



SOCIAL SECURITY

Office of Budget, Finance, and Management

September 25, 2018

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

Dear Mr. Mulvaney:

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.

We are excepting about 53,000 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 most recent plans, with the addition of excepting work associated with the issuing of original and replacement Social Security number cards; processing cases related to the beneficiary-initiated reinstatement of benefits; docketing and tracking cases; and quality reviews of favorable decisions related to the timely and accurate payment of benefits to the public. We are also excepting additional staff to support our information technology (IT) programmatic applications and infrastructure, including those activities supported by carryover funds for our IT modernization, and our fraud prevention activities related to the timely and accurate payment of benefits to the public. As the 2018 appropriation extended the period of availability for dedicated program integrity funds to 18 months, any program integrity funds carried over would be available during a lapse in appropriations beginning October 1, 2018. 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, at this time, the agency has sufficient funding available to carry out these functions in the event of a lapse of annual appropriations. 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 previous contingency 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 2013 shutdown. 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 Hearings Operations (OHO) we will except decision writers and support staff for our administrative law judges. 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 received 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 "Michelle King". The signature is stylized with a large, looped initial "M" and a cursive "King".

Michelle King
Deputy Commissioner
for Budget, Finance, and Management

Enclosures

cc:

Nancy Berryhill, Acting Commissioner
Asheesh Agarwal, General Counsel

SSA CONTINGENCY PLAN – FY 2019
Status of Service Activities During a Funding Lapse

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

Operations Frontline Activities	
Continued Activities	Discontinued Activities
<ul style="list-style-type: none"> ▪ Application for benefits (including appointments; limited data exchanges and record corrections, including claims-related earnings, for mandatory benefits) ▪ Request for appeals (reconsiderations, hearings, Appeals Council) ▪ Post-entitlement actions (change of address, Supplemental Security Income living arrangement changes, non-citizen verification/changes, direct deposit, death inputs, processing of remittances for overpayments and administrative fees, etc.) ▪ Non-receipts and critical payments ▪ Payee changes ▪ Direct contact reinstatement of benefits ▪ Original and replacement Social Security cards ▪ Prisoner activities—beneficiary-initiated reinstatement of benefits only ▪ Completing program integrity workloads (redeterminations and continuing disability reviews (CDR)) due to the availability of 2018 appropriations through March 2019 ▪ Critical information technology (IT) support for daily processing activities 	<ul style="list-style-type: none"> ▪ Benefit verifications ▪ Earnings record corrections and updates ▪ Payee accountings ▪ Prisoner activities--suspension ▪ Requests from third parties for queries ▪ Freedom of Information Act (FOIA) requests ▪ IT enhancement activities, public relations, and training ▪ Replacement Medicare cards ▪ Overpayments processing

State Disability Determination Services Activities	
Continued Activities	Discontinued 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▪ Completing program integrity workloads (redeterminations and CDRs) due to the availability of 2018 appropriations through March 2019▪ Assistance requests for hearings	<ul style="list-style-type: none">▪ End-of-line quality assurance reviews, IT enhancements activities, public relations, and training

Hearings and Appeals Activities	
Continued Activities	Discontinued 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 ▪ Critical IT support for daily hearings ▪ Hearing appeals ▪ Deciding appeals ▪ Docketing and tracking new cases ▪ Completing program integrity workloads (hearing appeals of redeterminations and CDRs) due to the availability of 2018 appropriations through March 2019 ▪ Adding new medical and vocational experts to blanket purchase agreements ▪ Quality assurance review activities related to allowances 	<ul style="list-style-type: none"> ▪ Quality assurance review activities other than those related to allowances ▪ 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 August 18, 2018						
Office	Total	Required for Wind-down	Exceptions	Authority for Exceptions	Furloughs	Explanation
Actuary	57	57	1	Necessary implication	56	Respond to shutdown-related inquiries as needed
Analytics, Review, and Oversight	2,086	2,086	1,415	Necessary implication	671	Detecting, deterring, and mitigating fraud, facilitation and support of payment for potential allowances, appeals work
Budget, Finance, and Management	931	931	258	Necessary implication, safety of human life and protection of property	673	Health and safety; budget and contract support, benefit payment certification, protection of property
Commissioner	25	25	4	Necessary implication	21	Executive leadership
Communications	155	155	3	Necessary implication	152	Press office and web support as needed
Hearings Operations	9,664	9,664	9,012	Necessary implication	652	Administrative law judges, hearing office staff, support staff
General Counsel	723	723	100	Necessary implication	623	Headquarters and regional offices for legal support and litigation
Human Resources	412	412	13	Necessary implication	399	Payroll, labor relations, benefits, and personnel policy support
HR - Reasonable Accommodations	203	203	198	Necessary implication	5	Accommodations under the Rehab Act to employees in DCO and DCHO who provide benefits to the public
Inspector General	493	493	268	Protection of life and property, Necessary implication	225	Special agents to protect life and property and those necessarily implicated by the activities of those special agents
Legislation and Congressional Affairs	54	54	2	Necessary implication	52	Communication with Congress
Operations	43,221	43,221	41,309	Necessary implication	1,912	Frontline work
Retirement and Disability Policy	533	533	4	Necessary implication	529	Policy support of payment of benefits and reimbursable work
Systems/Chief Information Officer	3,106	3,106	499	Necessary implication	2,607	Critical information technology infrastructure and programmatic support, cybersecurity
Total	61,663	61,663	53,086		8,577	

Notes:

- Advisory Board count of 12 is not included.
- Budget, Finance, and Management (177) and Operations (25) total and excepted staffing counts include delegations (202).
- Total staff on duty counts based on data through pay period ending 8/18/2018.