



SOCIAL SECURITY
Office of Budget, Finance, and Management

December 5, 2017

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. Our 2017 contingency plan is consistent with the plan we submitted to your office in September 2015.

We are excepting almost 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 2015 plan, with the addition of program integrity activities for our field offices and disability determination services (DDS) due to extended availability of our program integrity funds through March 2018. In past years, dedicated program integrity funds were available for 12 months. The 2017 appropriation extended the period of availability to 18 months, so any program integrity funds carried over would be available during a lapse in appropriations beginning October 1, 2017. 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 Appropriations Act, 2017, funds those payments through the first quarter of fiscal year 2018. 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 previous 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 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 black ink that reads "Michelle A. King". The signature is written in a cursive style with a large, stylized initial "M" that loops around the first part of the name.

Michelle King
Deputy Commissioner
for Budget, Finance, and Management

Enclosures

cc:

Nancy Berryhill, Acting Commissioner
Asheesh Agarwal, General Counsel

SSA CONTINGENCY PLAN – 2017
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 ▪ Completing program integrity workloads (redeterminations, continuing disability reviews (CDR)) due to the availability of 2017 appropriations through March 2018 	<ul style="list-style-type: none"> ▪ Original and replacement Social Security cards ▪ Benefit verifications ▪ Earnings record corrections and updates ▪ Payee accountings ▪ Prisoner activities ▪ Requests from third parties for queries ▪ Freedom of Information Act (FOIA) requests ▪ IT enhancement activities, public relations, and training ▪ Replacement Medicare cards ▪ Overpayments

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 ▪ CDRs 	<ul style="list-style-type: none"> ▪ Assistance requests for hearings ▪ End-of-line quality assurance reviews, IT enhancements activities, public relations, and training

Offices of Hearings Operations (OHO)	
Continued OHO Activities	Discontinued OHO 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 October 1, 2017						
Office	Total*	Required for Wind-down	Exceptions	Authority for Exceptions	Furloughs	Explanation
Actuary	57	57	2	Necessary implication	55	Programmatic actuarial support
Analytics, Review, and Oversight	2,134	2,134	513	Necessary implication	1,621	Executive leadership; oversight for detecting, deterring, and mitigating fraud; facilitation and support of payment for potential allowances
Budget, Finance, and Management	795	795	89	Necessary implication; safety of human life and protection of property	706	Health and safety; budgetary support; benefit payment certification
Commissioner	30	30	3	Necessary implication	27	Executive leadership
Communications	163	163	5	Necessary implication	158	Executive leadership; press office; web and social media support
Hearings Operations	9,863	9,863	9,569	Necessary Implication	294	Executive leadership; administrative law judges; hearing office staff; support staff
General Counsel	757	757	100	Necessary implication	657	Headquarters and regional offices for legal support and litigation
Human Resources**	414	414	25	Necessary implication	389	Executive leadership; payroll, labor relations, and personnel policy support
HR - Reasonable Accommodations	218	218	210	Necessary implication	8	Accommodations under the Rehab Act to employees in DCO and DCHO who provide benefits to the public
Inspector General	513	513	282	Protection of life and property (274); Necessary implication (8)	231	Special agents to protect life and property and those necessarily implicated by the activities of those special agents
Legislation and Congressional Affairs	63	63	3	Necessary implication	60	Communication with Congress and hearing preparation
Operations	44,445	44,445	41,772	Necessary implication	2,673	Front-line work
Retirement and Disability Policy	558	558	4	Necessary implication	554	Ensure continuity of ORDP's most critical functions
Systems/Chief Information Officer	3,226	3,226	300	Necessary implication	2,926	Critical information technology infrastructure and programmatic support
Total	63,236	63,236	52,877		10,359	

Note: Table excludes GSA Delegations count of 218, because it is funded with one-year and no-year money. Advisory Board count of 14 is also not included.

*Totals from the FY 2017 end-of-year FTP allocations as well as FTT and all other employees and updated to reflect the Office of Analytics, Review, and Oversight realignment transfers.

**For extended furlough implications, the Human Resources number will fluctuate. Eight (8) excepted employees are to address payroll closeout and would be furloughed and brought back intermittently depending on the length of the furlough.