or services that are not mission essential or otherwise excepted;
 - Contracts for goods and services that require the oversight or presence of personnel that are not deemed essential (consider whether you can or should have contractor personnel on site with no Federal career staff present);
 - Contracts for support services, such as janitorial services, food services, or grounds maintenance services, in a facility that is closed, even if they have been forward funded;
 - Please consider the need to designate essential contracting personnel in order to issue stop work orders or partial terminations for the convenience of the Government; to descope contracts and necessary justification and supporting documentation; and to support management of contracts supporting exempted activities.
- New contracts – Contracts should not be initiated during a lapse in appropriation unless they are for goods and services that are deemed essential based on the definitions above. Essential contracts and work orders could be issued, however, contractors would not be paid until appropriations are enacted.
- Grants – Bureaus and offices need to evaluate existing grants to determine whether the grantees can continue to perform without being able to draw down funding, because a Federal employee is not available to process or approve their draw-down request.
- Cooperative Agreements – Cooperative agreements should be considered for suspension until the necessary Government personnel who provide the substantial involvement of the Government for the agreement are available.

Operations that Impact the Private Economy: Direction on the definition of essential activities that would continue in the absence of appropriations was refined during shutdowns in the 1990's. In an August 16, 1995, memorandum to the Director of OMB, the Department of Justice Assistant Attorney General opined on the need to consider the impact of Government functions on the private economy. An example is the need to define air traffic controllers as essential in order to ensure the continued operation of commercial air travel. Thus, within a short-term lapse in appropriations, your determination of essential activities should include continued operation of functions critical to the private economy.

Volunteers: Voluntary services may not be accepted.

Travel and Relocation: in the absence of appropriations, all nonessential travel would be terminated. Bureaus and offices should be prudent about arranging travel in anticipation of the expiration of the Fourth Continuing Resolution, which takes place on midnight March 4, 2011. Employees should be prepared to return to their duty station in a timely manner if there is a lapse in appropriation and the shutdown plan is activated.

Time and Attendance/Tracking Costs: In the event of a lapse of appropriation, bureaus and offices will be expected to report on the expenses incurred as a result of essential activities, costs for shutdown, and impacts of forgone activities.

FUNDING GUIDANCE RELATING TO A LAPSE IN APPROPRIATIONS

Issue: This guidance provides direction regarding appropriations.

Background: In the absence of an appropriation or continuing resolution, the Department has limited authority to incur obligations. Obligations may be incurred against available balances from prior year appropriations. In the event that there are no available balances, obligations may be incurred on a restricted basis. The Attorney General of the United States issued an opinion on April 25, 1980, that the language and legislative history of 31 United States Code (U.S.C.) 1341, the Anti-Deficiency Act, unambiguously prohibits Federal officials from incurring obligations in the absence of appropriations.

Direction: In the absence of appropriations for the new fiscal year, the Department may incur no obligations that cannot lawfully be funded from prior year appropriations, unless such obligations are otherwise authorized by law. If no unobligated amounts from unexpired appropriations exist, the Department may incur obligations, under the authority of 31 U.S.C. 1342, only for emergencies involving the safety of human life or the protection of property. Funds will not be disbursed to liquidate these obligations until an appropriation is enacted.

The decision to continue essential activities during a no-funds situation without available prior year appropriations depends on the circumstances at that time. These activities have been identified on a general basis and not every action within an essential activity is necessarily one that protects life or property. Bureaus and offices with annual appropriations and no available prior year balances should restrict the number of essential personnel in preparing their contingency plans to the greatest extent possible as these obligations will be subject to scrutiny.

A. Bureaus and offices should consider the following in their contingency plan:

- All activities not approved as essential must begin an orderly shutdown when all funds available for obligation are exhausted.
- The timetable for shutdown depends on the type and amount of funding carried over and available to the organization, function, program, or activity.
- Essential activities must be performed at the minimum level possible.
- The minimum number of staff and support services may also be maintained to perform each of these essential activities.

B. Multi-year Appropriations may be available to continue operations:

- Each departmental element with funds available and authority to obligate should exercise prudence in making new obligations.
- Carryover funds from prior fiscal years should be used to forestall, as long as possible, interruptions in essential activities funded by multiyear or no-year appropriations.
- Payroll and related fixed costs must be given the highest priority.
- Continuation of non-essential activities funded by no-year or permanent appropriations must be considered in light of supporting services required, such as security or building operations, that would draw down available balances needed for essential activities.

- C. Annual Appropriations are not available in the event there is a lapse in appropriations:
- Unobligated balances in annual appropriations expire for purposes of incurring new obligations at the end of the fiscal year or with expiration of a continuing resolution.
 - In the absence of available budget authority, payroll obligations for essential personnel maybe obligated, but not dispersed under authority of 31 U.S.C. 1342. Disbursement of funds to compensate individuals that were deemed essential takes place once Congress enacts an appropriations bill that provides for this.
 - Bureaus and organizations seeking to reprogram funds within appropriation accounts to continue support for essential activities should consult first with the Department's Office of Budget.
 - The Department's authority to transfer funds between appropriation accounts is limited to fire and hazardous response situations. This authority does not change in the event of a lapse in appropriations. Balances may not be transferred between accounts unless specifically authorized by law.

QUESTIONS AND ANSWERS

Question: In the event the contingency plan is activated, should employees report to duty?

Answer: All employees should report to work, unless otherwise notified. If the continuing resolution expires on a weekend, employees should report to their first scheduled tour of duty, unless otherwise notified. If there is a lapse in funding, employees will be notified if they should begin orderly shutdown activities or if they are essential and should continue to report for work and perform their activities.

Question: What constitutes orderly shutdown?

Answer: OMB guidance defines phase down activities as those which would occur during the first 3-4 hours of the workday.

Question: If an agency performed administrative servicing functions for another agency, can the servicing agency continue to operate in the event of a lapse of appropriations?

Answer: The servicing entity can continue to operate if the activities are funded by appropriations that are not experiencing a lapse in appropriations, i.e. carryover or mandatory funding. Excluding those aspects that are deemed essential, servicing activities funded by appropriations that lapse should undergo an orderly shutdown.

Question: Why do activities have to cease when there is a lapse in appropriations?

Answer: In the event of a lapse of appropriations, incurring obligations that are not essential could represent a violation of the Antideficiency Act.

Question: Can employees volunteer if there is a lapse in appropriations?

Answer: No. Employees' willingness to work in the absence of an appropriation creates a potential expectation that they would be compensated at some future date.

Question: How does shutdown affect contracts?

Answer: Multi-year or other contracts, the continuation of which would require the obligation of new appropriated funds, could not proceed. Contracts obligated with previous years' funds remain valid since they do not require a new obligation. No contract extension, exercise of renewal option, or other new contract may be signed if it would require obligation of appropriated funds. During a lapse in appropriation, a contract may be awarded to support an emergency activity (e.g. minimal necessary guard services to protect a facility), but the contractor cannot be paid until appropriations are enacted.

Question: Can Federal employees be deemed essential to make payments for awards already awarded?

Answer: No, employees performing these duties would not be deemed essential and would be furloughed.

Question: If payments are late, would the Government incur interest penalties under the Prompt Payment Act? Doesn't this additional cost permit an agency to process payment requests to protect Government property?

Answer: If funds are not available due to a lapse in appropriation and payments are late, the Government would be obligated to make late penalty payments to contractors and grantees to compensate them. The payments would not be processed and disbursed until an appropriation is enacted.

Question: To what extent is it acceptable to process payments for contracts or grants used to support emergency activities?

Answer: There may be limited circumstances where an agency may make a determination that excepting an individual from furlough to process payment is necessary because failure to process the payment would result in an imminent threat to life, property, national security, or would prevent or significantly damage the execution of funded functions. In those cases, an agency must make an affirmative finding that such circumstances exist and the employee would be exempted from furlough for the time period necessary to process the payment.

[Note: funding function refers to programs where budget authority is available for obligation, i.e., carryover or mandatory authority not subject to appropriation.]

FORMAT FOR BUREAU/OFFICE CONTINGENCY PLAN

A suggested format is provided for bureau/office contingency plans. Bureaus will likely have regional and local plans that provide direction for individual installations. For reporting to the Department, a summary plan that accumulates the personnel by installation or region will suffice. Bureau/office plans should detail the essential personnel that will be on duty at headquarters.

Part 1: Designation of Essential Programs/Activities:

<u>Essential Activities</u>	<u>Function</u>	<u>Justification for Essential Designation</u>
Program/activity	Title and Function	Describe why this activity is essential

Part 2: Designation of Essential Personnel:

<u>Essential Personnel</u>	<u>Function</u>	<u>Justification for Essential Designation</u>
Name of individual	Title and Function	Describe why this position is essential

Part 3: Activities/Personnel that would continue:

<u>Name of Activities</u>	<u>Function</u>	<u>Funding Source</u>
Program/activity	Title and Function	Mandatory or Carryover funding source