

September 25, 2013

**MEMORANDUM FOR THE DEPUTY SECRETARY**

FROM: M. PATRICIA SMITH *MPS*

RE: SECOND UPDATE TO APRIL 7, 2011 PLAN FOR  
CONTINUATION OF CERTAIN LIMITED DEPARTMENTAL  
AND SOLICITOR ACTIVITIES DURING A LAPSE IN  
APPROPRIATIONS

I have reviewed my April 7, 2011 memo to you entitled "Continuation of Certain Limited Departmental and Solicitor's Office Activities During a Lapse in Appropriations" as well as the December 14, 2011 update to that memo. Those memoranda included 1) agency plans that the Office of the Solicitor (SOL) approved at that time as meeting the legal criteria and principles for performance of excepted activities during a lapse in appropriations; 2) documentation from the heads of other DOL agencies acknowledging that their agencies would cease to operate during a shutdown because they do not meet any of these legal criteria; and 3) SOL's plan for continuing a minimal level of activities sufficient to support the excepted activities of the Department under applicable legal standards.

With the exception of the changes noted below, the Office of the Solicitor has determined that the agency plans remain current in the event that a lapse in appropriations occurs in the near future.

SOL has approved for legal sufficiency the following substantive changes to DOL agencies' excepted activities agency plans.<sup>1</sup> These activities are excluded from the general prohibition on performing government functions during a lapse in appropriations, and the appropriate number of FTE will be assigned to work during a lapse in appropriations:

- The plan submitted by the Mine Safety and Health Administration has removed criminal investigative work in support of the U.S. Attorney's investigation of potential crimes associated with the Upper Big Branch explosion in April 2010, which was excepted from the general prohibition on performing government work during a shutdown in 2011, because that work has concluded.
- The Office of Workers Compensation Programs will be able to continue to pay Black Lung Part C benefits as long as the Black Lung Disability Trust Fund

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<sup>1</sup> Several offices have revised the text of their plans in order to delete extraneous information not needed in the text of the plan, including deleting individual employee names, or to update the plan text to reflect current details of plan implementation or employee titles. Changes in employee names were only made when a plan was otherwise undergoing revision. [Note: This summary applies to OSEC, BLS, EBSA, ETA, OCFO, OPA, OSHA, OWCP, and WHD]

contains sufficient funds to make such payments. Unlike previous continuing resolutions, the Consolidated and Further Continuing Appropriations Act, 2013 does not contain a provision restricting mandatory payments during a lapse of appropriations to a period of not more than 30 days.

- The plan submitted by the Office of Inspector General has removed the exempted activity dealing with oversight of activities and expenditures related to American Recovery and Reinvestment Act of 2009 funding, and also conforms to reduced staffing and changes in leadership.
- The plan submitted by the Employee Benefits Security Administration reflects the fact that the agency no longer has an Affordable Care Act implementation fund.
- The Office of the Assistant Secretary for Administration and Management’s revised plan reflects increased IT staffing to address increased IT responsibilities including added IT security responsibilities gained since 2011.
- Due to a reorganization by the Office of Labor-Management Standards, the agency’s revised plan reflects the addition of the new director of field operations as excepted.

In addition, the plan submitted by SOL no longer reflects excepted staff assisting the Department of Justice as that work has concluded.

When only the names of personnel listed in agency plans have changed but position titles remain the same, agency plans have not been updated to reflect those changes. However, the Office of the Assistant Secretary for Administration and Management is maintaining an up-to-date list of excepted and exempt employees.

As I noted previously, we will revise our approvals if and when circumstances warrant any additional changes.

Updated Agency-by-Agency Employee Census

We have revised the agency-by-agency employee census provided in 2011. The new census numbers are based on information provided to SOL as of today.

Agency Name	“On Board”	During Shut-Down
Office of the Secretary (IO, Dep Sec & Exec Sec)	66	8
Benefits Review Board	66	4
Bureau of Labor Statistics	2409	3
Employee Benefits Security Administration	986	46
Employment and Training Administration	1107	28

International Labor Affairs Bureau	105	2
Mine Safety and Health Administration	2355	966
Office of Administrative Law Judges	122	0
Office of Assistant Secretary for Administration and Management	722	52
Office of Chief Financial Officer	123	10
Office of Congressional and Intergovernmental Affairs	26	3
Office of EEOICPA Ombudsman	6	6
Office of Inspector General	396	180
Office of Labor Management Standards	219	1
Office of Public Affairs	58	8
Office of the Solicitor	728	71
Occupational Safety and Health Administration	2235	230
Office of Workers Compensation Programs	1606	1328 <sup>2</sup>
Wage and Hour Division	1829	6
Administrative Review Board	14	0
Employee Compensation Appeals Board	37	0
Office of Assistant Secretary for Policy	27	0
Office of Federal Contract Compliance Programs	726	0
Office of Disability Employment Policy	49	1
Office of Faith-Based and Neighborhood Partnerships	1	0
Office of Public Engagement	0	0
Office of Recovery for Auto Workers and Communities	3	0
Veterans Employment and Training Administration	229	1
Women's Bureau	54	0
<b>TOTAL</b>	<b>16,304</b>	<b>2,954</b>

Updated Agency-by-Agency Dates of Solicitor Approval for Legal Sufficiency

The Office of the Solicitor reviewed and approved proposals for excepted activities for the following DOL agencies or offices (the date of each approval appears in parentheses):

- Office of the Secretary (includes Immediate Office, Office of the Deputy Secretary, Executive Secretariat (9/25/13)
- Benefits Review Board (9/16/13)
- Bureau of Labor Statistics (9/16/13)
- Employee Benefits Security Administration (9/16/13)
- Employment and Training Administration (9/23/13)
- International Labor Affairs Bureau (9/16/13)

<sup>2</sup> The salaries for many employees in the Office of Workers Compensation Programs (OWCP) are funded by "no-year" appropriations.

- Mine Safety and Health Administration (9/16/13)
- Office of Administrative Law Judges (9/16/13)
- Office of Assistant Secretary for Administration and Management (9/16/13)
- Office of Chief Financial Officer (9/16/13)
- Office of Congressional and Intergovernmental Affairs (9/16/13)
- Office of EEOICPA Ombudsman (9/16/13)
- Office of Inspector General (9/16/13)
- Office of Labor Management Standards (9/16/13)
- Office of Public Affairs (9/16/13)
- Office of the Solicitor (9/16/13)
- Occupational Safety and Health Administration (9/16/13)
- Office of Workers Compensation Programs (9/23/13)
- Wage and Hour Division (9/16/13)

SOL-approved plans for each of the above agencies are included in this memorandum.

Pursuant to its legal analysis, SOL also determined that the following agencies have no functions that would continue during a funding lapse. We have indicated in parentheses the date on which the agency head confirmed to SOL his or her understanding that the agency would shut down during a lapse in funding:

- Administrative Review Board (9/10/13)
- Employee Compensation Review Board (9/10/13)
- Office of Assistant Secretary for Policy (9/12/13)
- Office of Federal Contract Compliance Programs (9/9/13)
- Office of Disability Employment Policy (9/13/13)\*<sup>3</sup>
- Office of Faith-Based and Neighborhood Partnerships (9/16/13)
- Office of Public Engagement (9/16/13)
- Office of Recovery for Auto Workers and Communities (9/16/13)
- Veterans Employment and Training Administration (9/9/13)\*
- Women's Bureau (9/10/13)


Email exchanges demonstrating agency head acknowledgment of the need to shut the agency down are attached to this memorandum.

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<sup>3</sup> Asterisks in this section of the list denote the head of an agency that has no functions that would continue during a funding lapse is a Presidential appointee not subject to furlough who would continue to report to work during a shutdown.

**U.S. DEPARTMENT OF LABOR**  
**OFFICE OF THE SECRETARY**  
**WASHINGTON, D.C.**  
**20210**






**MEMORANDUM FOR THE SOLICITOR**

**FROM:** Matthew Colangelo   
Chief of Staff

**DATE:** September 25, 2013

**SUBJECT:** Review of March 1, 2011 Contingency Planning Memo

I have reviewed the contingency planning memo for the Office of the Secretary, dated March 1, 2011, and the changes made in the memo on December 14, 2011. No substantive changes to these previous memos are necessary, so the office plan continues to call for the following:

- Four (4) “excepted” positions to satisfy the office’s minimum full time staffing requirement.
  - , Chief of Staff
  - , Deputy Chief of Staff
  - , Senior Counselor to the Secretary
  - , Director of Scheduling and Advance
  
- One (1) “excepted intermittent” individual who would work as necessary (office or telework).
  - , Chief Economist

U.S. DEPARTMENT OF LABOR  
DEPUTY SECRETARY OF LABOR  
WASHINGTON, D.C.  
20210

February 28, 2011

MEMORANDUM FOR M. PATRICIA SMITH  
SOLICITOR OF LABOR

FROM:

SETH D. HARRIS  
DEPUTY SECRETARY



SUBJECT:

Proposed "Excepted" Activities During a Lapse in Appropriations

During a lapse in appropriations, my immediate office will suspend all operations and all of my employees will be furloughed, except as described below. Upon your approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the name of the individuals performing the activities set forth below. I envision job rotation for some activities.

Excepted staff in this office will limit their activities to activities in support of the Secretary and Deputy Secretary in the performance of "excepted" activities as identified in the Department. This would include departmental excepted activities, activities arising from the fact that the funding lapse has occurred, and executive branch efforts to resolve the impasse with Congress.

In the absence of special needs during such a lapse in appropriations, one staff assistant would be utilized to perform excepted activities, including, for example, screening callers, reviewing mail and other requests, and structuring my schedule and coordinating it with the needs of the Secretary. Other staff could be recalled should the volume of my duties with respect to the shutdown or other excepted activities rise to warrant additional staffing. This would include the occurrence of a serious emergency or a major initiative, e.g., legislative, legal or programmatic, subsequently authorized as an excepted activity.

Thank you for your review of this request.

**MEMORANDUM FOR PATRICIA SMITH,  
SOLICITOR OF LABOR**

**FROM: BETSY KIM *lck*  
DIRECTOR, EXECUTIVE SECRETARIAT**

**DATE: March 1, 2011**

**SUBJECT: Proposed "Excepted" Activities in the Office of the Executive Secretariat  
During a Lapse in Appropriations**

*The Office of the Executive Secretariat is charged with managing and implementing the Secretary's internal communication process, and providing logistical support to the Secretary, who performs statutory duties and fundamental responsibilities for, and on behalf of, the President. The Secretary's ability to perform these duties requires staff support from the Office of Executive Secretariat.*

*During a lapse in appropriations, this office remains the Secretary's communications nerve center for (1) performing triage of correspondence and other communication for the appropriate Secretarial, PAS and staff attention, and (2) assuring quality control and correspondence management for all written communications relating to the authorized functioning of the Department. -*

*In addition, the Office of the Executive Secretariat manages controlled information intended for the Secretary and Deputy Secretary, and performs logistical support required to assure that the Secretary's daily agenda, both within and outside the departmental headquarters, is carried out in an effective manner, as free as possible from undue security risk.*

*In the event of a lapse in appropriations, I believe a minimum of three staff are necessary to assure that these minimal activities are performed. In the event that circumstances require additional staff, or require the rotating of staff, alternates may be utilized.*

**Individuals who would provide the authorized services:**

- ██████████ - Director, Executive Secretariat**
- ██████████ - Director, Management Support Services**
- ██████████ - Secretary Driver Day Shift**

March 8, 2011

MEMORANDUM TO: PATRICIA SMITH  
Solicitor

FROM: ROY P. SMITH  
Acting, Chairman of the Board  
Benefits Review Board

RE: AGENCY SHUTDOWN

During a lapse in appropriations, the Benefits Review Board will suspend all operations, and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work during the duration of the emergency.

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**Exception for Processing Motions for Stays of Payments:**

The Benefits Review Board references the exception from a required shutdown of government activities due to lapse in appropriations that is permitted for obligations that are necessary for the protection of property. The narrow category of activities described below will permit the protection of property interests that would otherwise be lost.

Pursuant to 33 U.S.C. §914(f), an employer must pay an award ordered by the administrative law judge within 10 days after it becomes "due." If employer does not pay, it is liable for an additional assessment of 20 % of the amount due. *See also* 20 C.F.R. §702.350.

An award becomes "due" at the time it becomes "effective" pursuant to 33 U.S.C. §919(e), which is when the administrative law judge's compensation order is "filed" in the office of the district director. *See also* 33 U.S.C. §921(a); 20 C.F.R. §702.350.

The last clause of 33 U.S.C. §921(b)(3) provides that compensation required by an award must be paid even while a case is on appeal, unless a stay of payments is granted by the Board. Section 921(b)(3) states that a stay of payments shall not be issued unless the employer/carrier can establish "irreparable injury" will ensue if it is required to pay the award. *See also* 20 C.F.R. §802.105. If the Board grants a stay of payments, its order must contain a specific finding regarding the nature and extent of the irreparable injury that would ensue to the employer/carrier. 20 C.F.R. §802.105(a).



Thus, in order for an employer/carrier to obtain complete, albeit possibly temporary, relief, it must apply for, and the Board must grant, a stay of accrued and prospective payments within 10 days of the date the compensation order is filed by the district director. Employer, however, may apply for a stay of payments at any time, and after the initial 10-day period, any stay granted would apply only to prospective benefits.

**Conclusion:**

In light of the forgoing, it appears to the undersigned that the Clerk of the Boards is essential to administering the Benefits Review Board's responsibility to process motions for stays of payments. The Clerk will, therefore, report to work in order to screen incoming mail for any motions for stays of payments. In the event any such motions are found, he will prepare a recommendation on the motion for the Board's consideration. Since a panel of three judges is required to address and rule on any such motion, three judges may be required to report to work intermittently to rule. Subsequently, the Clerk will prepare an order for the judges' signature, and timely issue that order.

**Individuals Authorized for Work Under this Exception:**

██████████, Clerk of the Appellate Boards  
██████████, Chairman and Chief Administrative Appeals Judge  
██████████, Administrative Appeals Judge  
██████████, Administrative Appeals Judge

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**U.S. Department of Labor**

Commissioner  
Bureau of Labor Statistics  
Washington, D.C. 20212



September 10, 2013

Memorandum For: M. Patricia Smith, Solicitor

Deborah Greenfield, Deputy Solicitor

From:

Erica L. Groshen, Commissioner

*John M. Gahr for E. Groshen*

Subject:

Contingency Plan for Excepted Functions in the Absence of Appropriations

During a lapse in appropriations the Bureau of Labor Statistics will suspend all operations and its staff will be furloughed, except as described below. A member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotations in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

All survey and other program operations will cease and the public website will not be updated. In addition, for command and control purposes, blackberry and email service will be maintained for those in work status. Minimum timekeeping functions for excepted personnel will continue, though most administrative functions will cease during a shutdown.

The timing of any shutdown is critical. In 1995, the shutdown occurred after the Consumer Price Index (CPI) estimates had been prepared, but before they were released to the public. While the release of economic data was not classified by the Office of Management and Budget (OMB) to be an excepted activity, the risk of disclosure of the CPI data during a shutdown was deemed to be unacceptable and releasing the CPI report was deemed to be part of the orderly cessation of activities. As such, OMB authorized a minimal staff to come in during the shutdown to release the CPI data. Should such an exigency occur again and OMB authorizes the release of some Principal Federal Economic Indicator (PFEI), BLS would need a small staff from the program, publications, and IT offices to handle the release. Those individuals would vary depending on the timing of the shutdown and, hence, the particular release that would be affected.

In order to maintain program operations as long as possible leading up to a shutdown, we will need to backup our systems, verify successful backup, and then shut them down. We consider this a necessary part of the orderly cessation of operations. This process will take up to 3 days, and will vary by program.

While GSA manages physical security in the building, it is possible that any incidents that might pose a risk to the security of protected data will require staff to report to work on an as-needed basis.

A list of our proposed excepted individuals will be sent to the Assistant Secretary for Administration and Management. As mentioned, some staff not listed may be required depending on the timing of a shutdown in relation to the release of a PFEI or unforeseen emergencies.

**U.S. Department of Labor**

Employee Benefits Security Administration  
Washington, D.C. 20210



**SEP 12 2013**

**MEMORANDUM FOR** Patricia Smith  
Solicitor of Labor

**FROM:** Alan D. Lebowitz *AL Lebowitz*  
Deputy Assistant Secretary  
For Program Operations

**SUBJECT:** Suspension of Operation Plans

Based upon an analysis of EBSA's responsibilities, we propose that 85 of our field and National Office staff be declared "excepted" or "intermittent excepted." In FY 1995, we received approval from the Solicitor's Office for these same activities. In FY 2011, these same activities were reaffirmed by the Solicitor's Office. This limited number of staff is needed in order to continue to perform excepted and "by necessary implication" activities arising from the Secretary's criminal authority under ERISA and to otherwise respond to situations which require immediate action under the statutory civil remedies provided to the Secretary to prevent an imminent threat to property as well as to address imminent threats to human life when medical benefits are denied in life threatening situations.

During a lapse in appropriations the Employees Benefit Security Administration will suspend all operations and its staff will be furloughed, except as described in the attached. Upon approval of this request a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individual performing the excepted and or excepted by "necessary implication" activities set forth above. I anticipate the possibility that additional or intermittent employees may be required to in some instances. If unforeseen emergencies occur, these additional employees would be identified and a request for their exception requested.



If you have any questions or further clarification is necessary please contact me at your earliest convenience.

Agency: EMPLOYEE BENEFITS SECURITY ADMINISTRATION

Excerpted Activities

The following employees' continued service is needed on an ongoing basis to perform excerpted activities that arise from the Secretary's authority to i) pursue criminal cases involving ERISA plans, ii) pursue civil proceedings and remedies necessary to prevent an imminent threat to property, particularly including plan assets, and iii) address situations posing an imminent threat to human life due to the denial of health or disability benefits by an ERISA-covered plan.



National Office

<u>Employee Name</u>	<u>Office</u>	<u>Office Phone</u>
	Office of the Assistant Secretary	
	Office of the Assistant Secretary	
	Office of the Assistant Secretary	
	Office of the Assistant Secretary	
	Office of the Assistant Secretary	
	Office of Program Planning	
	Office of Enforcement	
	Office of Enforcement	
	Office of Enforcement	
	Office of Enforcement	
	Office of Participant Assistance	
	Office of Participant Assistance	
	Office of Technology and Info	
	Office of Technology and Info	

\*Support Staff

Subtotal: 14

Field Offices

<u>Employee Name</u>	<u>Office</u>	<u>Office Phone</u>
	Regional Director, Boston	
	Regional Crim. Coord., Boston	
	Regional Director, New York	
	Deputy RD, New York	
	Regional Crim. Coord., New York	
	Regional Director, Philadelphia	
	Deputy RD, Philadelphia	
	District Supervisor, Washington, DC	
	Regional Crim. Coord., Philadelphia	
	Regional Director, Atlanta	
Deputy RD, Atlanta		

District Supervisor, Ft. Lauderdale  
Regional Crim. Coord., Atlanta  
Regional Director, Cincinnati  
Deputy RD, Cincinnati  
Regional Crim. Coord., Cincinnati  
District Supervisor, Detroit  
Regional Director, Chicago (Acting)  
Deputy RD, Chicago  
Regional Crim. Coord., Chicago  
Regional Director, Kansas City  
Deputy RD, Kansas City  
Regional Crim. Coord., Kansas City  
Regional Director, Dallas  
Regional Crim. Coord., Dallas  
Regional Director, Los Angeles  
Deputy RD, Los Angeles  
Acting Reg. Crim. Coord., LA  
Regional Director, San Francisco  
Deputy RD, San Francisco  
Regional Crim. Coord., San Francisco  
District Supervisor, Seattle

Subtotal: 32

Agency Total: 46

**Intermittent Exceptions (Agency Total: 39)**

In addition there is a requirement that the below listed employees be excepted in order to perform the excepted activities described.

Office of Technology and Info (National Office): [REDACTED], IT Specialist; [REDACTED], IT Specialist; [REDACTED], Program Analyst; [REDACTED], Program Analyst; [REDACTED], Supervisory IT Specialist; [REDACTED], Supervisory IT Specialist.

EBSA has identified a minimal IT staff in the National Office who will ensure DOL's technology services, including e-mail, local area network framework, and various IT systems, operate without disruption to support excepted employee work in our National Office and Field Offices. The OTIS Director, an IT manager in EBSA's National Office, will coordinate the IT services for excepted staff in the field.

Office of Enforcement (National Office): [REDACTED], as COR for expert witness contracts (an excepted activity), may be required to prepare receipt of goods and approve invoices for payment to the vendors.

Boston Regional Office: Senior Investigator [REDACTED] has a meeting at the U.S. Attorney's Office in Connecticut involving the primary target of an investigation. This meeting is to establish the credibility of the more than three year government

investigation of the target. There is expected to be discussions regarding the potential for a plea agreement at this meeting.

Currently, the Deputy Regional Director is vacant (an excepted position). [REDACTED] will be Acting Deputy RD, Boston (10/1 – 10/5) and [REDACTED] Acting Deputy RD, Boston (10/6 – 10/31).

New York Regional Office: Senior Investigator [REDACTED] is the investigator in a criminal case scheduled for trial to start on October 7, 2013 and it is likely that [REDACTED] will be engaged in pre-trial preparation between October 1st and October 7<sup>th</sup> and trial thereafter.

Senior Investigators [REDACTED] and [REDACTED] are the investigators in the criminal case scheduled for trial to start on September 30, 2013 and may continue into October.

Investigator [REDACTED] is the investigator in the criminal case scheduled for trial to start on October 17, 2013, and it is likely that [REDACTED] will be engaged in pre-trial preparation between October 1st and October 17<sup>th</sup> and trial thereafter.

Philadelphia Regional Office: [REDACTED] is the lead investigator on the REAL VEBA. Philadelphia RSOL is preparing the Court that may hear the Secretary's complaint during the first week of October. If the hearing continues as scheduled, [REDACTED] testimony will be needed over several days in early October.

[REDACTED] is the investigator in a criminal case. On August 28, 2013, [REDACTED] the AUSA assigned to this case, indicated that he will go to the Grand Jury in October 2013 to seek an Indictment in November 2013. [REDACTED] has been asked to be a Grand Jury witness and be available to assist with other witnesses and the presentation of documents as needed.

[REDACTED] is the investigator in a series of criminal cases. These cases are being worked with Agents from OLMS and OIG under the supervision of AUSA [REDACTED] from the U.S. Attorney's Office for the District of Columbia. It is anticipated [REDACTED] services will be needed for several days in October to assist in the prosecution of these individuals.

Atlanta Regional Office: [REDACTED] is the Senior Investigator in the trial of the American Trade Association criminal investigations scheduled for October 1, 2013, in the Middle District of Tennessee, in Nashville, Tennessee. The trial is expected to last 1 month.

[REDACTED], Senior Investigator, and [REDACTED], Supervisory Investigator, are involved in a trial scheduled for September, but was canceled. The ARO is waiting for the Court to reschedule the trial. It is possible that it may occur in October. It is anticipated that it could last up to 1 week. The Trial would be in the Northern District of Florida, in Pensacola, Florida.

Cincinnati Regional Office: [REDACTED], Investigator, has a criminal trial scheduled for October 7, 2013. The investigator will need preparation time beginning the week of 9/30/13.

[REDACTED], GS/Health Care Coordinator, may have criminal investigative activity required regarding grand jury testimony on a significant criminal case. AUSA is expected to firm up plans in the next couple of weeks.

[REDACTED], Senior Investigator, has a criminal trial scheduled for November 12, 2013. Trial preparation will be necessary the week before the trial.

[REDACTED], Group Supervisor, has discovery for the Hillsdale/RFC cases that will probably begin in the next two months according to RSOL.

[REDACTED], Investigator, has a possible indictment in early October. Investigator will be required to testify.

[REDACTED], Senior Investigator, has a possible Grand Jury in early October. Investigator will be required to testify.

[REDACTED], Senior Investigator, has a possible criminal indictment in October/November.

Chicago Regional Office: [REDACTED], senior investigator has a criminal trial beginning October 18 and a criminal sentencing to attend on October 15.

Kansas City Regional Office: No Intermittent Exceptions

Dallas Regional Office: Regional Director [REDACTED] expects to be out of the office on October 10<sup>th</sup>, 11<sup>th</sup>, 17<sup>th</sup>, 18<sup>th</sup> and perhaps 21<sup>st</sup>. If the DRD position is not filled by then, the ARD [REDACTED] will be Acting RD as Excepted Intermittent.

[REDACTED], Investigator, has an arraignment hearing on a criminal case in mid-October and the Investigator may need to be present and it's possible that there may be an indictment related to another one of his cases.

[REDACTED], Investigator, a trial is scheduled to begin on September 30, 2013 which may go into October 1-4<sup>th</sup> in San Antonio.

[REDACTED], Investigator, may have to review a plea agreement related to a criminal case.

[REDACTED], Investigator, has grand jury subpoenas being issued in a criminal case and Investigators may be required to work reviewing the incoming documents for compliance and to provide the information to the prosecutor. [REDACTED], Investigator, may also be needed to review documents for compliance and to provide the information to the prosecutor. Additionally, it's possible that there may be an indictment related to one of [REDACTED] cases.

██████████ Investigator, may have an indictment related to one of his cases.

Los Angeles Regional Office: A deposition is currently scheduled for October 8, 2013 in connection with the Department's ongoing civil litigation against the Plan Sponsor and Great Banc. Senior Investigator ██████████ is the assigned investigator and is most knowledgeable about the facts of this case; her presence at the deposition is critical.

San Francisco Regional Office: ██████████ may have to testify in front of a federal grand jury in Sacramento in connection with a criminal case, if the subject declines to sign the negotiated plea agreement.

██████████ may have to testify in front of a grand jury in a criminal case, if the subject does not enter into a plea agreement.

██████████ is the investigator in a criminal case. The criminal trial is currently scheduled for Nov. 5, 2013 in Reno. ██████████ may be needed for trial prep during October.

Employees funded by non-lapsed funding source.

NONE


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September 27, 2013

MEMORANDUM FOR: M. PATRICIA SMITH  
Solicitor

FROM: ERIC SELEZNOW   
Acting Assistant Secretary for Employment and Training

SUBJECT: FY 2014 Funding Interruptions:  
*THIRD* UPDATED Designation of Excepted Activities and  
Personnel

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The purpose of this memo is to identify certain Employment and Training Administration (ETA) activities that could be maintained throughout any extended shutdown. During a lapse in appropriations, ETA will suspend all operations and its staff will be furloughed, except as described below. ETA's plan meets the Department of Justice tests for the continuation of UI benefits that don't lapse and the protection of life and property. The plan is based upon the following assumptions and provides an updated list of Excepted Personnel in Attachment B [Attachment B was provided to OASAM on September 18 and has been amended several times.]:

- No foreign labor certifications will be processed.
- No program performance reports will be received from grantees.
- No Trade Adjustment Assistance determinations will be made.
- Because there is no lapse in the payment of Unemployment Insurance (UI) benefits to unemployed workers, it will be necessary to cover the following UI functions: 1) Support to states and Federal agencies for payment of UI benefits for Federal and Military personnel (UCFE and UCX); 2) Disaster Unemployment Assistance; 3) Ensuring money transfers to states and to the various trust fund accounts are managed; 4) Emergency Unemployment compensation (EUC) and 5) Information technology functions.
- The weekly initial UI claims report, a key economic report, will be issued.
- The operations of all Job Corps centers are maintained by contracts that utilize PY 2013 funds. For that reason, and in order to protect life and safety of students and facilities, Job Corps will maintain operations of all 125 centers housing approximately 28,000 students. This will require a number of excepted employees during the shutdown. The center-related contracts are funded through November 1, 2013. After November 1, action will be required to provide additional PY 2013 funds to maintain center operations.
- Electronic systems will be maintained to process any Job Corps, National Emergency Grants for FEMA declared disasters, the weekly UI claims report (UI Data Base Management System) or other items.

- Non-excepted personnel may be called to work upon request – for example, in the case of a FEMA-declared disaster to help process a NEG application or to process Job Corps shopping carts.

Attachment A describes in more detail ETA's excepted functions and activities; Attachment B identifies the minimum number of excepted employees (including those subject to call-back) who will be required to carry out these functions and activities. There are a number of additional employees on the excepted list termed as "alternate" to ensure that excepted work is covered during periods when excepted staff is off duty on unpaid status. Those alternate individuals will not increase the total number of excepted employees on duty at any given time, since they are only on duty to substitute for another excepted employee.

Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

Attachments

September 27, 2013

### **Attachment A: Excepted Functions and Activities**

ETA functions and activities that would be maintained throughout a shutdown are summarized below:

**Job Corps: Protecting Life and Property** – ETA administers the Job Corps program, a network of 125 Centers nationwide. The funding for all Job Corps center operations is through the Program Year (PY) appropriation. PY 2013 runs from July 1, 2013 through June 30, 2014. At any point in time, about 28,000 Job Corps students reside at these Centers operated by Job Corps contractors, attending academic and occupational training. 28 additional centers are operated by the U.S. Forest Service under an agreement between the Departments of Labor and Agriculture. ETA retains responsibility for the life and safety of the students, and for the protection of center property. ETA has analyzed its Job Corps contracts and prior to September 30th will have added additional funding to those that we project to require additional funding to operate through November 1st. This assumes that contractors continue to operate at their current rate of costing. In addition, ETA has identified contracts that need to be extended as of September 30th and will also be processing those modifications prior to that date. Once ETA completes those funding actions in September, 2013, all Job Corps contracts are funded through November 1, 2013. In addition, ETA will provide \$14 million to USDA and \$13 million to cover student payroll through November 15th. These actions will be taken from Job Corps PY 2013 first quarter allotment and will be completed by September 30th.

Excepted personnel in the national and regional offices will provide minimum acceptable oversight of the Centers, perform financial, procurement and related administrative functions to insure the Centers protect student life and safety as well as protection of facility property; and monitor electronic systems to prevent failure or malfunction and insure system availability. In the unlikely event that a contract runs out of funding or an extension of a contract is required, ETA will need staff to take action to continue operation. The continuation of Job Corps services is key to the safety and health of the students. Shutting down a center because of the lack of funding or because of a non-extension will place many students in situations of elevated risk for life and health. ETA notes that the staff required to close down a center and handle the contract and related student issues is far greater than that required to extend or modify a contract. If ETA is not allowed to address these anomalies when they occur, it will need authorization to bring in more staff than currently requested to handle the shutdown in an orderly manner. ETA also will be required to act before the funding runs out so as to be able to pay the severance and travel costs associated with a shutdown. Since these costs are unbudgeted in PY 2013, ETA also will need to adjust its projection of students served and modify contracts to ensure that the cost of the shutdown does not cause other budget issues.

**Unemployment Insurance: Continuing Functions Not Funded with Expiring Annual Appropriations** – ETA will continue to provide essential functions, as occurred during the shutdown in 1995. These include direction to Federal agencies and administration of UI benefits for unemployed Federal and military personnel (UCFE & UCX). ETA will also continue to process Disaster Unemployment Assistance provided by the Federal Emergency Management Agency for declared disasters. ETA will work with the Office of Public Affairs to publish the weekly initial UI claims report, which is excepted by necessary implication due to its importance to the Federal

Reserve's activities relating to monetary policy. UI benefits will continue to be paid since funds are available. Current circumstances are different from 1995 when we were not paying Emergency Unemployment Compensation (EUC) or full Federal funding for Extended Benefits (EB) and states were not borrowing to pay benefits (currently 18 states have outstanding advances).

Excepted personnel in the national and regional offices will oversee UI activities related to the fiscal and financial aspects of administering the UI program; interface with Treasury and the states should there be issues that surface with regard to states drawing down funds to pay benefits and/or repaying trust fund advances. Excepted personnel will also interface between the states and the Department of Homeland Security, Federal Emergency Management Agency, to facilitate funds flowing to states to pay disaster unemployment benefits; oversee the operations of the UCFE and UCX programs; provide information and guidance to Federal agencies, furloughed workers, and states relative to UCFE and UCX.

**National Emergency Grants: Protecting Life and Property** – A small group of national and regional office personnel will assist states in completing NEG applications to address declared disasters under the Stafford Act. These activities are critical to help states and localities address unexpected labor market dislocations caused by natural or man-made disasters.

**Financial and Technology Support** – A small number of ETA personnel who perform a range of procurement, grant, and financial functions such as authorizing and obligating necessary federal funds, process shopping carts, and oversee draw downs will be retained on a full and intermittent basis. In addition, ETA will provide minimal support for its electronic systems to assure they are protected from physical harm or cyber attack. Support for ETA's user applications will be limited to only those systems that are determined to be necessary to support authorized "excepted" activities.

**Amendment of the Plan** – In the event of emergency or other unforeseen circumstances that require additional excepted work be performed, or require excepted work to cease, ETA will submit an appropriate request to amend this plan.



**MEMORANDUM FOR THE SOLICITOR**

**FROM:** Sandra Polaski *AAP for*  
Deputy Undersecretary

**SUBJECT:** Excepted Functions in the Event of Lapse in Appropriations

**DATE:** March 30, 2011

In the event of a lapse in appropriations the Bureau of International Labor Affairs (ILAB) would perform only those functions that are obligations necessary to discharge the President's constitutional duties and powers, and that are necessary by implication to support those functions. Specifically, the functions are necessary to the President's responsibility to receive Ambassadors and other public Ministers and to conduct foreign relations.

Fulfilling these functions would require a minimum number of staff to attend any international meetings and/or negotiations taking place during such lapse where the Department of Labor/ILAB serves as the sole or lead USG representative on labor at the meeting. This will be determined on a case by case basis considering the importance of the meeting but would involve the minimum number of staff necessary to address the most crucial meetings and issues. In addition, ILAB staff may be called upon to support the President's travel and/or initiatives.

The titles of those ILAB staff that could be called upon depending on the meeting or event are:

Deputy Undersecretary  
Associate Deputy Undersecretary  
Chief of Staff  
Director, Office of Trade and Labor Affairs (OTLA), or subject matter expert designated from OTLA staff  
Director, Office of International Relations (OIR), or subject matter expert designated from OIR staff  
Director, Office of Child Labor, Forced Labor and Human Trafficking (OCFT), or subject matter expert designated from OCFT staff



**SEP 10 2011**

**MEMORANDUM FOR M. PATRICIA SMITH**  
Solicitor of Labor

**FROM: JOSEPH A. MAIN** *Joseph A. Main*  
Assistant Secretary of Labor for  
Mine Safety and Health

**SUBJECT: Contingency Plan for Excepted Functions**  
In the Absence of Appropriations

If there is no FY 2014 appropriations bill for the Department of Labor or FY 2014 Continuing Resolution, the Mine Safety and Health Administration (MSHA) would continue key functions which directly involve protecting against imminent threats to human life in the Nation's mines, and which are necessary for the protection of government property. In our opinion, these excepted functions meet the Department of Justice test that there be a reasonable likelihood that safety of life and property would be compromised if the functions are not performed.

The attachment describes these functions, and identifies the minimum number of excepted employees who will be required to carry out these functions.

If unforeseen emergencies, such as a mine disaster occurred, additional employees would be identified to work for the duration of the emergency. During a lapse in funding, MSHA would cease all other continuing, regular functions.

The FY2014 contingency plan reflects the same substantive information as the FY2011 contingency plan. The only change is that there are no exempt employees allocated to the Upper Big Branch Investigation because the investigation has been completed.

During a lapse in appropriations the Mine Safety and Health Administration (MSHA) will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

**MINE SAFETY AND HEALTH ADMINISTRATION  
EXCEPTED ACTIVITIES AND EMPLOYEES  
SEPTEMBER 10, 2013**

**Excepted Activities:**

**I. Inspections of targeted mines and specific hazards; investigations of accidents and miners' complaints, and sample analysis.**

During a funding lapse, MSHA will perform certain activities which, if not performed would significantly compromise the safety of human life in the Nation's mines. MSHA will perform targeted inspections at mines which have been prioritized based on the mine's history of the hazards that put miners' lives at risk. Hazard-specific inspections will also be conducted across the Nation to address those conditions and practices which have been recent key causes of death and serious injury. Additionally, investigations of accidents and miners' safety complaints and select sample analysis will continue because they represent potentially serious and imminent safety problems.

**Number of Excepted Employees**

	<u>Regional</u>	<u>National</u>	<u>Total</u>
Subtotal	768	--	768

**II. Executive/managerial/supervisory direction; staff support.**

MSHA will designate program officials in each geographical location where employees are performing the excepted activities described in Section one above, to provide executive/managerial/supervisory direction. This direction will ensure that the excepted activities being performed are in targeted mines and address targeted issues. Additionally, a limited number of excepted employees will provide clerical duties in support of excepted activities; and perform system and computer hardware monitoring duties to prevent failure or malfunction and ensure system availability. The excepted positions below represent the minimum numbers needed to adequately support the functions described in Section one.

- o Senior management staff (51 positions)
- o Field office supervisors (87 positions)
- o Support staff (1 positions)

**Number of Excepted Employees**

	<u>Regional</u>	<u>National</u>	<u>Total</u>
Subtotal	126	13	139

**MINE SAFETY AND HEALTH ADMINISTRATION  
EXCEPTED ACTIVITIES AND EMPLOYEES  
SEPTEMBER 10, 2013**

**III. Building security activities.**

To ensure the protection of the two MSHA-owned properties and proprietary product documentation housed at one of the facilities, twelve excepted employees will provide 24 hour security services at these locations. The number below represents six staff for Mine Academy security and six staff to secure the Triadelphia, WV facility.

Number of Excepted Employees

	<u>Regional</u>	<u>National</u>	<u>Total</u>
Subtotal	12	--	12

**IV. Information Technology Support.**

MSHA will designate information technology support personnel at MSHA headquarters in Arlington and assign similar responsibility at MSHA's devolution sites in Denver, CO and Beckley, WV, to maintain network infrastructure and connectivity required for continuity of emergency operations and continuing target enforcement.

Number of Excepted Employees

	<u>Regional</u>	<u>National</u>	<u>Total</u>
Subtotal	2	1	3

**V. Mine Plan Approvals.**

MSHA performs certain plan review and approval activities which have a direct impact on miner health and safety. Plan revisions, as well as new plans dictated by changes in the mine conditions and mining practices, must be reviewed and approved for operators to continue safe operations.

Number of Excepted Employees

	<u>Regional</u>	<u>National</u>	<u>Total</u>
Subtotal	40	--	40

**VI. Mine Emergency Operations Readiness.**

MSHA's quick response to a mine emergency situation is critical in order to protect the safety and health of our Nation's miners. Excepted personnel are needed in order to ensure that vehicles and equipment are ready for deployment in the event of a mine emergency.



MINE SAFETY AND HEALTH ADMINISTRATION  
EXCEPTED ACTIVITIES AND EMPLOYEES  
SEPTEMBER 10, 2013

Number of Excepted Employees

	<u>Regional</u>	<u>National</u>	<u>Total</u>
Subtotal	3	--	3

**Grand Total, MSHA Excepted Employees:**

Number of Excepted Employees

	<u>Regional</u>	<u>National</u>	<u>Total</u>
Subtotal	952	13	965

Attachment

cc: Deborah Greenfield

**U.S. Department of Labor**

Office of Administrative Law Judges  
800 K Street, NW, Suite 400-N  
Washington, DC 20001-8002

(202) 693-7300  
(202) 693-7365 (FAX)



**DATE:** March 25, 2011

**MEMORANDUM TO:** M. PATRICIA SMITH  
Solicitor

**FROM:** STEPHEN L. PURCELL  
Chief Judge

A handwritten signature in black ink, appearing to read "Stephen L. Purcell". The signature is written in a cursive style and is positioned to the right of the typed name and title.

**SUBJECT:** Suspension of Operations Plan

During a lapse in appropriations, the Office of Administrative Law Judges (OALJ) will suspend all non-essential operations. All staff will be furloughed until such time as appropriations are authorized, except as provided below and approved by your office.

Upon the approval of OALJ's plan, a member of my staff will notify the Assistant Secretary for Administration and Management (ASAM) of the names of the individuals who are needed to perform the activities set forth below. I anticipate the possibility of intermittent work and job rotation for all of these activities. If unforeseen emergencies occur during any suspension of operations, additional employees would be identified to work solely for the duration of the emergency.

The OALJ adjudicates approximately 6,000 cases each fiscal year and in doing so holds hearings in many of these cases. Hearings are typically scheduled 60 to 120 days in advance, and they are generally held within 75 miles of a claimant's residence. For each week that the government suspends operations, the agency must cancel the hearings scheduled for that week. OALJ needs access to its case tracking system to determine where and when hearings are scheduled. Only an administrative law judge can order a hearing cancelled, and the files which contain the information needed to cancel these hearings reside in the National Office and seven District Offices. The National Office, due to its workload, needs the Chief Judge and Associate Chief Judges to handle the task of cancelling hearings, and the District Chief Judges would perform the same duties for each District Office.

Support staff is also needed to contact the parties in these cases, and those duties will be handled by Special Assistants in each office. These activities will constitute weekly intermittent work.

In addition, administrative functions, such as time and attendance submissions or responding to emergency phone calls, will be handled on an intermittent basis by the Director of Program Operations and the Administrative Officer.

In the National Office, which is located in leased space, OALJ receives its mail through the post office, and mail must be picked up daily, even though it cannot be processed. This activity will require the Chief Docket Clerk to work approximately 1-2 hours every day.

OALJ is one of nine agencies within the Department which has its own network and data center. This data center must remain operational to allow email, case tracking, and keeping website access operational for technical reasons. Keeping the data center operational during any government shutdown will require that the IT Division Chief spend 1-2 hours each day checking emails for security and accessibility issues and identifying work that may require additional employees be called in to perform.

In the August 1995 OALJ Suspension of Operations Plan the number of approved exempt positions for OALJ was 22 and this is the same number being requested by OALJ. Both plans identify 22 positions as essential during the suspension of operations in light of the fact that each of the seven District Offices operates independently from the National Office with respect to the cases assigned to those offices. The only change in exempt personnel identified in the current plan is that, instead of a secretary position being requested for the National Office, an additional Associate Chief Judge has been substituted since OALJ now has two Associate Chief Judges.

The plan devised by OALJ is intended to comply with our obligation to furlough all non-essential personnel during any suspension of functions caused by a lapse in appropriations. Should you need clarification or additional information with regard to any elements of the plan, please let me know. Thank you for your consideration.

cc: Deborah Greenfield,  
Deputy Solicitor of Labor



SEP 16 2013

**MEMORANDUM FOR M. PATRICIA SMITH  
Solicitor of Labor**

**FROM: T. MICHAEL KERR**  
~~Assistant Secretary for  
Administration and Management~~

**SUBJECT: OASAM Excepted Employees - 2013**

OASAM's plan identifies one exempt employee (Assistant Secretary), 57 Federal employees as "excepted, full time", and 25 as "excepted, intermittent" for a total of 83. Of those 83 employees, 60 are funded through the Working Capital Fund (WCF). The remaining 23 employees are funded by the Departmental Management Salaries and Expenses (S&E) Account. Overall, this represents only 11 percent of OASAM's total federal workforce (nine percent in the National Office, 13.5 percent in the Regional Offices). A detailed list of these employees is attached.

The following is OASAM's justification for its staffing level. As you know, OASAM's mission requires it to provide support services to Department of Labor (DOL) agencies. In the event of a government-wide shutdown, excepted personnel from DOL agencies will need basic support services in order to perform their duties. In general, the services OASAM will provide include Human Resources (HR), Information Technology (IT), Facilities Management (including minimal mail services), Procurement, Security, and Budget Planning.

**Human Resources**

*National Office: 14 employees (3 S&E; 11 WCF)*

*Regional Offices: 13 employees (13 WCF)*

By maintaining a small staff of HR managers in the National Office and an HR specialist in each regional office, OASAM will provide basic HR services to support excepted or exempt DOL personnel who will continue to work. HR staff members, in conjunction with excepted staff from the Office of the Chief Financial Officer (who will, effective October 6, 2013, become OASAM staff through a reorganization and are listed on the OASAM excepted employee list), will provide the necessary pay and human resources support to excepted and exempt employees who will be continuing to work during the suspension period. In addition, minimal staff from each regional HRO will be available on an as-needed basis to address and resolve any local issues that may prevent payroll from properly running. This also includes labor-management relations services and HR systems services for excepted or exempt activities.

### **Information Technology**

*National Office: 9 employees (9 S&E)*

*Regional Offices: 6 employees (6 WCF)*

OASAM has identified a minimal IT staff in the Office of the Chief Information Officer (OCIO) who will ensure DOL's technology services and IT security responsibilities continue without disruption to support excepted and exempt staff from other DOL agencies. The services provided include e-mail, local area network framework, help desks and IT systems (financial, procurement). An IT manager in each regional office will coordinate the IT services for excepted staff in the field.

### **Facilities Management**

*National Office: 6 employees (6 WCF)*

*Regional Offices: 9 employees (9 WCF)*

In order to ensure the Department's Frances Perkins Building is operational for excepted or exempt DOL personnel who will continue to work, two building engineers will alternate shifts to monitor building operations, including heat, air conditioning, electricity, and sanitation services provided by contract staff. Additionally, two mail clerks will provide limited mail collection and delivery during a shutdown. One to two employees from each of OASAM's regional offices will coordinate these functions in the field. This will involve coordinating with GSA or the building manager to ensure operations of excepted and exempt staff from other agencies is unimpeded.

### **Procurement / Finance (Region)**

*National Office: 1 employee (1 WCF)*

*Regional Offices: 4 employees (4 WCF)*

One Contracting Officer will be maintained at the National Office in order to provide contracting/procurement services as necessary in support of excepted and exempt staff. If, for example, an agency needs to modify a contract during the shutdown because of excepted activities, the Contracting Officer will execute that process. In the field, a Finance Manager will continue providing payroll services in support of excepted employees.

### **Security & Emergency Management**

*National Office: 4 employees (4 WCF)*

In the event of a shutdown, maintaining the safety and security of the Department's excepted and exempt personnel who will continue to work and the Department's property will remain a high priority. A federal employee will supervise a skeletal staff of contract security guards – rotating 11 guards, three shifts per day – who will provide basic coverage in the South Garage for parking and adequate coverage at the main employee entrance in the National Office.

Additionally, to ensure the Department receives timely notification from Federal law enforcement sources and the White House on any emergency situations, the Emergency Management Center will remain operational with three employees on a rotational basis.

**Appropriations Guidance**

***5 employees (5 S&E)***

Two managers in the Departmental Budget Center will provide expertise for all budget matters for the Department, including monitoring and providing guidance on the appropriate use of funds during the shutdown and exempt/excepted work during the shutdown. They will ensure senior exempt and excepted staff are kept apprised of budget developments. Three high-level employees may be recalled as needed should appropriations and apportionment issues arise.

We believe we have appropriately identified the staff we would need to facilitate an orderly shutdown of OASAM and still be able to adequately support exempt and excepted personnel from other DOL agencies who will continue to work.

If you have any questions, please contact [REDACTED], Deputy Assistant Secretary for Operations, at [REDACTED].

Attachment

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SEP 12 2013

MEMORANDUM FOR M. PATRICIA SMITH  
SOLICITOR

FROM:

  
James L. Taylor  
Chief Financial Officer

SUBJECT:

Exempt and Excepted Personnel in the Event of a Lapse in  
Appropriations

During a lapse in appropriations the Office of the Chief Financial Officer (OCFO) will suspend all operations and its staff will be furloughed, except as described in Exhibit A. Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth in Exhibit A. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

The individuals identified in Exhibit A are the minimum staff by necessary implication required to support exempt Agency activities. The Office of the Chief Financial Officer provides administrative support for activities throughout the Department, therefore a complete list of staff that may be needed to fulfill that role is derivative of what the Department determines as "excepted" programmatic activities and therefore may be adjusted based upon the programmatic activities that are ultimately determined to continue in the event of a funding lapse. We have considered the activities/employees necessary to the lawful continuation of other activities, including minimal obligations necessary for suspension of operations. The exception for activities that must occur by "necessary implication" applies to all OCFO "exempt" and "excepted" staff listed.

The staff recommended as "exempt" or "excepted" on the attached Exhibit A will ensure that the integrity of the Department's financial information is not compromised.

Attachment: Exhibit A

cc: Deborah Greenfield, Deputy Solicitor

**Exhibit A**

**Name**

[Redacted]

**Title/Function (Exempt Employee)**

Chief Financial Officer is "exempt" based on PAS status. Exempt

**Name**

[Redacted]

**Title/Function (Excepted "Full-Time" Employees)**

Deputy Chief Financial Officer will identify and manage funding for "excepted" activities. Except

[Redacted]

Associate Deputy Chief Financial Officer for Financial Systems will provide systems support for grants, contracts and travel systems for "excepted" activities.

[Redacted]

Administrative Officer will provide oversight for "excepted" activities.

[Redacted]

Budget Officer will provide budget execution support for "excepted" activities.

[Redacted]

Supervisory Information Technology Specialist will oversee systems security.

[Redacted]

Supervisory Information Technology Specialist (Systems/Server Administrator) will provide LAN support and critical file and data collection for records that would be rendered irretrievable without timely action by the Department.

[Redacted]

Financial Management Specialist will provide travel support to "excepted" staff throughout the Department.

[Redacted]

Supervisory Financial Management Specialist (Contracting Officer's Representative (COR)) will manage contractual activities that are deemed "excepted".

[Redacted]

Director, Payroll Systems Support, will manage and process payroll and provide support to OASAM for HR "excepted" activities for the period of October 1-5, 2013. Effective October 6, 2013, this employee and function will be reassigned to OASAM/HRC.



**Name**



**Title/Function (Excepted "Intermittent" Employees)**

Lead Human Resources Specialist will provide payroll support to OASAM for HR "excepted" activities for the period of October 1-5, 2013. Effective October 6, 2013, this employee and function will be reassigned to OASAM/HRC.

Information Technology Specialist will provide payroll system support to OASAM for HR "excepted" activities for the period of October 1-5, 2013. Effective October 6, 2013, this employee and function will be reassigned to OASAM/HRC.

Information Technology Specialist will provide payroll system support to OASAM for HR "excepted" activities for the period of October 1-5, 2013. Effective October 6, 2013, this employee and function will be reassigned to OASAM/HRC.

Human Resources Specialist will provide payroll support to OASAM for HR "excepted" activities for the period of October 1-5, 2013. Effective October 6, 2013, this employee and function will be reassigned to OASAM/HRC.

Supervisory Accountant will provide budget execution support for "excepted" activities.

U.S. Department of Labor

Assistant Secretary for  
Congressional and Intergovernmental Affairs  
Washington, D.C. 20210



**MEMORANDUM FOR M. PATRICIA SMITH, SOLICITOR OF LABOR**

**FROM:** BRIAN KENNEDY *BK*

**DATE:** March 1, 2011

**SUBJECT:** OCIA "Excepted" Activities During a Shutdown

During a lapse in appropriations, the Office of Congressional and Intergovernmental Affairs (OCIA) will suspend all operations and its staff will be furloughed, except as described below. Upon approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occurred, additional employees would be identified to work for the duration of the emergency.

~~The mission of OCIA is to advise the Secretary on all matters relating to Congress. Included among these responsibilities is the management of the legislative responsibilities of Secretary as principal advisor to the President on labor matters. OCIA also serves as the Secretary's liaison with Members of Congress, the Committees, and the House and Senate leadership. This office is the voice of the Secretary of Labor in all matters relating to and affecting Congress, as well as with respect to the enactment of the President's labor legislative agenda.~~

I understand that this Department's activities must be significantly curtailed during a funding lapse. I further understand that even this office's support for the Secretary's core functions must be curtailed to conform with applicable legal requirements. This office has reviewed its shutdown plan in the context of a prolonged lapse in appropriations and has identified certain activities for which we believe exists both the need and the authority to continue, for the duration of a shutdown.

In the event of a government shutdown during an appropriations impasse, our office's functions are critical in serving the Secretary who, in turn, is advising the President during the budget debate with Congress. To serve the Secretary during this time, OCIA would require at least a core number of staff from this office. As a part of the Office of the Secretary, we believe that our continued core functions must be performed to support the Secretary's work with the legislative branch.

I request your approval of our designation of a minimum of three "excepted positions" to provide that core legislative support to the Secretary. All of the activities we identify

below would be justified as implicitly necessary to assure adequate effectuation of authorized Secretarial activities deemed "excepted."

We propose to continue all legislative activities on behalf of the Secretary with respect to the actual suspension of Departmental activities. We would maintain contact with the relevant Member and Committee offices and provide them with information on the Departmental and office functions that are continuing during a shutdown and those that are suspended. We also propose to continue all legislative activities on behalf of the Secretary with respect to legislation as appropriations and continuing resolutions, budget/budget reconciliation, debt ceiling, and other legislation with a close nexus to the suspension of funding. In addition, this office would continue its involvement with respect to any other legislation, when directed by the Office of Management and Budget (OMB).

The minimal staffing for these activities would be 3 FTE (3 professional staff). In the event of significant emergency involving one of the Department's excepted activities, such as a major mine disaster, this office might utilize the minimum level of additional staff, if the need arose for enhanced consultations with Congress. In addition, in the event of substantial progress, during a shutdown, in Congressional consideration of significant legislation, this office might also, upon the request of OMB, recall the minimum level of additional staff necessary to assure proper effectuation of the Secretary's legal role as principal labor advisor to the President.

Upon your approval of this request, we will identify to the Assistant Secretary for Administration and Management the individuals who would provide these approved services. Thank you for your review of this request.



April 6, 2011

MEMORANDUM

TO: M. PATRICIA SMITH, SOLICITOR  
UNITED STATES DEPARTMENT OF LABOR

FROM: MALCOLM D. NELSON, OMBUDSMAN   
ENERGY EMPLOYEES COMPENSATION PROGRAM

RE: CONTINGENCY PLANNING IN EVENT OF LAPSE IN  
DOL ANNUAL APPROPRIATIONS

The Office of the Ombudsman for the Energy Employees Occupational Illness Compensation Program provides services to claimants and potential claimants under both Part B and Part E of the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). We are currently funded through two EEOICPA administrative funding streams that will not be subject to any lapse in the Department's Fiscal Year (FY) 2011 appropriations:

- (1) Our primary funding is allocated from the Department's permanent indefinite appropriation for Part E administrative expenses (see 42 USC 7385s-13), which is not subject to annual appropriation or to a lapse in the Department's annual appropriation.
- (2) We also receive a small amount of Part B administrative expense funding from the Department's FY10 appropriation. These funds are "no year" funds and we expect to have sufficient carryover funding to continue operating despite any lapse in FY11 appropriations.<sup>1</sup>

Because this Office's sources of funding will continue to be available even if there is a lapse in the Department's FY11 appropriations, we fully expect to be able to address all

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<sup>1</sup> The Department has not allocated any of the Part B funding available under the existing FY11 continuing resolution to this Office.

**of our Part B and Part E operations during any lapse in the Department's annual appropriation.**

**The Office of the Ombudsman currently includes the following positions:**


- 1. Ombudsman**
- 2. Policy Analyst**
- 3. Policy Analyst**
- 4. Writer/Editor**

**The attached list provides the names of the employees currently employed by the Office of the Ombudsman.**




September 18, 2013

MEMORANDUM FOR: M. PATRICIA SMITH  
Solicitor of Labor

FROM:   
NANCY RUIZ DE GAMBOA  
Assistant Inspector General  
for Management and Policy

SUBJECT: OIG Listing of Excepted Personnel

The OIG is submitting an updated contingency plan in the event of a lapse in appropriations, which includes an updated listing of OIG excepted positions. If you have any questions concerning the plan, please contact me on .

Attachment

**U. S. Department of Labor  
Office of Inspector General  
2013 Contingency Plan**

**September 16, 2013**

The U.S. Department of Labor (DOL) Office of Inspector General (OIG) has developed the following Contingency Plan in the event of a lapse in appropriations. This plan was developed consistent with Office of Management and Budget (OMB) requirements; existing, applicable U.S. Department of Justice (DOJ) Office of Legal Counsel (OLC) opinions; and updated DOJ determinations regarding excepted law enforcement activities included in its April 7, 2011 contingency plan (attached.) This contingency plan is subject to change based on any future OMB guidance and/or DOJ determinations.

This contingency plan identifies excepted positions within limited categories of functions that the OIG has deemed essential during a Government shutdown. Described in detail below, those categories are: (1) functions excepted by statute; (2) management, operational and legal activities needed to support excepted functions; and, (3) law enforcement activities, the suspension of which DOJ has determined "*could constitute an imminent threat to the safety of human life and the protection of property.*"

In addition, the OIG recognizes that some employees may be needed on an ad hoc or "on-call" basis after the initial shutdown of operations, and those positions have also been identified within each category.

**(1) Functions excepted by statute:**

The position for the Presidentially-Appointed, Senate-Confirmed, Inspector General is not subject to furlough by statute.

**Excepted Position:**

- Inspector General

**(2) Management, operational and legal activities needed to support excepted functions:**

The OIG has excepted certain employees who perform management, operational and legal activities necessary to support excepted activities.

**Excepted Positions:**

- Deputy Inspector General
- Deputy Inspector General for Operations
- Counsel to the Inspector General
- Assistant Inspector General for Management and Policy
- Director of the Division of Human Resources Management
- Director of Technology and Administrative Services
- Chief, Branch of Information Technology
- Human Resources Specialist – Payroll
- Executive Assistant and Acting Director of Communications and Congressional Liaison

**Intermittent/On-call Positions:**

- Assistant Inspector General for Audit
- Deputy Assistant Inspector General for Audit

- Director of Audit Operations
- Assistant Counsels to the Inspector General
- Deputy Assistant Inspector General for Management and Policy
- Director of Budget Management
- Director of Procurement
- Chief, Branch of Personnel Operations
- Human Resources Specialists - To be determined, based on need
- Information Technology Specialists - To be determined, based on need

**(3) Law Enforcement Activities:**

The OIG conducts criminal investigations relating to alleged violations of Federal laws, rules or regulations related to DOL programs and operations, as well as investigations of allegations of misconduct on the part of DOL employees. The OIG also conducts criminal investigations to combat the influence of labor racketeering and organized crime in the nation's labor unions in the areas of employee benefit plans, labor-management relations, and internal union affairs. In addition, the OIG provides protective services to the Secretary of Labor. The OIG has excepted all GS-1811 criminal investigators and limited investigative analysis staff needed to support excepted law enforcement activities.

**Positions Excepted:**

- Assistant Inspector General for Labor Racketeering and Fraud Investigations
- Deputy Assistant Inspector General for Labor Racketeering and Fraud Investigations
- Assistant Inspector General for Inspections and Special Investigations
- Director of Labor Racketeering
- Director of Program Fraud
- Director of Special Operations
- Director of Protective Operations
- GS-1811 Criminal Investigators
- Investigative Analyst (International Organized Crime Task Force)

**Intermittent/On-call Positions:**

- Director of Intelligence
- Investigative Analysts - To be determined, based on need

**Summary of Activities in the Event of a Government Shutdown**

Current On-Board Staff (09/16/2013)	Number of Excepted Employees				Total Staff Excepted	Total Staff to be Furloughed
	Excepted by statute	Support of Excepted Functions	Law Enforcement Activities	Other Funding		
392	1 <sup>1</sup>	9 <sup>2</sup>	173 <sup>3</sup>	0	180 <sup>4</sup>	212

<sup>1</sup> - Includes the currently vacant position of Inspector General (EX)

<sup>2</sup> - Includes the currently vacant position of Deputy Inspector General (SES)

<sup>3</sup> - Includes the currently vacant position of Assistant Inspector General for Labor Racketeering and Fraud Investigations (SES)

<sup>4</sup> - Excludes three EX/SES positions currently vacant.



**U.S. Department of Labor**

Office of Labor-Management Standards  
Washington, DC 20210  
(202) 693-0202



SEP 10 2013

**MEMORANDUM FOR:** M. PATRICIA SMITH  
Solicitor of Labor

DEBORAH GREENFIELD  
Deputy Solicitor

**FROM:** MICHAEL J. HAYES  
Director

Handwritten signature of Michael J. Hayes in black ink.

**SUBJECT:** OLMS Contingency plan for Excepted Functions in the  
Absence of Appropriations

In response to Michael Kerr's memorandum dated September, 6, 2013, I am responding to request a minor modification to the Office of Labor-Management Standards (OLMS) contingency plan. An OLMS reorganization that will be effective on October 1, 2013 will change the reporting lines for the agency's field operations. As a result, all regional staff will report to the director of field operations in the national office. Due to this reorganization, I have included our director of field operations as one of the excepted staff positions in the OLMS plan. Upon approval of the revised plan, OLMS will notify the Human Resources Center (HRC) of the names of the individuals who would perform the activities described in the OLMS plan.

During a lapse in appropriations, OLMS would suspend all operations and its staff would be furloughed, except as described below.

- Conducting investigations in criminal cases under the LMRDA that have statutory deadlines that cannot be tolled or waived, and that would be jeopardized if the investigation did not continue.
- Carrying out election investigations under the LMRDA where the 60-day statutory limit for filing a complaint cannot be waived or extended, and that would be jeopardized if the investigation did not continue.
- Supervising elections where postponement of the election would cause a violation of the statutory requirement with respect to the maximum time period for holding union officer elections or would result in a failure to meet a court-ordered deadline, absent an extension.

Additionally, OLMS would perform the following excepted activities (1) OLMS investigators subpoenaed to testify before a federal or state court would be excepted only for the period of time required to prepare and present testimony and travel to the court and (2) coordination and management of the above-described activities as they are or become necessary.

OLMS anticipates the possibility of job rotation in some instances to perform excepted functions. If unforeseen emergencies occur, additional employees would be identified and approved to work during the shutdown. The OLMS Director would fulfill the coordination and management role in the plan. Other employees may be called upon on an as-needed basis.

Enclosure

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U.S. DEPARTMENT OF LABOR

LIST OF EXCEPTED ACTIVITIES/ EMPLOYEES

Agency/Office/Organizational Unit: Office of Labor-Management Standards Date: 09/10/13

Total Number of Employees on-board prior to implementation: 218

Number of Excepted Employees	Exception Code (I)	Regional	National	Total
Investigators (number to be determined, see below)	3	TBD	TBD	TBD
OLMS Director	3	0	1	1
Director of Field Operations	3	0	1	1
Chief, Division of Planning, Mgmt. & Technology (OLMS Administrative Officer)	3	0	1	1

Total: Three and TBD investigators

In the event of government shutdown, OLMS would need exceptions for some investigative staff that would have to be determined at the time of the shutdown for the following purposes:

- 1) Investigators subpoenaed to testify before a federal or state court only for the period of time required to prepare and present testimony and travel to the court.
- 2) Investigators performing criminal investigations in jeopardy of being lost due to the statute of limitations.
- 3) Investigators performing election investigations required by statute to be conducted within 60 days, absent a mutual agreement between the labor union and OLMS extending the 60 day filing deadline.
- 4) Investigators performing activities associated with a supervised election where postponement of the election would cause a violation of the statutory requirement with respect to the maximum time period for holding union officer elections or would result in a failure to meet a court-ordered deadline, absent an extension.

**Exhibit A-434b**

1. Obligations for employees/activities funded through multi-year, no-year and indefinite appropriations;
2. Obligations for employees/activities funded through express authorizations in the form of contracting authority or authority to borrow;
3. Obligations for employees/activities necessary to the lawful continuation of other activities, including the minimal obligations necessary for suspension of operations;
4. Obligations for employees/activities necessary to the discharge of the President's constitutional duties and powers; and
5. Obligations for employees/activities for emergencies involving the safety of human life or the protection of property.

These are the general guidelines to be applied when identifying excepted activities under the Anti-deficiency Act, however, the Solicitor of Labor will make the final determination, based on information and justifications contained in agency requests, on excepted activities within the Department



MEMORANDUM TO:

M. Patricia Smith  
Solicitor of Labor

FROM:

  
Carl A. Fillichio, Senior Advisor for Communications  
and Public Affairs

DATE:

September 27, 2013

During a lapse in appropriations, the Office of Public Affairs will suspend all operations and its staff will be furloughed, except as described below.

Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occurred, additional employees would be identified to work for the duration of the emergency.

This office normally provides a full range of public information (including the National Call Center), media, social media, internal communications and technical communications support services to the Secretary and to agencies throughout the Department, employing a small staff of approximately 65, of which approximately 12 are located in regional offices.

At the outset, I would note the mission of this office is to assure the American people access to information about the Department of Labor, a component of their Government. It is critical that the public and Department of Labor employees get timely and accurate information about the status of our operations and permissible activities during a shutdown period. Our office will be expected to play a central role in such communications, both through traditional and electronic means. Having made this essential point, I would emphasize that this office has made a diligent effort to suspend and curtail its activities in conformity with applicable legal requirements.

The purpose of this memorandum is to request your approval of our designation of eight "excepted positions," solely in the national office, to serve as a minimal cadre during a lapse in appropriations. We believe that a narrow range of our proposed activities would be authorized under the recognized exception relating to the protection of life and property. In addition, we believe that all of the activities we identify below would be justified, as well, as implicitly necessary and essential to assure adequate effectuation of certain authorized Secretarial activities and certain other agency activities otherwise deemed excepted.

We propose, first, to minimally provide a narrow range of public information services to the Department during a shutdown, where such services would significantly further the



Department's excepted activities relating to the protection of life and property. We believe such activities are authorized where the dissemination of public information can be expected (1) to expeditiously inform employers/workers of a potentially life-threatening or maiming workplace hazard or risk to property or (2) to have the effect of deterring violations and enhancing compliance, during the period of shutdown, when public apprehensions about the continuity of life-protecting enforcement mechanisms is the greatest and when the credibility of such enforcement is most significantly undermined.

In addition, we propose to continue a minimal range of public information, web/social media and press support activities for the Secretary and for the Department with respect to the actual suspension of Departmental activities and its policy context. We would maintain minimal service in order to inform the public on which services the Department was continuing to provide and which services the Department had suspended. We would review the daily press, in order to identify misinformation to the public, and seek to obtain clarifications in the media. We further propose to maintain targeted, but minimal, public information services to the media through activities that are responsive to media requests and through other activities that organize forums for providing these services to groups of media representatives. These activities would be in support of otherwise authorized activities during the funding lapse, in connection with the impact of the shutdown; the policy context of the debate on budget and appropriations; and Departmental activities excepted and suspended.

The minimal staffing for these activities would be eight FTE: seven professional and one support, all located in the national office. This is the same number of FTE set forth in the Office of Public Affairs' March 2011 plan. OPA responsibilities include website management, management of the National Call Center, social media, internal communications, Open Government efforts and the administration of news media "lock ups" for the release of the Unemployment Insurance weekly claims data. In addition to the need to provide staffing to facilitate essential communications identified above during a shutdown through these means, an ongoing staffing presence for the website and other computer-based channels is necessary to monitor and guard against any possible hacking, malicious activity, or cyber terrorism. The occurrence of a government shutdown may be viewed as a vulnerable opportunity by those who want to do harm to those systems. A significant emergency involving one of the Department's excepted activities, such as a major mine disaster, might necessitate an additional professional staff member. Upon your approval of this request, we will identify to the Assistant Secretary for Administration and Management the individuals who would provide these services.

Thank you for your review of this request.

APPROVED by the Solicitor of Labor: \_\_\_\_\_



September 11, 2013

MEMORANDUM FOR THE SOLICITOR OF LABOR

FROM: ROSE MARIE L. AUDETTE  
Associate Solicitor for MALS, and Administrative Officer

RE: Continuation of Certain Limited Activities of the Solicitor  
During A Lapse in Appropriation

This SOL Contingency Plan supersedes prior plans regarding the identification of those activities and staff that are considered "exempt" or "excepted" from a cessation of operations and furlough during a lapse in appropriation for SOL, after the brief period of orderly shut down has been completed.

Pursuant to your directions about staffing of the Office of the Solicitor (SOL) during a lapse in appropriations, SOL will suspend all operations and its staff will be furloughed, except as described below. In accordance with the Department's directions and timelines, MALS will notify the Office of the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. We anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

In order to provide core legal services in support of exempt or excepted activities of the Secretary and client agencies, and provide those legal services involving the safety of human life or the protection of property necessary during the period of a lapse in appropriation, the exempt and excepted staff are as follows:

- **Front Office:** The Solicitor (a Presidential Appointee and exempt); Deputy Solicitor; two Deputy Solicitors on a rotating basis and one administrative/support staff person performing administrative and support functions for the entire National Office (total 1 staff exempt and 4 staff excepted).
- **Divisions:** Office of Legal Counsel; Black Lung and Longshore Legal Services; Civil Rights and Labor Management; Employment and Training Legal Services; Fair Labor Standards; Occupational Safety and Health; Plan Benefits Security: One attorney each (total 7 attorneys).

- **Federal Employees' and Energy Workers' Compensation Division:** one attorney on an excepted function basis, and all staff of the FECA Subrogation Unit directly funded by the Employees' Compensation Fund on an exempted function basis (including supervisor, attorneys, paralegals, legal assistants, and any administrative, support, and or student interns), as funding for this function will continue (total 1 attorney excepted, plus the exempted staff of the FECA Subrogation Unit, currently 18 staff members, consisting of 3 attorneys and 15 support staff).
- **Mine Safety and Health Division:** four attorneys.
- **Management and Administrative Legal Services Division:** one appropriations attorney, one employment law attorney, one contracts/procurement attorney, one attorney/Administrative Officer, and one IT staff (total 5 staff).
- **All Regions:** three attorneys in each Regional Office and one attorney in each Sub-regional Office (total 28 attorneys), and one administrative/support staff person in each region (total 7 administrative/support staff).

**Total excepted staff (including the Solicitor): 19 exempted and 56 excepted staff.**

In addition, a number of intermittent excepted staff will be rotated or recalled, as necessary. Further, in emergency situations that may develop during the period of a lapse in appropriation, other staff may be returned to paid status for the period necessary to meet the exigency.

This level of staffing will also permit SOL to respond to agency requests for legal assistance relating to shutdown issues during the pendency of shutdown itself, and for approval of additional requests for excepted functions or personnel. We will provide expedited approval of such requests in order for the Department to continue its operations within the boundaries of applicable law.

We do not know at this time whether, and to what extent the federal judiciary will continue to operate during a shutdown that affects the Department's funding. We plan to place additional SOL staff into excepted status to the extent that we are not able to adjust federal court litigation schedules or statutes of limitation. At this time, we cannot specify the number or location of such staff, since that would depend on the timing of a shutdown. We are monitoring carefully our deadlines on a nationwide basis and attorneys understand the need to try to obtain extensions as a shutdown becomes more likely.





**SEP 10 2013**

**MEMORANDUM FOR:** M. PATRICIA SMITH  
Solicitor of Labor

**FROM:**   
DAVID MICHAELS, PhD, MPH

**SUBJECT:** Contingency Plan for Suspension of Agency Operations  
after September 30, 2013

During a lapse in appropriations, OSHA will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities below. I anticipate the possibility of job rotation in some instances. If unforeseen circumstances arise, additional employees could be identified to work for the duration of the emergency.

OSHA is authorized to continue functions in advance of appropriations on matters "of emergencies involving the safety of human life or protection of property." We believe that OSHA employees involved in enforcing imminent danger situations under Section 13 of the Occupational Safety and Health Act, and those involved in responding to workplace fatalities and catastrophes, should be excepted from the suspension requirements. OSHA employees should be able to respond to safety and health complaints or other information when employees are potentially exposed to hazardous conditions that present a high risk of death or serious physical harm. In addition, we believe that a minimum number of OSHA employees necessary to provide essential support for these operations may, by necessary implication, be excepted. In this manner, OSHA can maintain a force permitting it to respond to emergency situations.

For these excepted activities, OSHA proposes to retain in duty status the following staff:

- **National Office:** Six members of the Executive Staff; four Senior Compliance Staff; two Engineers from the Office of Construction and Engineering; four Information Technology staff; the Agency Emergency Manager; and one Support Staff for the National Office Executive and Senior Compliance Staff.
  - **Executive Staff:** Assistant Secretary; Deputy Assistant Secretary (career); Deputy Assistant Secretary (non-career); Senior Policy Advisor, Chief of Staff, and Director, Administrative Programs. Executive staff will provide leadership and oversight of staff performing excepted activities and the

Director of Administrative Programs will perform administrative work related to performance of excepted activities. The Agency Emergency Manager will handle National emergency response issues, if necessary. A Special Assistant will provide administrative support to this group and the Senior Compliance Staff.

- **Senior Compliance Staff:** Directorate of Enforcement Programs (DEP) – DEP Director, DEP Deputy Director, and DEP, Health Enforcement Programs Director; Directorate of Construction (DOC) – DOC Director, DOC Office of Engineering Services, Supervisory Civil Engineer and Civil Engineer. The Senior Compliance Staff will provide key management and guidance for activities associated with excepted enforcement responsibilities and assist in tracking and processing open cases/citations to ensure statute of limitations dates do not lapse.
- **Information Technology (IT) Support Staff:** OSHA IT staff will ensure the operation of key information management systems to support enforcement staff performing excepted activities.
- **Regional Offices:** Regional Administrators for all ten regions; and an Assistant Regional Administrator for each of the following – Administrative Programs, Enforcement, and Federal State Operations or Technical Support; plus one support staff per Region.
- **Area Offices:** One Senior Safety Compliance Officer and one Senior Health Compliance Officer for each of the 92 field offices.
- **Salt Lake City Technical Center:** two Senior Chemists and two Industrial Hygienists from the Health Response Unit.

Additionally, certain situations falling within those excepted activities may arise which require the recall of additional staff to address particular emergencies.

Attachment

## NATIONAL OFFICE PERSONNEL EXEMPT FROM SHUTDOWN

POSITION TITLE	OFFICE
Assistant Secretary	Office of the Assistant Secretary
Deputy Assistant Secretary (Career)	Office of the Assistant Secretary
Deputy Assistant Secretary (Non-Career)	Office of the Assistant Secretary
Senior Policy Advisor	Office of the Assistant Secretary
Chief of Staff	Office of the Assistant Secretary
Director of Administrative Programs	Directorate of Administrative Programs
Emergency Program Manager	Directorate of Technical Support and Emergency Management
Special Assistant	Office of the Assistant Secretary
Supervisory Information Technology Specialist	Directorate of Administrative Programs
Lead Information Technology Specialist	Directorate of Administrative Programs
Information Technology Specialist	Directorate of Administrative Programs
Information Technology Specialist	Directorate of Administrative Programs
Director, Enforcement Programs	Directorate of Enforcement Programs
Deputy Director, Enforcement Programs	Directorate of Enforcement Programs
Director Health Enforcement Programs	Directorate of Enforcement Programs
Director of Construction	Directorate of Construction
Supervisory Civil Engineer	Directorate of Construction
Civil Engineer (Structural)	Directorate of Construction

**PERSONNEL OUTSIDE OF WASHINGTON, DC EXEMPT FROM SHUTDOWN**

POSITION TITLE	REGIONAL OFFICES
<p>Regional Administrator                      Assistant Regional Administrator (ARA)                      for Administration and Management                      ARA for Enforcement                      ARA for Technical Support                      Administrative Support</p>	<p>Boston Regional Office                      Boston Regional Office                      Boston Regional Office                      Boston Regional Office                      Boston Regional Office</p>
<p>Regional Administrator                      Assistant Regional Administrator (ARA)                      for Administration and Management                      ARA for Enforcement                      ARA for Technical Support                      Administrative Support</p>	<p>New York Regional Office                      New York Regional Office                      New York Regional Office                      New York Regional Office                      New York Regional Office</p>
<p>Regional Administrator                      Assistant Regional Administrator (ARA)                      for Administration and Management                      ARA for Enforcement                      ARA for Technical Support                      Administrative Support</p>	<p>Philadelphia Regional Office                      Philadelphia Regional Office                      Philadelphia Regional Office                      Philadelphia Regional Office                      Philadelphia Regional Office</p>
<p>Regional Administrator                      Assistant Regional Administrator (ARA)                      for Administration and Management                      ARA for Enforcement                      ARA for Technical Support                      Administrative Support</p>	<p>Atlanta Regional Office                      Atlanta Regional Office                      Atlanta Regional Office                      Atlanta Regional Office                      Atlanta Regional Office</p>
<p>Regional Administrator                      Assistant Regional Administrator (ARA)                      for Administration and Management                      ARA for Enforcement                      ARA for Technical Support                      Administrative Support</p>	<p>Chicago Regional Office                      Chicago Regional Office                      Chicago Regional Office                      Chicago Regional Office                      Chicago Regional Office</p>

<b>POSITION TITLE</b>	<b>REGIONAL OFFICES</b>
<b>Regional Administrator</b>	<b>Dallas Regional Office</b>
<b>Assistant Regional Administrator (ARA) for Administration and Management</b>	<b>Dallas Regional Office</b>
<b>ARA for Enforcement</b>	<b>Dallas Regional Office</b>
<b>ARA for Technical Support</b>	<b>Dallas Regional Office</b>
<b>Administrative Support</b>	<b>Dallas Regional Office</b>
<b>Regional Administrator</b>	<b>Kansas City Regional Office</b>
<b>Assistant Regional Administrator (ARA) for Administration and Management</b>	<b>Kansas City Regional Office</b>
<b>ARA for Enforcement</b>	<b>Kansas City Regional Office</b>
<b>ARA for Technical Support</b>	<b>Kansas City Regional Office</b>
<b>Administrative Support</b>	<b>Kansas City Regional Office</b>
<b>Regional Administrator</b>	<b>Denver Regional Office</b>
<b>Assistant Regional Administrator (ARA) for Administration and Management</b>	<b>Denver Regional Office</b>
<b>ARA for Enforcement</b>	<b>Denver Regional Office</b>
<b>ARA for Technical Support</b>	<b>Denver Regional Office</b>
<b>Administrative Support</b>	<b>Denver Regional Office</b>
<b>Regional Administrator</b>	<b>San Francisco Regional Office</b>
<b>Assistant Regional Administrator (ARA) for Administration and Management</b>	<b>San Francisco Regional Office</b>
<b>ARA for Enforcement</b>	<b>San Francisco Regional Office</b>
<b>ARA for Technical Support</b>	<b>San Francisco Regional Office</b>
<b>Administrative Support</b>	<b>San Francisco Regional Office</b>
<b>Regional Administrator</b>	<b>Seattle Regional Office</b>
<b>Assistant Regional Administrator (ARA) for Administration and Management</b>	<b>Seattle Regional Office</b>
<b>ARA for Enforcement</b>	<b>Seattle Regional Office</b>
<b>ARA for Technical Support</b>	<b>Seattle Regional Office</b>
<b>Administrative Support</b>	<b>Seattle Regional Office</b>

POSITION TITLE	AREA OFFICES
<p><b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b></p>	<p><b>REGION I</b>            Andover            Braintree            Bridgeport            Concord            Hartford            Maine            Providence            Springfield</p>
<p><b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b></p>	<p><b>REGION II</b>            Albany            Avenel            Buffalo            Hasbrouck Hts.            Long Island            Manhattan            Marlton</p>
<p><b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b></p>	<p><b>REGION III</b>            Parsippany            Puerto Rico            Queens            Syracuse            Tarrytown</p>
<p><b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b></p>	<p><b>REGION III</b>            Allentown            Baltimore            Charleston            Erie            Harrisburg            Philadelphia            Pittsburgh            Norfolk            Wilkes Barre            Wilmington</p>

POSITION TITLE	AREA OFFICES
<p><b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b></p>	<p><b>REGION IV</b>  Atlanta East  Atlanta West  Birmingham  Ft. Lauderdale  Jackson  Jacksonville  Mobile  Nashville/Raleigh/Columbia  Savannah  Tampa</p>
<p><b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b></p>	<p><b>REGION V</b>  Appleton  Aurora  Calumet City  Chicago North  Cincinnati  Cleveland  Columbus  Eau Claire  Fairview Hts.  Madison  Milwaukee  Peoria  Toledo</p>
<p><b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b></p>	<p><b>REGION VI</b>  Austin  Baton Rouge  Corpus Christi  Dallas  El Paso  Fort Worth  Houston North  Houston South  Little Rock  Oklahoma City  San Antonio</p>

<b>POSITION TITLE</b>	<b>AREA OFFICES</b>
<b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b>	<b>REGION VII</b>
	Des Moines
	Kansas City
	Omaha
	St. Louis
	Wichita
<b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b>	<b>REGION VIII</b>
	Billings
	Bismarck
	Denver
	Englewood
<b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b>	<b>REGION IX</b>
	Honolulu
	Las Vegas
	Oakland
	Phoenix
	San Diego
<b>One Senior Safety Compliance Officer and One Senior Health Compliance Officer for each Area Office</b>	<b>REGION X</b>
	Anchorage
	Bellevue
	Boise
	Portland

<b>POSITION TITLE</b>	<b>LOCATION</b>
Senior Chemist	Salt Lake Technical Center
Senior Chemist	Salt Lake Technical Center
Industrial Hygienist	Salt Lake Technical Center
Industrial Hygienist	Salt Lake Technical Center



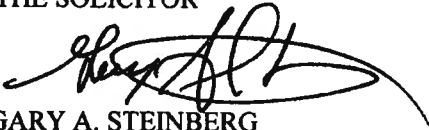


SEP 23 2013

File Number:

MEMORANDUM FOR THE SOLICITOR

FROM:

  
GARY A. STEINBERG  
Acting Director  
Office of Workers' Compensation Programs

SUBJECT:

Contingency Plan for Excepted Activities and Functions

During a lapse in appropriations, the Office of Workers' Compensation Programs (OWCP) will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary for Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occurred, additional employees would be identified to work for the duration of the emergency.

As detailed on the attachment, OWCP has some statutory authority to continue the payment of benefits for varying amounts of time during a lapse in annual appropriations in awarded claims under the Black Lung Benefits Act, the Energy Employees Occupational Illness Compensation Program Act, the Federal Employees' Compensation Act, the Longshore and Harbor Workers' Compensation Act and its extensions, and the War Hazards Compensation Act. In addition, it is expected that administrative activities that are not funded by annual appropriations would continue without change.

With respect to administrative expenses that are funded by annual appropriations, as long as benefit payments continue, OWCP also has the implied authority to incur obligations in advance of appropriations for administration of those benefits, including the authority to retain the staff, management and automated systems necessary to the check writing and distribution functions that are critical to the disbursement of the benefit payments themselves. In addition, OWCP is authorized by law to continue necessary claims management as a necessary implication of the continued funding for benefit payments and in order to protect the lives of the beneficiaries of the programs involved. These individuals potentially have suffered work-related injuries or illnesses that are compensable under one of the statutes within the agency's jurisdiction. Necessary claims management includes developing, adjudicating and administering new claims and new requests for benefits, as well as adjudicating requests for authorization of necessary medical procedures such as emergency medical care and other activities that are necessarily implied by continuation of the compensation programs involved.

The attachment outlines the parameters of OWCP's authority to continue paying benefits under these programs and describes the excepted administrative functions in greater detail.

During a funding lapse, OWCP would cease all other continuing, regular functions.

Attachment

cc: Deborah Greenfield

**Office of Workers' Compensation Programs  
EXCEPTED ACTIVITIES AND FUNCTIONS**

**I. Payment of benefits.**

The Office of Workers' Compensation Programs (OWCP) is responsible for administering the Black Lung Benefits Act (BLBA), the Energy Employees Occupational Illness Compensation Program Act (EEOICPA), the Federal Employees' Compensation Act (FECA), the Longshore and Harbor Workers' Compensation Act (LHWCA) and its extensions, and the War Hazards Compensation Act (WHCA). As detailed below, during a funding lapse, OWCP expects to have sufficient authority and funds to continue making benefit payments,<sup>1</sup> including monetary compensation and payment of medical benefits, under the above programs as detailed below:

**A. BLBA:**

1. Part B benefits are paid from annual appropriations; OWCP expects to be able to continue paying Part B benefits indefinitely, because OWCP's appropriation provides an advance for benefits payable during the first quarter of the next Fiscal Year and OWCP does not expect to exhaust this funding in the near future.

2. Part C benefits are paid from the Black Lung Disability Trust Fund (BLDTF). OWCP expects to be able to continue paying any benefits due from the BLDTF as long as the BLDTF contains sufficient funds to make payments. At this point, if there is a lapse in appropriations, OWCP can continue paying benefits until such time as all funding is completely expended

**B. EEOICPA:** OWCP expects to be able to continue paying all benefits due, whether under Part B or Part E, because benefits are paid from the Energy Employees Occupational Illness Compensation Fund, a permanent indefinite appropriation that is not dependent upon annual appropriations or authority provided in other appropriations laws.

**C. FECA:** OWCP expects to be able to continue paying all benefits as long as sufficient funds remain available in the Employees' Compensation Fund, a permanent appropriation. Although a significant portion of the money deposited into the Fund is from annual appropriations<sup>2</sup> received by employing agencies and transferred to the Fund pursuant to 5 U.S.C. § 8147(b), these funds do not expire and use of the funds to pay benefits is not dependent upon authority provided in annual appropriations. Upon a lapse in appropriations, OWCP can continue paying benefits for several months until such time as all available funding is expended. Estimates will be updated as transfers from other agencies are received.

**D. LHWCA:** OWCP expects to be able to continue paying any benefits due from the LHWCA Special Fund, as long as the Special Fund contains sufficient funds to make payments. At this time, OWCP expects to have sufficient funding in the Special Fund to continue paying benefits for approximately 12 months.

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<sup>1</sup> This discussion applies only to benefits that are payable from funds controlled by the United States government. Under some programs, some benefits are paid directly by private parties (employers or their insurers). Those benefits should continue without interruption.

<sup>2</sup> Approximately 40% of the benefits paid from the Fund consist of payments made to employees of the United States Postal Service (USPS). USPS reimburses the Fund for those payments from a revolving fund which is not subject to a lapse in annual

E. WHCA: WHCA claims are paid from the Employees' Compensation Fund, discussed in Section C (above). As with FECA benefits, OWCP expects to be able to continue paying all benefits as long as sufficient funds remain available in the Employees' Compensation Fund, a permanent appropriation. OWCP expects to have sufficient funding in the Fund to continue paying benefits consistent with section C.

## II. Administrative Expenses

A. EEOICPA: OWCP has sufficient funds for all administrative activities under Part E of EEOICPA because those activities are funded by a permanent indefinite appropriation rather than OWCP's annual appropriation. In addition, although Part B administrative expenses are funded by annual appropriation, OWCP's current fiscal year appropriation for Part B expenses remains available until it is expended and these funds would continue to be available during a lapse in appropriations. If carryover funds are exhausted, however, a lapse in appropriations would affect Part B administration. As discussed in more detail in Section IIC (below), OWCP would be authorized to continue necessary Part B claims management in order to continue administration of Part B benefits to the extent that funding remains available to pay those benefits.

B. BLBA Part B: BLBA Part B administrative expenses are funded through DOL's annual appropriation, and remain available until expended. OWCP does have some limited "carryover" funding which would remain available (until expended) during a lapse in appropriations; however this funding is not expected to be sufficient to cover all Part B administrative costs. As discussed in more detail in Section IIC (below), however, OWCP would be authorized to continue necessary Part B claims management in order to continue administration of Part B benefits to the extent that funding remains available to pay those benefits.

### C. BLBA, LHWCA, FECA, and WHCA

In general, OWCP uses annual appropriations to fund administrative activities for BLBA Part C, FECA, LHWCA and WHCA.<sup>3</sup> A lapse in annual appropriations would affect these activities. In addition, as discussed in Sections IIA and IIB, EEOICPA Part B and BLBA Part B administrative expenses are funded by annual appropriations that remain available until expended; FECA Fair Share administrative expenses are funded in the same way. If carryover funds are exhausted, a lapse in appropriations would affect these activities.

The Office of Legal Counsel (OLC) at the Department of Justice has opined that, "the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well." *Operations in the Event of a Lapse in Government Appropriations*, 1995 WL 17216091 (August 16, 1995) (citing 43 Op. Atty Gen. 293 (January 16, 1981)). In addition, OWCP expects certain necessary claims management activities under these statutes to fall within another exception to the Antideficiency Act "for emergencies involving the safety of human life or the

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<sup>3</sup> There are some limited exceptions to this general rule. Where the governing statute permits use of other funding to pay expenses that might otherwise be considered administrative expenses, the other source of funding may be used. For example, the Federal Employees' Compensation Act generally prohibits use of the Employees' Compensation Fund to pay for administrative activities, but excludes legal services related to FECA subrogation from this prohibition.

protection of property." See 31 U.S.C. 1342. Individuals receiving benefits under the above programs have suffered work-related injuries or illnesses that are compensable under one of the statutes within the agency's jurisdiction. Under these exceptions, OWCP is authorized to continue necessary claims management in order to continue administration of claims for benefits that have been awarded under these statutes to the extent that funding remains available to pay those benefits. This includes the authority to retain the staff, management and automated systems necessary to the check writing and distribution functions that are critical to the disbursement of the benefit payments themselves.

The OLC has specifically referenced benefit payments under entitlement programs when the funds for the payments themselves do not lapse as an area where it infers authority to continue the administration of the program to the extent of the remaining benefit funding despite a lapse of appropriations. Each of these programs constitutes such an entitlement program. Thus, the necessary implication of the authority to continue to pay benefits under the BLBA, EEOICPA, FECA, LHWCA and WHCA is that OWCP is authorized by law to incur obligations in advance of appropriations to develop, adjudicate and administer new claims and new requests for benefits in order to allow payment of such benefits. In addition, in order to protect the life and health of covered workers' requests relating to provision of medical services, such as authorizations required for certain medical treatments, services and supplies will have to continue to be reviewed and adjudicated. OWCP will continue to do so as required under each of the referenced statutory authorities. Necessary claims management includes the adjudication of requests for authorization of necessary medical procedures such as emergency medical care, as well as other activities that are necessarily implied by continuation of the compensation programs involved.

OWCP also will designate program officials in each geographical location where employees are performing the excepted activities described above to provide essential executive, managerial and supervisory direction and to provide information technology support to ongoing activities. This will ensure that the excepted activities as set forth above are provided appropriate supervision and technical support. Additionally, excepted employees will provide financial, contract management, and clerical duties in support of excepted activities; appear in court pursuant to lawful subpoenas served on them in their capacity as Federal employees, and perform all required technical support activities to ensure availability of the resources necessary to perform authorized functions.

**U.S. Department of Labor**

Wage and Hour Division  
Washington, DC 20010



MEMORANDUM FOR M. PATRICIA SMITH  
SOLICITOR OF LABOR

FROM:

LAURA A. FORTMAN *Laura A. Fortman*  
PRINCIPAL DEPUTY ADMINISTRATOR

SUBJECT:

Updated Contingency Plan for Shutdown of Operations

The Wage and Hour Division (WHD) is submitting a revised contingency plan in the event there is a lapse in appropriations. The attached contingency plan amends the list of WHD excepted positions approved by your office on April 7, 2011 and also includes an updated listing of WHD excepted personnel.

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**U.S. Department of Labor**

Wage and Hour Division  
Washington, DC 20010



September 10, 2013

MEMORANDUM FOR M. PATRICIA SMITH  
SOLICITOR OF LABOR

FROM:

LAURA A. FORTMAN *Laura A. Fortman*  
PRINCIPAL DEPUTY ADMINISTRATOR

SUBJECT:

Updated Contingency Plan for a Shutdown of Operations

During a lapse in appropriations the Wage and Hour Division (WHD) will suspend all operations and its staff will be furloughed, except as described below. Upon the approval of this request, a member of my staff will notify the Assistant Secretary of Administration and Management of the names of the individuals performing the activities set forth below. I anticipate the possibility of job rotation in some instances. If unforeseen emergencies occur, additional employees would be identified to work for the duration of the emergency.

For WHD, the basis for excepted personnel in DLMS 6-430 is the following criteria "Necessary to respond to emergencies involving the safety of human life or the protection of property." The requested exception would be used to employ WHD staff to conduct an immediate investigation of any incidents involving serious injury or death of a minor while employed or any transportation accident or any housing safety violation involving serious injury or death of a farm worker.

To accomplish such, in the absence of a confirmed Administrator, we would designate the Principal Deputy Administrator (in his/her absence, the Deputy Administrator for the Office of Program Operations) and the five WHD Regional Administrators as excepted employees who would be continuously available to handle communications and coordinate responses to any emergency. We would also designate each of our District Directors (or an individual acting in that capacity) as excepted-intermittent employees who would occasionally visit the district office location to check mail and phone calls to determine whether an emergency situation has been reported which requires an immediate response. This category of employees would not report to work each day, but only on a pre-determined schedule or as needed to respond to an emergency.

cc: [REDACTED], SOL Appropriations Counsel  
[REDACTED], SOL Appropriations Counsel Area

**WHD Excepted Full-Time Positions:**

Administrator (vacant)  
Principal Deputy Administrator (in the absence of a confirmed Administrator)  
Deputy Administrator for the Office of Program Operations (in the absence of the Principal Deputy Administrator)  
Regional Administrator, Northeast Region (Philadelphia)  
Regional Administrator, Southeast Region (Atlanta)  
Regional Administrator, Midwest Region (Chicago)  
Regional Administrator, Southwest Region (Dallas)  
Regional Administrator, Western Region (San Francisco)

**WHD Excepted Intermittent Positions:**

**Northeast Region**

Albany, NY DO  
Baltimore, MD DO  
Boston, MA DO  
Caribbean DO  
Hartford, CT DO  
Long Island, DO  
New York City, DO  
Northern New Jersey DO  
Philadelphia, PA DO  
Pittsburgh, PA DO  
Richmond, VA DO  
Southern NJ DO  
Wilkes-Barre, PA DO

**Southeast Region**

Atlanta, GA DO  
Columbia, SC DO  
Gulf Coast DO  
Jackson, MS DO  
Jacksonville, FL DO  
Louisville, KY DO  
Miami, FL DO  
Nashville, TN DO  
Raleigh, NC DO  
Tampa, FL DO

**Midwest Region**

Chicago, IL DO  
Columbus, OH DO  
Des Moines, IA DO

Detroit, MI DO  
Grand Rapids, MI DO  
Indianapolis, IN DO  
Kansas City, KA DO  
Minneapolis, MN DO  
St. Louis, MO DI

**Southwest Region**

Albuquerque, NM DO  
Dallas, TX DO  
Denver, CO DO  
Houston, TX DO  
Little Rock, AR DO  
McAllen, TX DO  
New Orleans, LA DO  
Oklahoma City, OK DO  
Salt Lake City, Utah DO  
San Antonio, TX DO

**Western Region**

Seattle, WA DO  
Portland, OR DO  
Honolulu, HI DO  
San Francisco, CA DO  
Sacramento, CA DO  
Las Vegas, NV DO  
Los Angeles, CA DO  
Phoenix, AZ DO  
San Diego, CA DO  
West Covina, CA DO