



Department of Commerce

Plan for Orderly Shutdown Due to Lapse of Congressional Appropriations

September 27, 2021

Overview

Office of Management and Budget (OMB) Circular A-11, section 124, requires the Department to maintain a plan for agency operations in the absence of appropriations. This plan has been developed to meet the requirements of that section and has been broken out by the Department's primary operating units and the Office of the Secretary with each further broken down into their constituent operating units where relevant. Consistent with section 124, this plan may be modified whenever there is a change in the source of funding for an agency program or any significant modification, expansion, or reduction in agency program activities; upon receipt of additional guidance from OMB, the Office of Personnel Management (OPM), or the Department of Justice; or as circumstances otherwise warrant. At a minimum, the plan will be reviewed and updated every two years.

The Antideficiency Act restricts the conduct of business by agencies during a lapse of appropriations. The Antideficiency Act generally prohibits agency heads and their employees from making or authorizing expenditures or obligations in excess of appropriations; making or authorizing expenditures or obligations of funds required to be sequestered under Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985; and accepting voluntary services for the United States (US) or employing others to perform personal services in excess of that authorized by law, except in cases of emergency involving the safety of human life or the protection of property. Violations of the Antideficiency Act can result in administrative and criminal penalties.

In the event of a lapse in appropriations, the Department will immediately suspend regular agency operations. Certain functions and activities, however, may be continued even in the absence of an annual appropriations Act or continuing resolution. The principal guidance utilized by the Department on the types of functions and activities that may be continued during a lapse in appropriations is that contained in the Attorney General's opinion on the continuance of Governmental functions during a temporary lapse in appropriations dated January 16, 1981, as updated by an Office of Legal Counsel's memorandum dated August 16, 1995, related opinions of the Department of Justice, and the Office of Management and Budget's *Frequently Asked Questions During a Lapse in Appropriations*, available at <https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans>.

Accordingly, Department functions and activities that may be continued in the event of a lapse in appropriations are those that are:

1. Financed by a resource other than current year annual appropriations;
2. Expressly authorized by law to continue in the absence of appropriations;
3. Authorized by necessary implication to continue in the absence of appropriations;
4. Necessary to discharge the President’s constitutional duties and powers; and
5. Related to emergencies where there is a reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in performance.

In addition, the Department may undertake activities necessary to ensure an orderly shutdown of operations, which are implicitly authorized to continue on a short-term basis in the event of a lapse in appropriations. Unless otherwise noted herein for a specific operating unit, component, or office, such activities are expected to be completed within the first four hours on the first business day an operating unit, component, or office would otherwise be open after a lapse in appropriations occurs. In the event an individual performs a variety of excepted activities, the position will be recorded in this plan where the majority of work is performed.

Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	Varies by Program and Operating Unit
Total number of agency employees expected to be on board before implementation of the plan:	51,654
Total number of employees to be retained under the plan for each of the following categories:	
Compensation is financed by a resource other than annual appropriations:	1,087
Necessary to perform activities expressly authorized by law:	0
Necessary to perform activities necessarily implied by law:	569
Necessary to the discharge of the President’s constitutional duties and powers:	117
Necessary to protect life and property:	6,592
Brief summary of significant agency activities that will continue during a lapse:	
As detailed herein, the Department will continue to provide weather, water, and climate observations, prediction, forecasting, warning, and related support; select security and related oversight functions and law enforcement activities, including those for the protection of marine fisheries; fisheries management activities including quota monitoring, observer activities, and regulatory actions to prevent overfishing; water level data for ships entering US ports, critical nautical chart updates and accurate position information; export enforcement, including ongoing conduct of criminal investigations and prosecutions and coordination with other law	

enforcement and intelligence agencies in furtherance of national security; operation of the national timing and synchronization infrastructure as well as the National Vulnerability Database; assignment of radio frequencies to federal agencies for critical national security and public safety purposes; and all functions and activities of the decennial census operations of the US Census Bureau, the First Responder Network Authority, the National Technical Information Service, and the US Patent and Trademark Office to the extent prior year annual appropriations and the proceeds of offsetting collection authorities, as applicable, remain available to finance operations. The Department will also undertake necessary budget and finance operations required to support otherwise excepted activities during a lapse, such as the tracking of fiscal obligations incurred related to funds control support, and disbursing funds to liquidate obligations properly incurred against funds appropriated prior to the lapse in appropriations.

Brief summary of significant agency activities that will cease during a lapse:

Except as otherwise provided herein, the Department will cease operations related to: most research activities at the National Institute of Standards and Technology and the National Oceanic and Atmospheric Administration; services and activities provided by the Bureau of Economic Analysis, the Economic Development Administration, and the Minority Business Development Agency; most services and activities of the US Census Bureau and the International Trade Administration; assistance and support to recipients of financial assistance; and technical oversight of contracts whose performance will not be continued during the lapse to support otherwise excepted functions and activities of the Department.

Orderly Shutdown Procedures

Approximately two business days before a potential lapse in appropriations, the Department, in coordination with OMB, will notify employees of the status of funding and inform employees of their work and pay status under a lapse in appropriations. After OMB has communicated to the Department that appropriations have lapsed, the Department will commence an orderly shutdown of regular agency operations.

All employees are to report to duty on their next scheduled workday. At this time, employees will again be instructed of their status – i.e., whether they are to be furloughed or excepted from furlough for a short period to perform extended orderly shutdown activities or on an intermittent or ongoing basis to perform otherwise excepted functions. Employees will be provided with furlough notices, as appropriate. Furlough information, guidance, and the current status of Department operations will be posted to and maintained during a lapse on the Department’s website: <https://www.doc.gov>.

On their next scheduled workday, non-excepted personnel will report to duty for up to four hours to perform short-term, administrative functions to prepare for an orderly transition, including providing supervisors with personal contact information, setting out-of-office messages on their phones and email, cancelling meetings, completing time and attendance records as may be directed by the Department, securing files and personal belongings, and otherwise making preparations to preserve their work. Supervisors may authorize orderly shutdown activities to be performed by remote computer connections where appropriate. Supervisors are to take into consideration an employee’s previously scheduled leave, alternative work schedule (AWS) day

off, or holiday(s) that take place during the furlough period and generally allow the employee to complete orderly shutdown activities on the workday on which the employee had been scheduled to return to work. Clear instructions must be provided to employees with planned periods of absence regarding when they are expected to report to work to perform orderly shutdown activities.

Some furloughed employees may be recalled to duty in the event that circumstances arise requiring their performance of excepted functions and activities. This may include performing additional orderly termination activities if a lapse continues beyond a short period. In addition, employees initially excepted from furlough upon the commencement of a lapse subsequently may be furloughed in the event that circumstances change such that there are no longer excepted functions and activities remaining to be performed; if furlough of such employees is necessary, they will be provided with appropriate furlough notifications and will be required to perform orderly shutdown activities as described above.

The Office of Human Resources Management and servicing human resources offices will take all actions required by law or regulation to notify employee unions of furloughs caused by a lapse in appropriations as provided by guidance issued by the OMB and the OPM.

Beyond the initial period allotted for orderly shutdown of agency operations, Department facilities and information technology (IT) equipment and systems (including mobile devices and remote computer connections) may only be accessed by employees and contractors identified as necessary to support excepted activities that will continue during a lapse.

Travel authorizations issued prior to a lapse in appropriations will be cancelled on a rolling basis during the pendency of the lapse unless related to an excepted function or activity. Individuals on travel at the time a lapse ensues will be returned to their normal duty stations as soon as is reasonable and practicable.

Prior to a lapse, existing contracts will be reviewed by the relevant Department operating units and contracting officers, in consultation with the Office of the General Counsel as appropriate, to determine whether work by a contractor may be continued because day-to-day oversight by the contractor or access by the contractor to Government facilities, equipment, and systems is not required to continue performance or because the contractor will otherwise perform activities necessary to support excepted functions and activities of the Department. Contracting officers will issue appropriate stop work orders to totally or partially suspend performance by contractors in the event a lapse in appropriations occurs.

Resumption of Regular Operations

Upon the enactment of appropriations and the resumption of regular operations, operating units and Departmental offices may resume program activities consistent with all applicable Departmental operating procedures

Furloughed employees will be expected to return to duty. This will normally be the employee's next scheduled workday upon the resumption of regular operations. Supervisors may exercise

flexibilities if employees have problems returning to work on the day specified, such as authorizing the use of accrued annual leave, compensatory time off, or credit hours.

Furloughed employees are expected to monitor the status of the Department's operations to determine when they are to return to duty by visiting the Department's website at: <https://www.doc.gov>. Employees may also obtain information about returning to duty by calling the Department's Information Line (202-482-7400 or 877-860-2329) or visiting the OPM website operating status website: <https://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/current-status/>.

Operating units and Departmental offices will take steps upon the resumption of regular operations to prioritize activities as appropriate and establish clear channels for communications necessary for employee support, issue resolution, and escalation of issues. Working with the Department's Office of the Chief Financial Officer and Assistant Secretary for Administration, as appropriate, all operating units will make appropriate considerations for: (1) the accelerated execution of employee payroll processes; (2) the support of employee morale and welfare (including, for example, communicating the availability of employee assistance resources); (3) necessary contracting actions, including the identification of high-priority contract actions and sequence, the evaluation of equitable adjustments and other special circumstances, and the queuing of invoices for payment; and (4) the reestablishment of regular funds control and distribution consistent with the Department's Accounting Principles and Standards Handbook and other applicable guidance to ensure orderly financial operations, including that relative to payroll and benefits processes and payments, agency-specific priority payments, and timely reporting and record keeping to include standard monthly and quarterly reporting and information distribution.

Office of the Secretary (OS)

In the event of a lapse in appropriations, the Office of the Secretary will provide overall management and direction of functions authorized to continue during the lapse. This includes necessary oversight of and the provision of centralized services for excepted functions of all Departmental offices and operating units.

The Office of the Secretary has five Presidentially-appointed, Senate-confirmed (PAS) officers who, by virtue of their positions, are not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event any of these positions are either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having their functions and duties performed temporarily by other than a PAS official, then such individuals will be excepted from furlough as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable.

Immediate Office of the Secretary

Orderly shutdown activities not expected to be completed within one-half day include coordinating the orderly termination of activities involving the bureaus, briefing senior leadership on outstanding items, and cancelling meetings and any related travel and notifying stakeholders. These extended orderly shutdown tasks will be performed by approximately four individuals and will be completed within one to one and one-half days.

Minimally necessary activities to oversee and manage the excepted functions and activities of the Department, including stakeholder and public outreach related to ongoing excepted functions and activities, will be continued. These activities primarily support Department functions that relate to the safety of human life or the protection of property, but they may also support functions funded by other than current annual appropriations, the suspension of which would prevent or significantly damage the execution of the funded function or functions that relate to the discharge of the President's constitutional duties and powers.

Office of the Chief Financial Officer and Assistant Secretary for Administration (OCFO/ASA)

Orderly shutdown activities not expected to be completed within one-half day include identification of excepted contracts and coordination with Enterprise Services; suspension of contractual obligations; closing all Department mail centers; shutdown of human resources management operations and systems; and administrative tasks related to the suspension of operations. These extended orderly shutdown tasks will be performed by nine individuals and will be completed within one to five days.

Functions that will continue to protect life and property include building operations necessary to support excepted personnel at the Herbert C. Hoover Building (HCHB): oversight of security and intelligence matters; exercise of responsibilities to approve emergency acquisition

flexibilities and support excepted procurement activities; and human resource guidance to support excepted activities.

Functions to continue to carry out financial management activities implied by law include monitoring financial and administrative systems; performance of financial management activities necessary to liquidate obligations; and providing budget and resource management decision support to Departmental leadership.

Financial and budget operations, human resource, security, and other administrative services not otherwise excepted will continue to support other excepted activities until funds are no longer available.

If the lapse continues for an extended period of time, it may be necessary to recall staff to patch systems, to approve payments and invoices, to perform HCHB building safety scheduled maintenance, and to provide financial and administrative support for excepted Department and operating unit functions and activities unforeseen at the commencement of the lapse.

Office of the General Counsel (OGC)

Orderly shutdown activities not expected to be completed within one-half day include filing motions to stay matters in litigation, suspending or closing other legal matters, and administrative tasks related to the suspension of Office operations. These extended orderly shutdown tasks will be performed by approximately 18 individuals and will be completed within one to five days.

The Office will continue to provide the minimal level of legal support necessary for otherwise excepted activities of the Department and its operating units. This includes legal advice incidental to emergency functions that relate to the safety of human life or the protection of property, including that related to ongoing litigation unable to be suspended, export enforcement activities, and administrative law functions related to excepted Department activities. The Office will also provide legal support for emergency export licensing activities in support of the constitutional functions and duties of the President. Full legal support will be provided to those programs and operating units whose operations will continue due to having other than current year annual appropriations either to the extent such support has been funded or the suspension of which would prevent or significantly damage the execution of the funded programs.

In the event a lapse continues for an extended period, personnel may be recalled as necessary to provide litigation support for cases that cannot be suspended and to provide legal support for excepted Department and operating unit functions and activities unforeseen at the commencement of the lapse.

DOC and OS Office of the Chief Information Officer (OCIO)

Orderly shutdown activities not expected to be completed within one-half day include ensuring required notifications to employees are completed, briefing DOC and OS OCIO senior leadership on outstanding items, cancelling meetings, and notifying stakeholders. Extended

orderly shutdown tasks will be performed by approximately one individual and will be completed within two days.

DOC and OS OCIO will continue to execute and complete critical IT duties, responsibilities, oversight and coordination across Commerce in support of otherwise excepted activities and functions.

Support includes ensuring the IT network, telecommunications, national security and critical infrastructure, hardware, software and other IT services remain operational, safe, staffed, protected and functioning in a technically safe and sufficient manner. DOC and OS OCIO Staff will collaborate, communicate, and coordinate with bureau OCIO offices to address issues, problems, threats, and emergencies that may occur.

In the event a lapse continues for an extended period, staff may be recalled on an intermittent or full-time basis to ensure systems are patched, preventive maintenance tasks are accomplished, infrastructure operations and maintenance duties are completed, and to address and resolve contract issues and actions necessary to support otherwise excepted activities and functions.

Limited staff may also be recalled on an intermittent basis to execute administrative and business functions related to otherwise excepted activities and functions, address cyber security issues and threats, and to respond to critical actions, inquiries, and data-calls.

Enterprise Services Organization (ES)

Orderly shutdown activities not expected to be completed within one-half day include coordination with Department of the Treasury and Enterprise Services customers regarding the functionality of HRConnect during a lapse in appropriations. These extended orderly shutdown tasks will be performed by approximately two individuals and will be completed within one day.

ES will continue to provide procurement, pay and benefits, and personnel action request processing services to those operating units of the Department with a continuing source of funds to the extent funding otherwise remains available for ES. In the event funding for ES lapses, such services will be continued for components with a continuing source of funds to the extent failure to provide them would prevent or significantly damage the accomplishment of the funded activities of those operating units. ES will provide procurement and personnel action request processing services for operating units operating under other excepted basis to the extent incident and necessary to support the excepted function.

In the event a lapse continues for an extended period, personnel may be recalled to enable the processing of invoices for payments to vendors for obligations properly incurred against available funding.

Office of the Under Secretary for Economic Affairs (OUS-EA)

In the event of lapse in appropriations, all regular operations of the Office of the Under Secretary for Economic Affairs will cease. Orderly shutdown activities not expected to be completed within one-half day include delivering furlough notices and information to staff, securing the office space, briefing excepted personnel, and conducting all other necessary shutdown procedures and communications. These activities are expected to take no longer than one day and can be accomplished by one individual.

The Office has one Presidentially-appointed, Senate-confirmed (PAS) officer who, by virtue of their position, is not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event this position is either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having its functions and duties performed temporarily by other than a PAS official, then such individual will be furloughed.

Bureau of Economic Analysis (BEA)

Orderly shutdown activities not expected to be completed within one-half day include developing and delivering communications and guidance to staff and external stakeholders, delivering furlough notices to personnel, securing the physical office space, confirming Time and Attendance responsibilities have been completed, and ensuring the Bureau's website, phone-lines, and email addresses have been appropriately dispositioned for a lapse in appropriations. These extended orderly shutdown activities are expected to be performed by approximately ten individuals and will be completed within one day.

Most Bureau activities will cease in the event of a lapse in appropriations. The Bureau will continue the minimally necessary activities to ensure the safety and security of BEA physical, data, and IT resources and property.

In the event a lapse continues for an extended period, personnel may be recalled as necessary to conduct financial management activities necessary to liquidate obligations incurred prior to the lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Bureau of Industry and Security (BIS)

BIS administers and enforces export controls on dual-use and certain munitions items through the Export Administration Regulations (EAR) under the authority of the Export Control Reform Act (ECRA). Given the national security mission of BIS and its collaborative efforts with other national security, foreign policy, law enforcement, and the intelligence community agencies, certain agency functions must continue in the event of a lapse in appropriations.

BIS has three Presidentially-appointed, Senate-confirmed (PAS) officers who, by virtue of their positions, are not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event any of these positions are either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having their functions and duties performed temporarily by other than a PAS official, then such individuals will be excepted from furlough as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable.

Office of the Under Secretary for Industry and Security (OUS-BIS)

The OUS provides ongoing support to the Secretary of Commerce and leadership of bureau functions related to the protection of human life and property during a lapse in appropriations and other excepted functions. The Office of the Deputy Under Secretary has responsibility for overseeing the management for BIS' orderly shutdown activities as well as providing administrative controls and support for other BIS excepted functions. This includes maintaining support for licensing, treaty compliance, industrial base studies, defense allocations, and investigative programs and protecting BIS' IT infrastructure, data, and back-up data centers to ensure not only the integrity of the systems but that assets continue to be properly secured and operational to support the needs of BIS' export enforcement and export administration activities during the lapse.

During the lapse, other operations under OUS, including finance (e.g., processing personnel and pay records in connection with furlough actions), contracts, and travel support functions will remain available as necessary and incident to the continued support of law enforcement and emergency licensing functions.

Office of Assistant Secretary for Export Administration (OAS-EA)

The OAS-EA is required to review and process emergency license applications and draft regulations related to the support of US and allied military activity and protection of US property and human life in the event of a lapse in appropriation. Additionally, the program offices will require excepted positions to be filled during a lapse in appropriations in order to administer the Defense Priorities and Allocations System regulations necessary to address any issues that may arise in supporting national defense programs during a lapse in appropriations; to manage/host Organization for the Prohibition of Chemical Weapons inspections, to conduct activities related to Section 705 of the Defense Production Act of 1950 that are required to support national defense and time sensitive infrastructure needs; and determine the trade and economic national

security impact of export controls on US interests. These functions are necessary to the discharge of the President's constitutional duties and powers.

The Office of Technical Evaluation will continue to execute industrial base assessments functions through reimbursable agreements with US Air Force, Department of Defense, and the Department of Homeland Security. Their compensation is financed by a resource other than an annual appropriation.

To the extent that any investigation authorized under Section 232 of the Trade Expansion Act of 1962 is underway or is commenced during a lapse in appropriations, OAS-EA will undertake the relevant work using unobligated balances of prior appropriations that remain available for obligation.

Office of Assistant Secretary for Export Enforcement (OAS-EE)

The OAS-EE is a specialized law enforcement organization recognized for its criminal and civil investigative expertise and advanced targeting and successful partnerships with other law enforcement agencies and the intelligence community. Even in the event of a lapse in appropriations, these law enforcement functions are necessary for the protection of US national security, homeland security, foreign policy and economic interests. Excepted investigative personnel (i.e., special agents) conduct investigations of violations of US export control laws involving the protection of life and property. Thus, at BIS headquarters and field offices, these functions include monitoring open investigations, opening new cases, and responding to all contingencies, including actions to prevent or stop illegal exports which might arise during a lapse of appropriations.

Excepted personnel are also required, during a lapse, for reviewing intelligence and export transactions, providing bona fides analyses of any emergency license applications received, targeting end-use checks to support the work of Export Control Officers stationed in seven overseas locations to prevent diversions of US items, and providing analytical investigative support to the BIS special agents in order to prevent or stop illegal exports which might arise during a lapse of appropriations. Administrative staff support is also required.

US Census Bureau

In the event of a lapse in appropriations, the US Census Bureau anticipates that it will have sufficient funding from other than current year appropriations to continue to release data products from the 2020 Census, results from its coverage measurement program, and results from evaluations and assessments for a brief period after a general lapse in appropriations commences. The number of Census Bureau positions listed under Category 1 for FY22 are subject to change due to the complexity and cyclical nature of the bureau's operations. Up to 2,300 decennial funded positions could be needed for ongoing operations related to the 2020 Census in FY22. The funded positions for reimbursable surveys may be as high as 7,500, depending upon the number of funded reimbursable agreements that have been executed prior to a potential lapse. During a lapse in appropriations, the working capital fund will generate overhead from the above-funded positions and could average 600 positions. Prior to any lapse in appropriations, an assessment will be performed to determine the level of budget authority available to continue operations. Administrative and information technology infrastructure activities supporting these programs will continue, funded by overheads collected against the funding sources above.

If the lapse in appropriations continues for a significant length of time and these funds are exhausted, then most employees working on these activities will be furloughed, consistent with the ConPlan described below.

The activities that the Census Bureau will not continue include the Economic Census, the production of Economic Indicators, the American Community Survey, and other activities funded from lapsed appropriations and reimbursable activities to the extent not funded.

Office of the Director and Deputy Director and Chief Operating Office

Excepted functions: The Census Bureau has one Presidentially appointed, Senate-confirmed (PAS) officer who, by virtue of his/her position, is not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event this position is either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having its functions and duties performed temporarily by other than a PAS official, then that individual will be excepted from furlough as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable.

Oversight of and all support necessary to continue functions otherwise excepted. Performance of financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Chief Financial Office

Orderly shutdown activities that will not be completed within one-half day include: performance of all necessary emergency contract actions, coordination of travel for employees in travel status,

and management of the budget. We estimate that seven employees will be necessary to complete the activities and that it will take approximately four days.

Excepted functions: Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Chief Administrative Office

Orderly shutdown activities that will not be completed within one-half day include: payroll and benefits processing, reschedule or terminate commercial deliveries, ensure accountable property is not in shipping and receiving status and is properly documented, close Reimbursable Work Agreements (RWAs) with General Services Administration (GSA) and contractors, coordinate with GSA on facility maintenance and emergencies, continue to pay leases, and provide medical care and counseling to employees. We estimate that 18 employees will be necessary to complete the activities and that it will take approximately 2.5 days.

Excepted functions: Administer the Census Bureau lapse in appropriations plan, including employee furlough notifications leading up to, during, and after the shutdown, management and employee communication, and serve as the Department's point of contact for the Census Bureau's lapse plan, emergency management and protection of Census Bureau employees and Census Bureau property; coordinate with GSA on facility maintenance. Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Chief Information Office

Orderly shutdown activities that will not be completed within one-half day include: IT support for payroll processing, in particular web Time and Attendance (webTA) and the National Finance Center (NFC). Import time and attendance data for field representatives from the Web-Based Field Representative Earnings Data system; the IT Data Base Administrator support for Census Hiring Employment Check (CHEC)/Centralized Application for Managing Personnel Investigations and Non-Employees (CAMPIN) (e.g., security system); the Decennial Applicant, Personnel and Payroll Systems (DAPPS); and the Census Human Resources Information System (CHRIS). IT support for website operations for [Census.gov](https://www.census.gov) and provide Cloud technical support. We estimate that 22 employees will be necessary to complete the activities and that it will take approximately 3 days.

Excepted functions: Execute and complete critical IT duties, responsibilities, oversight and coordination across Census in support of otherwise excepted activities and functions. Support includes maintaining the IT service help desk; providing technical maintenance and support to the Sharepoint system; managing the Bowie Computer Center facility; monitoring the security devices for indications of malicious or abnormal behavior consistent with the compromise of a system; supporting the Census Bureau's website operation; Commerce Business Systems, CHEC, DAPPS, webTA and NFC, emergency notification system, CHRIS, and CHEC/CAMPIN Kofax/Livescan Server.

Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Communications

Excepted functions: Prepare communication for employees and external stakeholders. Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Decennial Census Programs

Excepted functions: Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Demographic Programs

Excepted functions: Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Economic Programs

Excepted functions: Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Research and Methodology

Excepted functions: Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Field Operations—Headquarters

Excepted functions: Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Field Operations—National Processing Center (NPC)

Orderly shutdown activities that will not be completed within one-half day include: payroll processing, printing furlough notices and preparing and sending packages to all field representatives and work-at-home employees. We estimate that 17 employees will be necessary to complete the activity and that it will take approximately 3 days.

Excepted functions: Maintain the facility boiler plant, handle necessary repairs to the boiler plant or facility plumbing, and respond to facility emergencies. Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Field Operations—Regional Offices (ROs)

Orderly shutdown activities that will not be completed within one-half day include: securing the RO buildings and property; ensuring paper 308 T&A forms are keyed in, verified, and corrected; and closing out the payroll. Providing IT support to the payroll staff. We estimate that 54 employees will be necessary to complete the activity and that it will take approximately 3 days.

Excepted functions: Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Associate Director for Field Operations—Regional Census Centers (RCCs)

Orderly shutdown activities that will not be completed within one-half day include: securing the RCC buildings and property; ensuring paper 308 T&A forms are keyed in, verified, and corrected; and closing out the payroll. Providing IT support to the payroll staff. Securing equipment assigned to staff. We estimate that 12 employees will be necessary to complete these activities and that it will take approximately 2 days.

Excepted functions: Perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year appropriations otherwise available for obligation during a lapse in appropriations.

Economic Development Administration (EDA)

Some of EDA's management and oversight of funds and programs are not subject to annual appropriations and will continue to execute during a lapse in appropriation (includes supplemental funds (the Bipartisan Budget Act of 2018 (PL 115-123), Supplemental Appropriations for Disaster Relief Act, 2019 (PL 116-20), Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (P.L. 116-136), and the American Rescue Plan Act (ARP Act), Public Law 117-2). Continuing activities may also include those funded through Federal Emergency Management Agency (FEMA) Mission Assignments to assist and support economic recovery efforts in disaster-impacted communities and regions.

During a lapse in annual appropriation, EDA will maintain certain functions and activities that are necessary for a short period to ensure an orderly shutdown of operations. Specifically, employee furlough, contractual and building access coordination activities are necessary for at least a full (8-hour) day to ensure orderly shutdown of all the non-disaster related operations in all parts of EDA across all time zones. Additionally, EDA will continue those activities associated with authorized sources of funding appropriated in addition to annual appropriations.

Office of the Assistant Secretary (OAS)

OAS has one Presidentially-appointed, Senate-confirmed (PAS) officer(s) who, by virtue of their position, is not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event this position is either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having its functions and duties performed temporarily by other than a PAS official, then such individual will be excepted from furlough as necessary to provide management and oversight the failure of which to provide would prevent or significantly damage the execution of programs that have a continuing source of funds.

In addition, minimally necessary activities will be performed to oversee and manage the excepted functions and activities outlined below failure of which to provide would prevent or significantly damage the execution of programs that have a continuing source of funds.

Also, the Denali Commission Federal Co-Chair (a Department of Commerce employee, assigned to EDA's OAS) will continue to provide overall policy direction of the independent federal agency. Salary compensation is financed by a resource other than annual EDA appropriations.

Office of Chief Counsel

In the event of a lapse in appropriations, office activity or functions that directly involves implementing authorized supplemental appropriations will continue.

Office of Regional Affairs

In the event of a lapse in appropriations, any office activity or function that directly involves implementing authorized supplemental appropriations will continue.

Regional Offices

In the event of a lapse in appropriations, EDA's six regional offices (Atlanta, GA; Austin, TX; Chicago, IL; Denver, CO; Philadelphia, PA; and Seattle, WA) will continue activities and/or functions that directly involve implementing authorized supplemental appropriations.

National Programs (Performance, Research and National Technical Assistance; Innovation and Entrepreneurship; Trade Adjustment Assistance for Firms; Economic Development Integration and Disaster Recovery)

Office activities and functions that directly involves implementing authorized supplemental appropriations will continue.

Office of Finance and Management Services (OFMS)

In the event of a lapse in appropriations, office activities and functions will continue that directly involve implementing authorized supplemental appropriations activities including processing apportionments with OMB, allocations in the Department's financial management systems, providing funds certification for procurement actions, implementation, oversight, and evaluation of internal administrative and financial management control systems, and reviews and monitors fiscal control system for both program and administrative expenses consistent with the requirements of the Antideficiency Act.

Office of External Affairs and Communications

In the event of a lapse in appropriations, coordination of EDA congressional, intergovernmental, and public affairs activities, and internal communications that directly involve implementing authorized supplemental appropriations activities will continue.

International Trade Administration (ITA)

ITA is comprised of four main operating units: Executive Administration and Direction; Global Markets; Enforcement and Compliance; and Industry and Analysis. Each of its main operating units is led by a Presidentially-appointed, Senate-confirmed (PAS) officer who, by virtue of their positions, are not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event any of these positions are either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having their functions and duties performed temporarily by other than a PAS official, then such individuals will be excepted from furlough as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable.

ITA consists of trade and investment professionals based in more than 100 US cities and, as a Foreign Service agency, Foreign Commercial Service officers and locally-employed staff in 118 cities around the world. ITA's global footprint presents unique operational challenges during a lapse in appropriations due to local labor laws in foreign countries and require close coordination with the State Department on personnel and travel expenditures. ITA's mission also requires close cooperation and coordination on activities with interagency, foreign government, and private sector partners, often supported through international obligations, participation agreements, or agreements under the Mutual Education and Cultural Exchange Act (MECEA) or Joint Project Authority.

Orderly shutdown activities not expected to be completed within one-half day will be performed by approximately 150 individuals (including approximately 104 Foreign Commercial Service Officers who are not excepted by Chiefs of Mission overseas) and will be completed within 4 days and include the following:

- Shut down or arrange for designated IT systems to remain operational.
- Shut down the steel licensing system including IT workstations and network servers. All steel mill imports into the United States require a license issued by the Steel Import Monitoring and Analysis (SIMA) office. The team needs to inform affected users, set up a temporary import license number, and coordinate with US Customs and Border Protection (CBP) to ensure that the flow of imports is not impeded. Although much work can be done in the days leading up to the shutdown, the team may require up to two days to ensure that the system is properly shut down and that importers are able to get their products into the country.
- Cancellation of certain activities under the MECEA for which ITA is still within the cancellation window.
- Coordination with US and international field teams to determine what activities should be shut down, scaled back, or continue under the appropriate exception categories and notification to the appropriate stakeholders and customers.

Due to activities crossing over various units, the layout is by excepted function. The following functions or activities will be excepted in the event of a lapse in appropriations.

Management of Excepted or Pre-funded Information Technology Contracts and Mitigation of Cybersecurity Risks (Exception Category 4)

Executive Administration and Direction (in the Office of the Chief Information Officer) will require some management personnel on hand to direct what is a large and pre-funded contractor workforce. If a lapse in appropriations would occur, a number of overseas staff will be excepted by their respective Chiefs of Mission, requiring systems to remain fully operational. As a result, the IT workforce will be required to maintain systems and provide real-time support for protection of ITA's mission-critical systems and data assets.

Impacted Operating Unit(s): Executive Administration and Direction

Management of Global Operations and Payment of Locally-Employed Staff (Foreign Commercial Officers and Civil Service Employees, Exception Category 4; Locally-Employed Staff (LES), Category 1)

ITA employs a number of LES and Foreign Commercial Service Officers in foreign countries. In the event of a lapse in appropriations, individual determinations regarding LES and Foreign Commercial Service Officers will be made in coordination with the respective country's Chief-of-Mission under the Department of State to carry out the President's duties to conduct foreign affairs and policy. This includes the management of Foreign Commercial Service Officers necessary to supervise LES in more than 70 countries overseas (at a ratio of one officer per every five LES), and the continuation of pay for the more than 650 LES overseas who cannot be furloughed due to local labor laws in their countries. This requires human resources professionals responsible for expeditious two-way communications with worldwide FCS officers and coordination with the State Department's Bureau of Human Resources.

Impacted Operating Unit(s): Global Markets; Executive Administration and Direction

Completion of Services under Participation Agreements Signed Before the Lapse in Appropriations (Exception Category 1)

Global Markets conducts a range of fee-based services (e.g., Gold Key Service, whereby ITA helps US companies locate the right buyer or business partner in a foreign market). The US company signs a Participation Agreement and pays ITA in advance of the service being rendered. ITA's Locally-Employed staff conducts the service. For all Participation Agreements signed and paid for before the lapse in appropriations, ITA will complete the service.

Impacted Operating Unit(s): Global Markets

Activities under the Mutual Education and Cultural Exchange Act (MECEA) (Exception Category 1)

ITA has entered into contractual agreements to conduct activities under MECEA or another contractual arrangement. These activities include partnering with trade show organizers and recruiting foreign buyers to US trade shows, providing onsite counseling to US exporters, and in some cases providing onsite business matchmaking services. For those events for which ITA has a legal commitment under MECEA that cannot be cancelled within a specified time frame, ITA will deliver the services agreed upon under the Agreement. For those events for which ITA is still outside the cancellation window under the Agreement, ITA will require one to two employees to work for up to three days (depending on size of the event) to shut the planned services down. Work involves contacting partners, taking down marketing information, and notifying overseas staff.

Impacted Operating Unit(s): Industry and Analysis; Global Markets

Activities Deemed Necessary for National Security (Exception Category 4)

ITA provides sector-, country-, economic-, and trade law-specific expertise to ensure that international trade negotiations and policy deliberations support US economic and national security interests. ITA experts are requested for activities deemed necessary for national security, including those stemming from requests from other agencies and the Office of the Secretary, including but not limited to bilateral trade consultations and negotiations and investigations under Section 232.

Impacted Operating Unit(s): Industry Analysis; Global Markets; Enforcement and Compliance; Executive Direction

Litigation Support (Exception Category 5)

In the event the litigation support function of the Office of the Chief Counsel for Enforcement and Compliance (CC-TEC) continues on an as-needed/limited basis during a lapse in appropriations, economic and trade analysis support may be needed on Anti-Dumping and/or Countervailing Duty cases for CC-TEC litigation activities. Litigation support is also necessary to meet our international obligations regarding dispute settlement activities under the World Trade Organization Agreements. Deadlines imposed by the Judicial Branch including the United States Court of International Trade, the United States Court of Appeals for the Federal Circuit, and the United States Supreme Court may not be suspended during a lapse in appropriations of Executive Branch agencies. Failing to meet court-ordered deadlines during a lapse in the Department's appropriations may result in loss of opportunity to defend the agency or findings of contempt to comply with court orders. In the event a lapse continues for an extended period, personnel may be recalled as necessary to provide litigation support for cases that cannot be suspended.

Impacted Operating Unit(s): Enforcement and Compliance

Implementation of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation (Exception Category 5)

Uranium shipments cannot be released from CBP without Enforcement and Compliance's approval in accordance with the terms of the Suspension Agreement. Failure to coordinate clearance of uranium shipments with CBP could result in the physical loss of uranium which would create a public safety and national security risk. Required activities include: the evaluation of certain contracts/contract amendments, as appropriate, and preparation of contract amendments that need Commerce approval in order to ensure the timely shipment and delivery of Russian uranium to the United States; the examination of documentation for incoming Russian uranium shipments; and the review and transmission of clearance instructions to CBP via the electronic portal would be required. The exception would be on an intermittent basis, as the need arises.

Impacted Operating Unit: Enforcement and Compliance

Privacy Shield Program (Exception Category 1)

The European Union (EU)-US and Swiss-US Privacy Shield Frameworks were designed by the Department and the European Commission and Swiss Administration to provide companies on both sides of the Atlantic with a mechanism to comply with data protection requirements when transferring personal data from the European Union and Switzerland to the United States in support of transatlantic commerce. The Privacy Shield Frameworks are funded out of cost recovery funds. Activities include the administration of ongoing Privacy Shield activities in compliance with the EU-US and Swiss-US Privacy Shield Frameworks.

Impacted Operating Unit: Industry and Analysis

Minority Business Development Agency (MBDA)

Orderly shutdown activities not expected to be completed within one-half day include developing and delivering communications and guidance to staff and external stakeholders, delivering furlough notices to personnel, securing the physical office space, confirming time and attendance responsibilities have been completed, and ensuring the Bureau's website, phone-lines, and email addresses have been appropriately dispositioned for a lapse in appropriations. These extended orderly shutdown activities are expected to be performed by approximately two individuals and will be completed within one day.

All regular operations of MBDA will cease in the event of a lapse in appropriations. One position will be excepted intermittently to conduct financial management activities necessary to liquidate obligations incurred prior to the lapse in appropriations.

National Institute of Standards and Technology (NIST)

NIST's mission is to promote US innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve our quality of life. Given this mission, NIST manages and supports a diverse program portfolio. A subset of these programs shall continue during a lapse, as described below.

Office of the Under Secretary of Commerce for Standards and Technology

The NIST Director's Office (DO) has one Presidentially-appointed, Senate-confirmed (PAS) officer who, by virtue of the position, is not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover salary. In the event that this position is either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) has the requisite functions and duties temporarily performed by other than a PAS official, then such individual will be excepted from furlough as necessary to provide management and oversight to the extent incidental and necessary to support excepted functions.

Minimally necessary activities to oversee and manage the excepted functions and activities of NIST as described below will continue. These activities primarily support NIST functions that relate to the safety of human life or the protection of property, but they may also support functions funded by other than current annual appropriations the suspension of which would prevent or significantly damage the execution of the funded function, or functions that relate to the discharge of the President's constitutional duties and powers.

Management Resources (MR)

Orderly shutdown activities not expected to be completed within one-half day include issuance of furlough communications and contractual communications. These extended orderly shutdown activities are expected to be performed by approximately 24 employees and will be completed within one day.

MR provides ongoing support services to all agency programs. The Office of the Associate Director of Management Resources (ADMR) has responsibility for and shall provide coordination and oversight of NIST's excepted activities in the event of an appropriations lapse.

Minimally necessary activities to provide support services for the excepted functions and activities of NIST, including human resources, contract and grants support, facility and equipment repair and maintenance, limited construction activities (that, if interrupted, would adversely impact critical utility systems), access control, security, emergency response, safety, IT security and telecom infrastructure support, and financial systems, will be continued. These activities primarily support NIST functions that relate to the safety of human life or the protection of property, but they may also support functions funded by other than current annual appropriations, the suspension of which would prevent or significantly damage the execution of the funded function, or functions that relate to the discharge of the President's constitutional duties and powers.

Laboratory Programs (LP)

LP oversees and operates research and measurement services programs across NIST. The Office of the Associate Director of Laboratory Programs (ADLP) shall provide coordination and oversight of those programs required to maintain operation in the event of an appropriations lapse.

During a lapse, the ADLP Office shall continue to provide laboratory leadership, oversight, and coordination of excepted research programs. Laboratory Programs staff shall maintain and monitor reactor operations and provide maintenance, monitoring, and repairs to research equipment to ensure protection of human life and property. Programs funded by other than current annual appropriations shall continue, including US participation in the Quantum Economic Development Consortium which is necessary to establish the foundations for US economic competitiveness within quantum information science and technology. Additionally, programs paid for by external fees or interagency agreements, such as disaster response and investigations, will continue. Additional excepted activities that will continue are necessary to discharge the President's constitutional duties and powers, including representation of the United States in International Standards Organizations and certain programs protecting national security. Operations to ensure Universal Time Coordination and cybersecurity shall continue to protect against threats to human life and property.

National Oceanic and Atmospheric Administration (NOAA)

Office of the Under Secretary (USAO)

The USAO is responsible for the strategic direction and oversight of NOAA, including key investments in developing a community model framework to advance US weather modeling and prediction, space innovation, streamlining unmanned systems research to provide critical data across NOAA's mission areas, and unlocking the partnership potential of non-governmental and private organizations to study our nation's oceans and promote a blue economy.

NOAA has three Presidentially-appointed, Senate-confirmed (PAS) officers who, by virtue of their positions, are not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event any of these positions are either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having their functions and duties performed temporarily by other than a PAS official, then such individuals will be excepted from furlough only as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable.

In addition, NOAA has one Presidentially appointed (PA) officer who, by virtue of his position, is not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover his salary. In the event this position is either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having its functions and duties performed temporarily by an official who is subject to furlough, then such individual will be excepted from furlough only as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable.

Orderly shutdown (1-3 days): Four positions are required for Legislative Affairs, Office of Communications, and Office of International Affairs to conduct orderly cessation of administrative and personnel activities.

Excepted functions include:

Providing administrative services to oversee and manage the excepted functions and activities of NOAA, including stakeholder and public outreach related to ongoing excepted functions. These activities primarily support NOAA functions related to the safety of human life or the protection of property but may also support functions funded by other than current annual appropriations, the suspension of which would prevent or significantly damage the execution of the funded function, functions that are mandated or implied by law, or functions that relate to the discharge of the President's constitutional duties and powers.

Office of the Chief Financial Officer (OCFO)

OCFO is responsible for the overall financial administration of NOAA and its organizations and has oversight for funds control and funds availability—carryover, reimbursable, other; reporting/querying on balances, and management of the Finance Systems, including restricting users and other activities, to ensure continuity of operations during a lapse in appropriations.

Orderly shutdown (3-7 days): One position is necessary within the Finance Office Travel Team to provide direction to employees on travel status and return to duty station.

Excepted functions include:

- Monitoring financial services related to excepted agency activities or otherwise legally authorized to continue during a lapse in appropriations. Processing and reviewing applicable obligations, disbursements, billings, or collections related to reimbursables, travel, loans, grants, and/or vendor payments.
- Providing guidance for excepted travel policies and procedures for excepted employees required to travel for qualified activities. Responding to inquiries regarding DOC/NOAA issued travel guidance and cancellation of planned trips for non-excepted activities.
- Performing activities necessary to place the financial management systems in restricted user status and/or other tasks required to support activities otherwise excepted to ensure the financial system is functioning as needed. Oversight for obligations in the financial systems to track and approve funds, review financial transactions and ensure NOAA is in compliance with OMB's guidance, ensure financial controls and fiscal accountability are in place, report on financial transactions and conduct queries of NOAA-wide obligations during a lapse in appropriations.
- Performing activities necessarily implied by laws as authorized to continue to support functions expressly authorized by law or to protect against significant and imminent threats to human life and property, which are carried out by NOAA Line and Staff Offices (LO/SO).

Office of the General Counsel (OGC)

OGC provides legal advice and counsel for all matters that may arise in the conduct of NOAA's missions.

Excepted functions include:

- Maintaining a minimal level of legal advisory operations for NOAA to ensure activities related to active pending litigation are sustained.
- Providing legal advice throughout NOAA for excepted functions (including rulemaking) to ensure the protection of property and safeguarding of human life.

Office of the Chief Administrative Officer (OCAO)

OCAO is required to maintain a minimal level of facility operations for NOAA during a lapse in appropriations to ensure the protection of property, safeguard life, monitor equipment safety, respond to facility emergencies, and provide freight deliveries and pick-up services, and otherwise support other excepted functions.

Orderly shutdown (3-7 days): One to five positions are necessary to support orderly shutdown activities and maintain facilities and equipment, while ensuring the continuity of operations for excepted functions are met at the campuses (Silver Spring, MD; Boulder, CO; Seattle, WA, Honolulu, HI) and to provide assistance to NOAA excepted activities.

Excepted functions include:

- Maintaining campus-wide operations at the Silver Spring, MD; Boulder, CO; Seattle, WA; and Honolulu, HI campuses. Functions provide on-call response to facility emergencies, manage limited mail service, receive notification letters or vendor invoices, maintain security systems, provide Contracting Officer Representative authorizations as necessary, and resolve common access card expiration issues for excepted employees.

Office of the Chief Information Officer and High Performance Computing and Communications (OCIO/HPCC)

OCIO/HPCC is responsible for all NOAA information and IT assets. OCIO provides the minimal level of support necessary for otherwise excepted NOAA activities and for those programs whose operations will continue due to having other than current year annual appropriations either to the extent such support has been funded or the suspension of which would prevent or significantly damage the execution of funded programs, and to the extent necessary to protect human life and property. The suspension of these services would significantly damage the execution of funded programs, cost-effective supercomputing support, and NOAA's research and forecasting missions.

Orderly Shutdown (1-5 days): Two positions are needed to complete general administrative duties to ensure orderly shutdown of equipment, systems, facilities, and secure government documentation.

Excepted functions include:

- Monitoring activities of positions whose compensation is financed by a source other than annual appropriations under Spectrum Relocation Funds, a Category 1 exception.
- Providing critical support and maintenance of the IT backbone for NOAA organizations involved in the protection of property and the safeguarding of life. The work encompasses supporting cybersecurity, network infrastructure, web operations, email and telecom activities, incident response, monitoring all NOAA assets and additional resources that serve the Information Technology Security

Office, the common data model monitor, and Security Operations Center staff, and providing acquisition support for critical services that impact the protection of life and property.

- Providing support for research and development of high performance supercomputing and NOAA's spectrum for mission use. The supercomputers are necessary to continue computation that and provides the National Weather Service with data for operational models for weather forecasting. A vital activity is ensuring data integrity and loss prevention for essential IT systems to protect against imminent threats to human life and destruction of property.
- Maintaining website access for critical weather warning and event information availability to complete excepted activities which rely on NOAA's Enterprise Network backbone necessary to protect against imminent threats to human life and destruction of property.

Office of Human Capital Services (OHCS)

OHCS manages the overall personnel activities for NOAA, including furlough planning and implementation. This Office provides necessary and critical support to NOAA excepted personnel and is responsible for tasks in managing the overall planning and implementation of activities for a lapse in appropriations event for all NOAA organizations.

Excepted functions include:

- Coordinating personnel furlough status reporting from each LO/SO and monitoring management responses during a lapse in appropriations.
- Supporting NOAA executives who provide leadership and management decisions on furlough activities to LO/SO personnel and authorize requests for recalls as appropriate. OHCS staff have authorities and systems access to support excepted personnel activities.
- Providing oversight for union activities pursuant to collective bargaining agreements.
- Resolving time and attendance errors (performed in conjunction with DOC Enterprise Services Office).
- Providing contract management of HR vendors authorized to work on excepted activities.

Acquisition and Grants Office (AGO)

AGO is responsible for maintaining operations in support of excepted activities during a lapse in appropriations, including administrative oversight for excepted contract work, coordination with LO/SO with excepted contracting agreements, and general processing of purchase card business line invoicing.

Orderly shutdown (1-3 days): One position is needed to support orderly shutdown activities to safeguard facilities and equipment, provide assistance to NOAA excepted contract activities, and ensure access to perform excepted functions at the Silver Spring, MD; Boulder, CO; Seattle, WA; and Honolulu, HI campuses.

Excepted functions include:

- Maintaining a minimal level of leadership and administration for oversight of NOAA excepted contract functions. Providing acquisition and the NOAA Cooperative Institutes' data to support customer needs and lapse-related data calls and requests for information in the execution of excepted program functions.
- Coordinating activities to continue performance of a contract (case-by-case basis) in all of NOAA's specialized areas including satellite, IT, weather, ship construction, facilities, small purchase, and high-performance supercomputing, depending on funding and the need for access to government facilities, personnel, and resources.
- Supporting required work with the NOAA Cooperative Institutes that directly supports execution of excepted functions.
- Supporting the processing of monthly payment of the purchase card business line invoices for excepted services, including processing daily electronic files and invoices, and submitting for payment to NOAA Finance, during a lapse in appropriations.

National Environmental Satellite, Data, and Information Service (NESDIS)

NESDIS supports secure and efficient command and control of NOAA and Department of Defense operational environmental satellites and ground processing that provide data/imagery to sustain weather forecasting and issuance of warnings required for public safety and protection of property.

Excepted functions include:

- Maintaining critical and mission-related program assets including Satellite Applications and Research, Geostationary Operational Environmental Satellite, Joint Polar Satellite System, Jason 2/3, Global Change Observation Mission-Water and Scatterometer to support performance of excepted functions.
- Supporting overall satellite command and control to manage the 24x7 operations of environmental satellites, acquisition, processing and interpretive analysis of environmental data from hazards of volcano eruptions, oil spills, fire and smoke and tropical cyclones for use in life and property warnings and forecasts, executing spacecraft commands and schedules, and acquiring, maintaining, and distributing a continuous flow of environmental satellite data and satellite rebroadcast services.

- Providing mission support to non-NOAA missions and agencies such as the National Aeronautics and Space Administration, US Geological Survey, Naval Research Laboratory, and foreign space agencies through the collection of ocean climatology data, automated data ingest software for satellite oceanographic data, and space weather data collection for weather forecasting.
- Maintaining a minimal level of leadership and support to assist excepted functions in meeting mission needs including spectrum management, personnel actions, monitoring of procurement actions, acquisitions, and recall of personnel.

National Marine Fisheries Service (NMFS)

NMFS is responsible for the stewardship of the nation's ocean resources and their habitat. NMFS' excepted functions focus on law enforcement; seafood inspection and other functions funded by other than current annually appropriated funds; maintenance of laboratories, aquaria, and experiments, and other functions related to protected species and other marine resources required to protect life and property.

Orderly shutdown (1-7 Days): Seventeen positions are required to perform the necessary activities to discontinue operations in the event of a lapse in appropriations and coordinate coverage of excepted functions in primary areas including Headquarters, Southeast Science Center, Southwest Region, Southwest Science Center, and Pacific Island Science Center.

Excepted functions include:

- Ensuring compliance with budget and financial regulations and providing oversight of infrastructure and other federal assets, recall of personnel to perform excepted activities in coordination with NOAA leadership, and preparing fishery closure actions for clearance by the Assistant Administrator and submission to the Office of the Federal Register.
- Supporting excepted functions related to fulfilling law enforcement activities to protect Federal trust resources, including the protection of endangered species, critical habitat, and protected areas, and monitoring oil spills and other marine hazardous material events as needed to advise the US Coast Guard (USCG) and other stakeholders on spill responses and assemble/lead an appropriate response team.
- Supporting implementation of the Magnuson-Stevens Fishery Conservation and Management Act, managing fisheries for Atlantic highly migratory species, ensuring the safety of seafood sold in the United States and enabling the continued work of seafood inspectors and related support staff funded by other than current annually appropriated funds.
- Coordinating emergency marine mammal and sea turtle stranding response, working with network partners and coordinating daily communications, monitoring fisheries landings, determining in-season adjustments or fishery

closures to prevent overfishing, and caring for aquaria/experiments/labs seven days per week.

- Ensuring the deployment of observers, management of data from observers, and monitoring the health and safety of observers.
- Working with natural resources agencies in western states on a variety of natural resources and infrastructure projects funded by non-Federal funds.

National Ocean Service (NOS)

NOS provides data, tools, and services to support coastal economies and their sustainability in the national economy to help communities prepare for, respond to, and recover from severe weather events, including hurricanes, flooding, and natural disasters. NOS is solely responsible for maintaining the national coordinate system; its activities focus on safe and efficient transportation of products in and out of US ports, updates to navigation charts, and monitoring of water-level data.

Orderly shutdown (3-5 Days): Twenty-five positions are required to perform the necessary activities to discontinue operations in the event of a lapse in appropriations and coordinate coverage of excepted functions including modify/cancel contracts; adjust payroll; recall persons on travel status; cancel Federal-led conferences, interviews, and communications.

Excepted functions include:

- Maintaining minimal/essential IT and geospatial systems/network and management structure of sustained core activities to support the protection of property and safeguarding of human life. Assisting in emergency planning for extreme weather events including gathering critical in situ observational data through the glider network, monitoring communication with 11 Regional Associations, the Alliance for Coastal Technologies and Integrated Ocean Observing System Association to support weather forecasting, maritime safety, and public health.
- Maintaining safe navigation of ships in the US Exclusive Economic Zone with critical nautical chart updates (dangers to navigation) and emergency hydrographic surveys to identify maritime hazards to shipping/transportation. Supplying critical data to the USCG and National Geospatial-Intelligence Agency to support a safe Maritime Transportation System in US waters and publishing critical electronic nautical charts.
- Conducting essential activities to protect property and safeguard human life by assisting the National Spatial Reference System (NSRS) in maintaining operations such as mapping, charting, flood risk determination, navigation, transportation, land use, and protection of critical infrastructure, maintaining the NOAA Continuously Operating Reference Stations (CORS) Network to enable the integrity of and quality assurance for the NOAA CORS Network, and monitoring the Reimbursable-Federal Aviation Administration/Aeronautical Survey Program

to conduct critical geodetic and remote sensing reviews of airport surveys for FAA to ensure transportation safety.

- Serving as the focal point within NOAA for responding to oil and hazardous materials releases and other emergencies necessary to protect the safety of human life, including forecasting the movement and behavior of spilled oil, chemicals, or marine debris, conducting studies to minimize harm, evaluating risk and developing solutions to address marine debris, and evaluating alternative cleanup methods.
- Monitoring of lab facilities to ensure minimal impacts to science experiments and ensure care and feeding of organisms on a routine basis to protect key science and research studies from loss and maintaining critical ocean forecast systems including harmful algal bloom forecasts to protect life and property.
- Serving as key resource and conducting on-site assessment of property(ies), vessel(s), vehicle(s), equipment, etc. on a weekly basis, or more frequently as needed for National Marine Sanctuaries (NMS). Protection of vessels and property at multiple sites including: Monitor NMS, Thunder Bay NMS (including visitor center), Channel Islands NMS, Santa Cruz Visitor Center, West Coast Regional Office and Monterey Bay NMS, and American Samoa NMS.
- Maintaining essential observations and models to share data in near real time for safe navigation, coastal resilience, support the protection of property and the safeguarding of human life. Preserving the critical infrastructure for the National Water Level Observation Network (NWLON), Physical Oceanographic Real Time System (PORTS) and National Current Observation Program (NCOP) and ensuring continuous operation of NWLON, PORTS and NCOP sensors by monitoring and troubleshooting issues identified, and retrieving equipment identified as at risk for loss or damage.
- Maintaining reimbursable partnerships management for execution of projects and programs funded outside of the annual appropriations process through agreements; coordinating access to property owned by partners.

National Weather Service (NWS)

NWS provides the nation with continuous climate, water, space weather, weather observations, forecasts and warnings, and Impact-based Decision Support Services (IDSS) during hazardous conditions. This work is critical and necessary to protect life and property in the country and parts of the world through international agreements. Offices operate on a 24 hour/7 days a week or 16 hour/7 days a week schedule to provide forecasts, warnings, data, critical expertise, and IDSS.

Excepted functions include:

- Ensuring ongoing operations, IT support, funds certification, procurement requests, and activities related to human capital management.
- Support weather forecast offices, river forecast centers and regional operations centers in the provision of water observations, forecasts and warnings, and IDSS during daily and active events to protect life and property.
- Operating on a 16 hour/7 days schedule (or 24 hour/7 days as needed) to provide forecasts, data, critical expertise and IDSS.
- Providing critical functions including emergency maintenance/repair of operational systems and coordination with other national centers, regions and agencies
- Overseeing contracts in support of the Office of Water Prediction operational activities, funds certification, and procurement requests related to excepted functions and the protection of life and property.

Oceanic and Atmospheric Research (OAR)

OAR's mission enables NOAA to ensure more accurate forecasts, acute warnings for natural disasters, and cutting-edge science to better manage national and global environment events.

Orderly shutdown (2 to 4 days): Thirty positions are required to perform necessary activities to discontinue operations across multiple laboratory environments and research sites in the event of a lapse in appropriations.

Excepted functions include:

- Supporting activities in conjunction with other government agencies, NOAA Cooperative Institutes, and affiliated firms, providing minimal level of leadership and direction, and protecting against significant and imminent threats to human life and property.
- Maintaining continuity of formal collaborative agreements with academic and non-profit research institutions and supporting continuity of critical research, climate studies, global carbon systems, and ocean observations to provide operational climate and weather products to the NWS in support of predictions, lead time and accuracy of severe weather warnings, tsunami detection, and forecasting to protect against significant and imminent threats to human life and property.
- Providing critical support for key environmental information products needed to determine air quality, weather, and climate variability, acidification, hydrothermal vent systems, fisheries oceanography, and long-term climate monitoring in collaboration with multiple academic partnerships and international coalitions and research institutions worldwide.

- Maintaining safety and security of chemical laboratory equipment and ongoing experiments required for continuity of research on atmospheric chemical processes essential for understanding and predicting changes in Earth's environment to protect against significant and imminent threats to human life and property.

Office of Marine and Aviation Operations (OMAO)

OMAO supports observational data collection for ongoing weather forecasting and severe weather warnings, protection of national trust resources and protection of the fleet, as well as other activities across the agency required to safeguard life and protect property.

Orderly shutdown (2 to 24 days): Sixteen research vessels may be at sea when a potential appropriations lapse occurs. All 16 ships will be instructed to return to the nearest port. The shore side support team is required to coordinate with these ships and crew in performing shutdown of shore side technical and administrative support operations.

Excepted functions include:

- Supporting the Commissioned Personnel Center and Director's Staff to coordinate the excepted activities related to processing personnel actions, notifying, and recalling staff.
- Answering budgetary questions on excepted activities for OMAO and its subcomponent organizations.
- Providing direction, security and basic services necessary to protect and maintain NOAA's fleet. NOAA vessels are government assets valued in the hundreds of millions of dollars that must be secured and protected to avoid risk of damage or theft and that would prevent their future use.
- Protecting and maintaining NOAA's aircraft and facilities, which are government assets valued in the hundreds of millions of dollars and must be secured and protected to avoid risk of damage or theft that prevent their future use. Excepted positions with unique, specialized experience maintain aircraft on a 24-hour/7-day shift-work basis. Aircraft must be maintained in a constant state of readiness to support weather impacting, emergency events and to ensure the protection of property.
- Maintaining the NOAA Corps Officers cadre assigned throughout NOAA organization to assist with excepted activities during a lapse in appropriations.
- Vessel and aircraft operations in support of other excepted functions such as Right Whale Surveys and Snow Surveys.

National Telecommunications and Information Administration (NTIA)

As the Executive Branch agency responsible for advising the President on telecommunications and information policy issues, NTIA must continue to perform the following critical activities during a lapse in appropriations: 1) manage the federal use of spectrum; 2) support policy and international treaty development in the areas of the Internet economy, including online privacy, copyright protection, cybersecurity, and the global free flow of information online; and 3) promoting the stability and security of the Internet's domain name system.

In addition to these critical responsibilities, NTIA receives funding from other than annual appropriated funds, including Mandatory Accounts and funds from federal and non-federal stakeholders. These funding sources allow NTIA to: 1) performing cutting-edge telecommunications research and engineering with both Federal government and private sector partners; 2) build and operate a nation-wide public safety broadband network, as well as support state and local governments to plan for their participation in the network; and 3) strengthen and seek greater efficiencies with federal spectrum use.

NTIA will limit its policy, spectrum management, and research activities to only the most critical or those funded by other than current annual appropriations. Further, NTIA will not engage in activities that further the deployment and use of broadband and other technologies in America.

Offices of the Assistant Secretary, Congressional Affairs, Public Affairs, and Chief Counsel

NTIA has one Presidentially-appointed, Senate-confirmed (PAS) officer who, by virtue of his/her position, is not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event this position is either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having its functions and duties performed temporarily by other than a PAS official, then that individual will be excepted from furlough as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable.

Provide minimal level of legal and advisory support as necessary for otherwise excepted or exempted NTIA activities, including international treaty negotiations and policy support to protect human life and property that could be threatened through cyber or national security incidents that impact our nation's telecommunications and information infrastructure.

Office of Spectrum Management

Ensure the emergency protection of spectrum management in support of US national security operations and other critical federal government activities. This excepted function is necessary for safety of human life and the protection of government owned and controlled spectrum frequencies (i.e., property).

On an intermittent basis, support the United States Government in the United Nations' International Telecommunications Union, which reviews and revises international Radio Regulations—an international treaty governing the global use of radio-frequency spectrum. This excepted function is necessary to discharge the President's constitutional duties and powers to enter into international treaties.

Contingent upon the availability of other than current annual appropriations (e.g., reimbursable dollars), perform operational activities related to spectrum management and critical mission needs.

Offices of Policy Analysis and Development and International Affairs

Provide telecommunications and information policy advice to the Secretary, White House, and other federal agencies in the areas of national security, cybersecurity, and law enforcement. This excepted function is necessary to protect human life and property that could be threatened through cyber or national security incidents that impact our nation's telecommunications and information infrastructure.

On an intermittent basis, support the United States Government in international treaty negotiations, such as those of the International Telecommunications Union and the G7, which involve telecommunications and information policy. This excepted function is necessary to discharge the President's constitutional duties and powers to enter into international treaties.

Ensure the availability of US Government administered .mil, .gov, .edu, and .us Top Level Domains. NTIA must provide written approval for any re-delegation requests from ICANN and approve technical changes associated with the .us Top Level Domains under contract managed by NTIA. This excepted function is necessary to protect and ensure the operation of government owned and controlled domains (i.e., property) that also are used to provide critical services that ensure the safety of human life.

Office of Internet Connectivity and Growth

Administers the BroadbandUSA program, the National Broadband Availability Map (NBAM), the Minority Broadband Initiative (MBI), the Tribal Broadband Connectivity Grant program, the Broadband Infrastructure Deployment Grant Program, the Connecting Minority Communities Pilot Program, as well as implement the provisions of the ACCESS Broadband Act, which have continuing sources of funds.

Institute for Telecommunications Sciences

Perform and provide administrative support to research projects associated with previously-obligated reimbursable agreements with other federal agencies and CRADAs with non-federal entities in order to satisfy mission-oriented commitments with clients. The activities will be performed on an intermittent to full-time basis based on the availability of funds and timeline for client commitments.

On an intermittent basis, perform maintenance and emergency services (e.g., fire, wind damage, electrical issues, etc.) related to the safety of human life or the protection of property at NTIA's Table Mountain research facilities outside Boulder, CO.

Office of Public Safety Communications

Provide support and oversight to the First Responder Network Authority as it develops a nationwide public safety broadband network and provide federal assistance to state and local entities as they plan to participate in the network. These activities are exempt due to financing by a resource other than annual appropriations. Funding is provided through provisions of the Middle Class Tax Relief and Job Creation Act of 2012.

Office of Policy Coordination and Management

OCIO will continue to execute and complete critical IT duties, responsibilities, oversight and coordination across Commerce in support of otherwise excepted activities and functions.

Continue to provide support to address IT, financial, human resources, and other management matters in support of otherwise excepted and exempted functions of NTIA on an intermittent to full-time basis, as needed.

First Responder Network Authority

Develop, build, and operate a nationwide public safety broadband network. These activities are exempt due to financing by a resource other than annual appropriations. Funding is provided through fee collections and provisions of the Middle Class Tax Relief and Job Creation Act of 2012.

National Technical Information Service (NTIS)

NTIS receives no direct appropriations and operates from a revolving fund on a fee-for-service basis. NTIS will not reduce staffing if there is a short (1-5 day) lapse in appropriations.

However, whether NTIS will continue work on the projects it undertakes for other Federal agencies will depend on those agencies determining whether it is appropriate for the project to continue during the lapse. The NTIS Deputy Director and Chief Financial Officer staff will track the NTIS revolving fund balance to determine when NTIS is likely to reach a minimal balance, at which time NTIS will begin orderly shutdown and all bureau activities will cease.

United States Patent & Trademark Office (USPTO)

The USPTO anticipates that it will have sufficient funds from patent and trademark business operations, other than current year appropriations, to continue full operations for a period of time after a general lapse in appropriations commences. If a lapse in appropriations continues to the point when funds from patent and trademark business operations can no longer sustain full operations, most USPTO employees will need to be furloughed. In the event that a shutdown of the USPTO is necessary, the following plan will be executed as described below.

Given the nature of the USPTO's business operations, funds from patent operations and trademark operations may not expire at the same time. It is possible that one business unit will continue to operate at normal levels while the other will shut down. The plan below covers the expiration of funds for both patent and trademark business units. Should that occur, the activities noted in the areas below reflect the bare minimum set of activities necessary to protect against the actual loss of intellectual property (IP) rights and the protection of life and property.

Office of the Under Secretary

In the event of a lapse in appropriations, the Office of the Under Secretary will provide overall management and direction of functions authorized to continue during the lapse. This includes necessary oversight and the provision of centralized services for excepted functions of all operating units.

The Under Secretary is a presidentially-appointed, Senate-confirmed (PAS) officer who, by virtue of the position, is not subject to furlough and the Department is authorized by necessary implication to continue to incur fiscal obligations to cover the Under Secretary's salary. In the event that this position is either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) has its functions and duties performed temporarily by an individual other than a PAS official, then such individual will be excepted from furlough as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable.

Regional Offices (Detroit, MI; Denver, CO; Dallas, TX; San Jose, CA)

There will be no activities conducted during a shutdown at our regional offices.

Office of Patents

In the event of a shutdown, the Office of Patents shall retain minimal staffing to manage several excepted functions. Persons excepted from a furlough include staff charged with protecting mission critical intellectual property, and staff who review all foreign activity. Also excepted are employees who process and review all newly filed patent applications (including the review of applications for national security interests to ensure that a Foreign Filing License is not inappropriately granted). These positions ensure that incoming applications are complete and meet filing requirements, thereby serving to protect patent filing dates.

The Office of Patents will also retain staff who maintain critical Licensing and Review (L&R) functions, including properly receiving requests for foreign filing licenses, deciding those requests, and issuing such licenses as provided under 35 USC § 184. Failure to receive a foreign filing license timely can result in loss of property rights by an applicant. Employees who advise on questions concerning 35 USC § 156 (Hatch-Waxman) will remain during the furlough, as failure to timely address questions concerning interim extension can also result in loss of property rights by the patent owner.

Office of Trademarks

During a furlough, the Office of Trademarks will except employees responsible for protecting mission critical Intellectual Property and overseeing all foreign activity. In addition, employees who provide technical and IT support for systems necessary to meet legal obligations to the public and international treaties will remain.

Office of Policy and International Affairs

In the event of a shutdown, the Office of Policy and International Affairs shall retain minimal staffing levels. Employees who monitor international activities related to IP protection and enforcement will remain as they are necessary to protect property rights. Staff who accept correspondence from other international IP agencies and support USPTO leadership on international issues will remain during a furlough to help us uphold obligations under international IP treaties.

Office of the Chief Administrative Officer

During a furlough, the Office of the Chief Administrative Officer (OCAO) will retain minimal staffing to provide agency oversight and coordination for shutdown operations, human capital and emergency operations. The OCAO will retain staff to advise agency leadership on human resource related matters, including union concerns, time and attendance matters, and orderly shutdown procedures. Other critical operations, necessary to protect life and property, supported by minimal staff in the OCAO's office include monitoring the contract guard force, guaranteeing the integrity of physical access and security systems on campus, accepting mail and packages, and providing advice on local and national events for potential impacts to the agency.

Office of the Chief Communications Officer

In the event of a shutdown, the Office of the Chief Communications Officer will retain minimal staffing to provide agency communication to stakeholders including the general public, international partners, and the media.

Office of the Chief Financial Officer

The Office of the Chief Financial Officer will retain minimal staffing to perform required functions necessary to protect property. Functions of the office that will continue include continued processing of incoming maintenance fees, paying invoices on prior obligations incurred by the USPTO, and processing all budgetary transactions in the USPTO's financial

systems. Staff will provide contracting officer duties and responsibilities, issue delivery/task orders, and modify financial actions. Additionally, staff will continue to analyze budgetary accounts, amounts, and spending during the furlough and will provide financial reporting such as reconciliation and record preservation as required by law.

Office of the Chief Information Officer

The Office of the Chief Information Officer (OCIO) will retain minimal staffing to support excepted activities including those necessary to meet existing legal obligations to the general public, those necessary to uphold obligations required by international treaties, and those necessary to protect property. Retained staff will include those responsible for maintaining the integrity and security of the USPTO's information technology network, operating the CIO Command Center, and providing essential event/incident response management. The OCIO will also retain employees to provide emergency response to IT systems used by the general public to research and protect property rights.

Office of the General Counsel

The Office of the General Counsel (OGC) expects that some shutdown functions will not be completed within one-half day. These activities include filing motions to stay matters in litigation, suspending or closing other legal matters, and administrative legal tasks related to the suspension of USPTO operations.

In addition, the OGC will continue to provide the minimal level of legal support necessary for otherwise excepted activities of the USPTO and its operating units. This includes legal advice incidental to emergency functions that relate to the safety of human life or the protection of property. Additionally, OGC will continue to provide ongoing interpretations of law related to the continued protection of USPTO property, IP, and employees. Remaining staff will provide legal advice as needed to protect IP and to comply with federal mandates. The applicable statute of limitations will be met for practitioner discipline cases.

In the event a lapse continues for an extended period, personnel may be recalled as necessary to provide litigation support for cases that cannot be suspended and to provide legal support for excepted Department and operating unit functions, as well as activities unforeseen at the commencement of the lapse.

Office of Equal Employment Opportunity and Diversity

The Office of Equal Employment Opportunity and Diversity will conduct no activities during a shutdown.

Patent Trial and Appeal Board

The Patent Trial and Appeal Board will retain a minimal level of staff excepted from the furlough to manage its critical functions related to the preservation of property rights and those functions required under US law. These functions include managing ongoing contested cases that require orders signed by a judge and entered to preserve party rights, evidentiary rulings for

depositions and other discovery proceedings, and contested proceedings scheduled on a pre-set independent of the USPTO's closing. Emergency motions will need to be decided as time periods between the parties pass. Stay orders will need to be entered and sent out to maintain the status quo of property rights between parties in contested cases as the preset deadlines pass.

Trademark Trial and Appeal Board

A minimal level of staff excepted from the furlough will be retained to manage critical functions of the Trademark Trial and Appeal Board related to the preservation of property rights and those functions required under US law. These functions include managing ongoing contested cases that require orders signed by a judge and entered to preserve party rights, evidentiary rulings for depositions and other discovery proceedings, and contested proceedings scheduled on a pre-set independent of the USPTO's closing. Emergency motions will need to be decided as time periods between the parties pass. Stay orders will need to be entered and sent out to maintain the status quo of property rights between parties in contested cases as the preset deadlines pass.

Additionally, excepted staff are needed to ensure the availability of the functioning electronic system to issue orders and reset dates.

Office of Government Affairs and Oversight

The Office of Government Affairs and Oversight will retain minimal staff during a furlough in order to perform activities necessary to protect life and property. These activities include monitoring Congressional activities related to the USPTO and responding to any requests from Congress related to IP rights and the USPTO's status during the furlough.

Office of the Inspector General (OIG)

In the event of a lapse in appropriations, the Office of the Inspector General will continue to perform ongoing audits, evaluations, and investigations that are supported by existing multi-year and no-year funds. This includes necessary oversight and the provision of centralized services such as legal counsel, network operations and security, data analytics, writer/editor services, and limited administrative and financial services support.

The Office of the Inspector General has one Presidentially-appointed, Senate-confirmed (PAS) office who, by virtue of their position, is not subject to furlough and for which the Department is authorized by necessary implication to continue to incur fiscal obligations to cover their salary. In the event this position is either (1) encumbered by an appointee who formerly served in a career senior executive position and who opted to retain leave benefits under 5 USC § 3392(c) or (2) having its functions and duties performed temporarily by other than a PAS official, then such individual will be excepted from furlough as necessary to provide management and oversight responsibility incidental to emergency functions related to the protection of human life and property or other excepted functions, as applicable. Additionally, the Deputy Inspector General will assist the Inspector General in maintaining the continuity of decision making authority, the Counsel to the Inspector General will continue to provide legal support to the Agency on emergency matters along with one attorney advisor, and an information technology specialist will maintain and protect databases containing proprietary information. Further, two budget personnel within the Office of Administration will work on an intermittent basis to perform financial management activities necessary to liquidate obligations incurred prior to a lapse in appropriations or against multi-year or no-year appropriations otherwise available for obligation during a lapse in appropriations. Lastly, two Human Resources personnel within the Office of Administration will work on an intermittent basis to provide continuity in time and attendance and payroll processing.

1. Compensation is financed by a resource other than annual appropriations.
2. Necessary to perform activities expressly authorized by law.
3. Necessary to perform activities necessarily implied by law.
4. Necessary to the discharge of the President's constitutional duties and powers.
5. Necessary to protect life and property.

EXCEPTED STAFF - BUREAU OVERVIEW

Bureau, Operating Unit	On-Board August 1, 2021	Cat 1	Cat 2	Cat 3	Cat 4	Cat 5	Total
Office of the Secretary	973	14	-	15	2	239	267
Office of the Under Secretary for Economic Affairs (OUSEA)	6	-	-	1	-	-	1
Bureau of Economic Affairs (BEA)	450	-	-	-	-	3	3
Bureau of Industry and Security (BIS)	387	15	-	3	52	191	261
Census *	18,647	11	-	115	-	32	158
Economic Development Administration (EDA)	278	108	-	-	-	1	109
International Trade Administration (ITA) **	2,019	18	-	4	15	23	60
Minority Business Development Agency (MBDA)	40	-	-	1	-	-	1
National Institute of Standards and Technology (NIST)	3,381	137	-	35	41	413	626
National Oceanic and Atmospheric Administration (NOAA)	11,842	222	-	381	-	5,440	6,043
National Telecommunications and Information Administration (NTIA)	486	460	-	3	7	16	486
National Technical Information Service (NTIS) ***	41	41	-	-	-	-	41
U.S. Patent and Trademark Office (USPTO) ****	12,920	-	-	5	-	231	236
Office of Inspector General (OIG)	184	61	-	6	-	3	70
Totals	51,654	1,087	-	569	117	6,592	8,362

* The number of Census Bureau positions listed under Category 1 for FY22 are subject to change due to the complexity and cyclical nature of the bureau's operations. Up to 2,300 decennial funded positions could be needed for ongoing operations related to the 2020 Census in FY22. The funded positions for reimbursable surveys may be as high as 7,500, depending upon the number of funded reimbursable agreements that have been executed prior to a potential lapse. During a lapse in appropriations, the working capital fund (WCF) will generate overhead from the above-funded positions and could average 300 positions. Prior to any lapse in appropriations, an assessment will be performed to determine the level of budget authority available to continue operations.

** In addition to staff listed as excepted on the Department's plan, the Department also employs a number of locally employed staff (LES) and senior commercial officers (SCOs) in foreign countries. In the event of a lapse in appropriations, individual determinations regarding LES and SCOs will be made in coordination with the respective country's Chief of Mission.

*** NTIS does not receive any appropriations and will continue to operate as normal in the event of a funding lapse.

**** To the extent prior year annual appropriations and the proceeds of offsetting collection authorities remain available to finance operations, USPTO will continue full operations. If a shutdown is necessary, the plan herein will be executed.