



SOCIAL SECURITY

Office of Budget, Finance, Quality, and Management

September 15, 2015

Mr. Shaun Donovan
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Mr. Donovan:

This letter sets forth the contingency plan of the Social Security Administration (SSA) to continue activities during a potential lapse in Federal appropriations and resulting partial shutdown of agency operations. Our 2015 contingency plan updates the plan we submitted to your office in September 2013.

We are excepting almost 56,000 employees from furloughs under applicable exceptions to the Antideficiency Act. The functions of the excepted employees will remain largely the same as those described in our 2013 plan, with the addition of support staff for the administrative law judges in our hearings operation. Because of the fluidity of the current budget situation, we will reevaluate and adjust our plan as necessary. I have enclosed a chart setting forth our estimated total employee count by agency component and a brief description of the functions excepted employees from each component will perform in the event of a partial shutdown. This letter further explains our legal basis for conducting those functions during a partial shutdown.

During a lapse in appropriations, we must cease all activities for which our annual funding has expired, unless an exception to the Antideficiency Act applies. *See* 1980 and 1981 Opinions from Attorney General Civiletti (1980 and 1981 Opinions). Three exceptions apply to our work: the wind-down activities exception, the protection of life and property exception, and the Necessary Implication exception. *See id.* With respect to the wind-down exception, Attorney General Civiletti explained that, “[F]ederal officers [may] incur those minimal obligations [during a lapse in appropriations] necessary to closing their agencies.” 1980 Opinion. In 1981, Attorney General Civiletti advised that Federal agencies may obligate funds during a lapse under the protection of life and property exception by showing a “reasonable necessity” of the funded activity to ensure the safety of human life or protection of property. 1981 Opinion. Attorney General Civiletti also opined that the Necessary Implication exception allows a limited number of Government functions funded through annual appropriations to continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions continue as well. *Id.*

In 1995, the Department of Justice, Office of Legal Counsel (OLC), issued a memorandum specifically noting that the activities necessary for disbursing Social Security benefits that “operate under indefinite appropriations” are examples of activities permitted by necessary implication. Further, the 1995 OLC memorandum extended the Necessary Implication exception to those functions performed by one agency necessary to support the funded functions of another agency.

Funding for the programs under Titles II, XVI, and XVIII of the Social Security Act will continue, even in the event of a lapse in appropriations. Indefinite trust funds supply Title II and Title XVIII benefits. General revenues fund Title XVI payments. However, the Consolidated and Further Continuing Appropriations Act, 2015 funds those payments through the first quarter of Fiscal Year 2016. Because there is funding to pay these benefits, the Necessary Implication exception allows us to perform those activities needed to ensure that benefits are accurately and timely paid, despite a lapse in appropriations. Our continuing functions related to making accurate payments during a lapse in appropriations is consistent with our September 2013 plan and is legally justified under the 1981 Opinion that permits us to “continue the administration of the program[s] to the extent of the remaining benefit funding.”

The enclosed charts detail the critical functions we would continue during a lapse in annual appropriations lasting between one and five days. Should a partial shutdown last longer than five days, we would reevaluate the number of excepted employees performing such functions and possibly increase the number of excepted employees as we did during the October 2013 lapse. Under the Necessary Implication exception, we will except only those employees critical to our direct-service operations and those employees whose work and oversight are critical to support those operations. Specifically, with respect to the Office of Disability Adjudication and Review (ODAR), we will except additional staff this year, including decision writers and support staff for our administrative law judges. In the October 2013 lapse, we increased the number of ODAR excepted employees after a period of time when it became evident that we could not effectively carry out the critical function without additional staff. We will also retain a limited number of SSA employees and necessary law enforcement agents from our Office of the Inspector General under the protection of life and property exception. We anticipate allowing employees to conduct orderly wind-down activities for no more than four hours on the first day of a lapse in appropriations consistent with the guidance of your office.

If we have a lapse in appropriations, we will encourage the disability determination services (DDS) to continue limited services during a lapse under the Necessary Implication exception with the understanding that we will reimburse the DDSs for their work once we receive funding. However, because DDS employees are State employees, we cannot direct the States to except or furlough their employees during a lapse. Each State will have to determine whether it can maintain limited DDS operations and pay its employees during a lapse

Once we receive restored appropriations, we will resume normal operations by:

- Notifying employees that the shutdown furlough has ended and that they are to return to work on a specified date;

- Providing supervisors with flexibility regarding leave and attendance issues if employees encounter problems returning to work on the day specified;
- Ensuring that IT systems are up and running smoothly for employees returning to work; and
- Resuming program activities related to grants and contracts and other fiscal and financial matters.

We will keep your office informed about any other actions required to resume normal operations after a shutdown.

We are committed to ensuring that, consistent with the constraints of a partial shutdown, we conform with applicable law, regulation, and guidance, yet continue to serve the American people in these difficult times.

Sincerely,

A handwritten signature in blue ink that reads "M. Elizabeth Reich". The signature is written in a cursive, flowing style.

M. Elizabeth Reich
Acting Deputy Commissioner
for Budget, Finance, Quality, and Management

Enclosures

cc:

Carolyn W. Colvin, Acting Commissioner
Andy Liu, General Counsel

SSA CONTINGENCY PLAN – 2015

Status of Service Activities During a Funding Lapse

To promote service to the public and fiscal responsibility, we will implement the following plans:

Operations Field Offices (FO)	
Continued FO Activities	Discontinued FO Activities
<ul style="list-style-type: none"> ▪ Application for benefits (including appointments; limited data exchanges and record corrections, including earnings, for mandatory benefits) ▪ Request for appeals (reconsiderations, hearings, Appeals Council) ▪ Normal post-entitlement actions (change of address, Supplemental Security Income living arrangement changes, non-citizen verification/changes, direct deposit, death inputs, etc.) ▪ Non-receipts and critical payments ▪ Payee changes ▪ Critical information technology (IT) support for daily processing activities 	<ul style="list-style-type: none"> ▪ Original and replacement Social Security cards ▪ Benefit verifications ▪ Earnings record corrections and updates ▪ Payee accountings ▪ Completing program integrity workloads (redeterminations, continuing disability reviews (CDRs), overpayments) ▪ Prisoner activities ▪ Requests from third parties for queries ▪ Freedom of Information Act (FOIA) requests ▪ IT enhancement activities, public relations, and training ▪ Replacement Medicare cards

State Disability Determination Services (DDS)	
Continued DDS Activities	Discontinued DDS Activities
<ul style="list-style-type: none"> ▪ Initial claims, including terminally ill, compassionate allowances, quick disability determinations, dire need, and wounded warriors ▪ Reconsiderations ▪ Critical IT support for daily processing activities 	<ul style="list-style-type: none"> ▪ CDRs ▪ Assistance requests for hearings ▪ End-of-line quality assurance reviews, IT enhancements activities, public relations, and training

Offices of Disability and Adjudicative Review (ODAR)	
Continued ODAR Activities	Discontinued ODAR Activities
<ul style="list-style-type: none"> ▪ Hearing cases ▪ Deciding cases ▪ Drafting relevant notices for claimants ▪ Preparing electronic records for claimants and representatives ▪ Identifying missing evidence and developing the record ▪ Exhibiting case files for Administrative Law Judges ▪ Decision-writing ▪ Screening cases for On-the-Record decisions ▪ Scheduling hearings 	<ul style="list-style-type: none"> ▪ Hearings appeals ▪ Docketing and tracking new cases ▪ Quality assurance review activities ▪ Adding new medical and vocational experts to blanket purchase agreements ▪ Processing bias complaints from claimants and representatives ▪ Responding to congressional inquiries regarding support for casework on constituent hearings and appeals ▪ Conducting all activities dependent on Operations support, including enrollment of appointed representatives for eFolder access ▪ Responding to FOIA requests and public inquiries ▪ Providing training and IT support or enhancements for hearing offices

SSA Staff On Duty						
Exceptions and Furloughs for a Government Shutdown Lasting 5 Days or Less						
Estimated Numbers as of 9/11/15						
Office	Total (Revised)	Required for Wind-down	Exceptions	Authority for Exceptions	Furloughs	Explanation
Actuary	58	58	2	Necessary implication	56	Programmatic actuarial support
Budget, Finance, Quality, and Management	2,042	2,042	653	Necessary implication - 574, Safety of Human Life and Protection of Property - 28	1,389	Health and safety, budgetary support, benefit payment certification, and front-line work
Chief Strategic Officer	60	60	1	Necessary implication	59	Executive leadership and support
Commissioner	50	50	7	Necessary implication - 5, Senate-confirmed Presidential Appointee - 1	43	Executive leadership and support
Communications	175	175	4	Necessary implication	171	Executive leadership, Press Office, and web support
Disability Adjudication and Review	11,366	11,366	9,817	Necessary implication	1,549	Executive leadership, ALJs, Hearing Office staff, and support staff
General Counsel	798	798	70	Necessary implication	728	HQ and Regional Offices for legal support and litigation
Human Resources*	467	467	23	Necessary implication	444	Executive leadership, labor relations support, and personnel policy
HR - Reasonable Accommodations**	225	225	215	Necessary implication	10	Support for excepted employees with disabilities
Inspector General	544	544	294	Safety of Human Life - 293, Senate-confirmed Presidential Appointee - 1	250	Presidential Appointee, IT Infrastructure and law enforcement
Legislation & Congressional Affairs	70	70	3	Necessary implication	67	Communications with Congress and hearing preparation
Operations	47,302	47,302	44,361	Necessary implication	2,941	Front-line work
Retirement & Disability Policy	622	622	6	Necessary implication	616	Executive leadership, IT server and COTR support (BOND and Ticket to Work)
Systems/Chief Information Officer	3,246	3,246	372	Necessary implication	2,874	Critical IT infrastructure and programmatic support
Total	67,025	67,025	55,828		11,197	

Note: Table excludes GSA Delegations count of 213, because it is funded with no-year money. Advisory Board count of 12 is also not included.

*For extended furlough implications, OHR number will fluctuate. Eight of the 23 excepted employees are to address payroll closeout and would be furloughed and brought back intermittently depending on the length of the furlough. As the relevant pay period ends on October 2, we would require the services of these eight employees through October 8 and then we could furlough them with the need to bring them back (October 19 – 22) if the furlough extended through the end of the next pay period (October 16).

**We are researching whether six of the ten furloughed employees should be excepted as well because they provide accommodations to employees in Systems and ODAR. (We have not included them in the exception count at this time.)