

U.S. Department of Justice
FY 2022 Contingency Plan
- September 24, 2021 -

This FY 2022 Contingency Plan covers Department of Justice (DOJ or the Department) operations during a lapse in appropriations.

The Antideficiency Act restricts the Federal Government's ability to obligate funds in advance of appropriations or beyond appropriated levels. During a lapse in appropriations, the Department will only continue the following categories of activities:

1. Those funded by a source that has not lapsed, such as permanent indefinite appropriations and carryover of no-year funds appropriated in a prior year;
2. Those for which there is an express authority to continue during an appropriations lapse;
3. Those for which authority to continue during an appropriations lapse arises by necessary implication;
4. Those related to the discharge of the President's constitutional duties and powers; and
5. Those related to "emergencies involving the safety of human life or the protection of property," *i.e.*, where there is a reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question.

The Department of Justice is comprised of 40 components that have a broad array of national security, law enforcement, and criminal justice system responsibilities. The Department's mission is to enforce the law and defend the interests of the United States according to the law; to ensure public safety against threats foreign and domestic; to provide federal leadership in preventing and controlling crime; to seek just punishment for those guilty of unlawful behavior; and to ensure fair and impartial administration of justice for all Americans.

Therefore, a significant portion of the Department's mission relates to the safety of human life and the protection of property, and primarily for this reason, the Department has a high percentage of activities and employees that are excepted from the Antideficiency Act restrictions and can continue during a lapse in appropriations. Other activities and employees are excepted because they are funded with multi-year or no-year appropriations, or because they are Presidential appointees, most of whom are excepted from furlough because they are not covered by the leave system in 5 U.S.C. Chapter 63.¹ Note that the contingency plan assumes that, at the time of a shutdown, all Components and Subcomponents normally headed by a Presidential

¹ Note: Former career Senior Executive Service (SES) appointees who receive a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. § 3392(c). If SES leave benefits are so elected, such a Presidential Appointee would be subject to furlough under 5 CFR part 359, subpart H, unless otherwise excepted.

Appointee are in fact headed by a Presidential Appointee. If at the time of shutdown the Department does not have Presidential appointees in one or more of those positions, the Department will determine the excepted status of those who are acting in those positions in accordance with the criteria above.

Agency Summary:

The total number of agency employees on-board at the time we issued this Contingency Plan was 116,126² (see Table 2). Based on data as of June 5, 2021, for a lapse in appropriations for the first 5 calendar days of fiscal year 2022, 98,635 DOJ employees would be excepted from furlough (see Table 1), representing 85% of DOJ on-board employees.

**Table 1: Department of Justice FY 2022 Contingency Plan Exceptions
Employees Excepted from Furlough**

Categories		Total Excepted Employees FY 2022
Category 1 ³	Employees whose compensation is financed by a resource other than annual appropriation (also referred to as "exempt employees")	6,082
Category 2	Employees necessary to perform activities expressly authorized by law to continue during a lapse in appropriations	961
Category 3	Employees necessary to perform activities necessarily implied by law	1,508
Category 4	Employees necessary to the discharge of the President's constitutional duties and powers	3
Category 5	Employees necessary to protect life and property	90,081
Total		98,635

The Department's plan is consistent with Office of Legal Counsel (OLC) opinions and Office of Management and Budget (OMB) guidance and conforms to the following general principles:

- The law enforcement capacity of the U.S. Government should not be impaired or perceived to be impaired. To do so could constitute an imminent threat to the safety of human life and the protection of property.
- Components may call some employees back to work if the need for their services becomes critical, and furlough others as conditions change.

² Onboard staffing data are derived from DOJ's payroll system and reflect information from pay period 11, ending June 5, 2021.

³ Note that this number includes employees funded with carryover, multi-year and no-year funding appropriated in prior years. The number of excepted employees in this category may decrease over the course of an appropriations lapse as carryover funding is depleted.

- Ancillary support services will be maintained to the extent necessary to support excepted operations. These ancillary functions include legislative affairs and other congressional support activities, public affairs activities, and community outreach, which may be conducted to the extent the failure to perform those functions prevents or significantly damages the functioning of a funded component, the operations of other funded parts of the Government, or the performance of an excepted function.
- Employees may not be reassigned or given new duties, and offices may not be restructured, in order to move individuals from a non-excepted function into an excepted function (although some rotational coverage of excepted positions will occur).

With respect to litigation, the Department's plan assumes that the Judicial Branch will continue to operate, though possibly at a reduced level, through the lapse. Therefore:

- Criminal litigation will continue without interruption as an activity essential to the safety of human life and the protection of property. Since criminal litigation is excepted, domestic and international extraditions are also necessary to protect life and property and therefore excepted. Extradition requests are made pursuant to bilateral and multilateral treaties which carry obligations to extradite within a treaty deadline timeframe that cannot be extended due to a lapse in appropriation.
- Civil litigation will be curtailed or postponed to the extent that this can be done without compromising to a significant degree the safety of human life or the protection of property. Litigators will approach the courts and request that active cases, except for those in which a delay would compromise to a significant degree the safety of human life or the protection of property, be postponed until funding is available. If a court denies such a request and orders a case to continue, the Government will comply with the court's order, which would constitute express legal authorization for the activity to continue. The Department will limit its civil litigation staffing to the minimum level needed to comply with the court's order and to protect life and property. Receipt of summonses, pleadings and motions by mail may be delayed.

Assumptions relating to training activities (where the funding for those training activities has lapsed) are as follows:

- In order to ensure the proper execution of the Department's emergency functions, components may determine that the training of new employees in positions that have been designated as "emergency" is an excepted function.
- To the extent that the training of new "emergency" employees is in process or about to begin when a lapse occurs, components should consider whether a short delay (for example, over the weekend) in the training will compromise emergency functions. If such

a delay will not compromise emergency functions, components should consider keeping the employees at the training center but delaying the training itself, or not sending the employees to the training during the brief delay. If at any point the component determines that the delay in training might impact emergency functions, the training should resume.

- New employees who are not in positions designated as “emergency” should not start work during the lapse and should not be trained.
- In-service training of current employees, even those excepted from furlough, will be cancelled.
- Training of state and local officers will be discontinued for the duration of the lapse in appropriations.
- As a general rule, training for international law enforcement officers occurring in the United States will be cancelled. However, with respect to training of international law enforcement officers abroad (such as the training of officers who will be working in a combat zone), components will use their judgment to determine whether such training needs to occur immediately in order to protect human life or property. If so, such training may continue.
- For those components who use the Federal Law Enforcement Training Center (FLETC) for training, shutdown and reengagement plans will be coordinated with the Department of Homeland Security and FLETC personnel.

Employee relocations will, for the most part, be postponed during a lapse. Exceptions will be made for employees performing emergency functions who were in the process of moving and/or had their relocation authorizations approved prior to the lapse, but reimbursements for their expenses may be delayed. New relocations will not be approved unless: (a) they are being paid from a funded source (e.g., Diversion fees or Federal Bureau of Investigation (FBI) no-year funding) or (b) they are necessary to continue emergency functions.

With respect to overseas operations, the Department will defer to the Chief of Mission (COM) for all employees (DOJ and contract) who are posted at an embassy or installation and will ensure its employees comply fully with all applicable directives of the COM related to the continued or suspended business of the embassy or installation.

Department of Justice programs funded with permanent indefinite appropriations or other funding not subject to annual appropriation (e.g., Diversion Control, Health Care Fraud and Abuse Control, Debt Collection, Assets Forfeiture Fund, Federal Prison Industries) are displayed in the plan as excepted positions (and are also referred to as “exempted positions” in other contexts), because their funding is not dependent upon an enacted appropriation. Also included

within the accounts that have funding are the Bureau of Prisons' (BOP) Buildings and Facilities and Commissary accounts, which have carryover funding from their multi-year authority. Employees paid from these funding sources are not dependent upon an enacted appropriation and are therefore considered excepted. In light of the continued availability of these funding sources, approximately 6,094 excepted employees will be able to be paid, at least initially, in the event of a lapse. The rest of the excepted employees will work without pay.

Individual DOJ Component Summaries:

Following is a synopsis of the components' plans for the Department of Justice, including the nature of the agency activities in which excepted employees will be engaged. The attached Table 2 provides the total number of employees in the component on-board when the plan was issued; the total number of component employees excepted from furlough under each of the recognized exceptions; and the agency's legal basis for each of its determinations to except employees.

- **General Administration (GA)/Working Capital Fund (WCF)/Justice Information Sharing Technology (JIST):** Accounts include the Department's Leadership and Senior Policy/Management Offices. This includes Presidential Appointees, who are not subject to furlough by virtue of their appointment status, while a sizeable number of employees in these organizations will be furloughed. The excepted employees will provide overall Departmental leadership and policy management for ongoing operations that protect life and property and for other excepted activities during the lapse of appropriations.

The GA account also funds a portion of the functions and staff of the Justice Management Division (JMD). The excepted GA-funded JMD employees will provide Department-wide direction for staffs providing support for ongoing operations that protect life and property; direct support, including IT support, for Department-wide operations that protect life and property; and building security at the Main Justice Building. The Working Capital Fund (WCF) is funded by reimbursements from a variety of sources, but primarily from sources that are appropriated annually and will not be available if there is a lapse in appropriations; many of these functions will be curtailed during the lapse. In addition, a number of JMD employees are funded by the Three Percent Fund for debt collection, which is not subject to annual appropriation, and thus these employees may continue to work during a lapse in appropriations.

JMD also oversees the JIST and the WCF Information Technology accounts. Excepted employees in these areas are needed to operate the 24/7 Justice Security Operations Center, which provides information security for the Department's systems. In addition, these employees are needed for information technology operations and systems that support ongoing law enforcement operations that will continue during any lapse in appropriations.

A small number of offices within the GA account have requested additional excepted employees as compared to the Department's most recent contingency plan. The Office of Public Affairs (PAO) is requesting an additional staffer to manage anticipated public inquiries in the event of a lapse in appropriation. Further, JMD staffs such as Human Resources recognized a need for additional excepted employees to support the Department during the last shutdown.

- **Executive Office for Immigration Review:** Excepted employees are needed to process all immigration cases and appeals involving detained respondents, including criminal noncitizens; provide Headquarters oversight of excepted functions; provide administrative support for excepted functions; and preserve jurisdictional viability of discrimination cases within the Administrative Law Judge function.
- **Office of the Pardon Attorney (PARDON):** PARDON has one excepted attorney position to ensure the component head can be responsive to the Deputy Attorney General and the President during a lapse in appropriation and one excepted staff position, the Executive Officer, who is the continuing resolution point-of-contact (CR POC) and the designated employee for internal questions regarding a shutdown. PARDON's mission is to assist the President in the exercise of his constitutional clemency power, which falls within exemption 4 (those related to the discharge of the President's constitutional duties and powers). For nearly two decades, capital clemency cases were infrequent as a result of the federal moratorium on the death penalty; however, the moratorium was lifted and the Federal Bureau of Prisons began scheduling the executions of death-row inmates. Inmates have 30 days from the date that an execution is set to petition the President, through PARDON, for a commutation (reduction) of sentence. To the extent a petition were to be pending during a lapse in appropriations, the exception for "discharge of the President's constitutional duties and powers" would apply to PARDON employees needed to timely investigate the matter, gather and review voluminous but relevant documents, hear from federal clemency stakeholders, victims, and witnesses, as well as petitioners (through counsel) before preparing the recommendation of the Department for review by the Deputy Attorney General. PARDON would also be responsible for effectuating the President's decision under the Constitution to grant or deny clemency to the capital offender prior to the scheduled date of execution. Therefore, depending on the number of capital cases under review at the time of a lapse, PARDON may need additional employees to handle its constitutional responsibility.
- **Office of the Inspector General:** As a Presidential Appointee, the Inspector General is not subject to furlough. The excepted employees are needed to investigate allegations of bribery, fraud, abuse, civil rights violations and violations of other criminal laws and administrative procedures arising from the conduct of Department employees, contractors and grantees; support law enforcement functions; oversee emergency operations and provide legal advice and issue subpoenas; continue work on time-sensitive national

security investigations; and provide security and administrative support for excepted personnel and emergency services. In addition, OIG has excepted personnel who perform audits whose compensation is financed from sources other than direct appropriations. In the event of a lapse in appropriations exceeding one pay period in length OIG will need to designate eleven additional employees as excepted. One additional attorney will be added as well as ten “Other” staff. These ten additional employees include positions such as security, financial, IT, and facilities managers and specialists as well as an HR Officer and Contracting Officer. More than half the OIG staff are excepted and, in the event of an extended lapse in appropriations, additional support will be needed in the IT, HR, communications, facilities and administrative support areas in order to provide critical services to the excepted OIG staff.

- **U.S. Parole Commission (USPC):** The excepted USPC employees are needed to respond to requests for emergency warrants and process parole certificates. Due to the constitutional prohibitions against the suspension of the writ of habeas corpus, this litigation has continued and is expected to continue in all judicial districts. Also, the USPC anticipates that the U.S. Probation Offices and the Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) will continue to submit written requests for USPC action against offenders who have violated the conditions of their release. The Chairman and the Commissioners, as Presidential Appointees, are not subject to furlough. They will be available to approve each warrant before issuance. USPC has jurisdiction over federal offenders who committed offenses before November 1, 1987, as well as all District of Columbia (DC) offenders. Much of the DC caseload is driven by requests for warrants as a result of violations of the terms and conditions of parole.
- **National Security Division (NSD):** As a Presidential Appointee, the Assistant Attorney General is not subject to furlough. The excepted employees are needed to ensure the Department’s national security investigations and prosecutions continue, that the Department’s national security activities are coordinated both within the Department and with other government agencies, and to represent the Intelligence Community before the Foreign Intelligence Surveillance Court, which will remain open to facilitate the national security activities of the United States in a manner consistent with the law. NSD will also provide legal advice to the Intelligence Community with respect to ongoing national security matters and oversee the Department’s administration of the U.S. Government’s authorities under the Foreign Intelligence Surveillance Act. In addition, excepted employees will continue work on pending counterterrorism, espionage, export control, and sanctions violations; coordinate and supervise the Department’s international terrorism, domestic terrorism, and weapons of mass destruction matters; and continue to review Committee on Foreign Investment in the United States matters, including responding to time-sensitive inquiries regarding the national security implications of corporate conduct in compliance with National Security Agreements. In the event of an

extended lapse in appropriations, NSD has indicated the need for 30 additional excepted employees. The bulk of the 30 positions would fall under the Other Staff category. These positions would include paralegals, security, IT, and travel staff who would be needed to support excepted activities.

- **General Legal Activities (GLA):** The Solicitor General and the Assistant Attorneys General are Presidential Appointees and are not subject to furlough. The GLA account includes the following components: Office of the Solicitor General, Tax Division, Criminal Division, Civil Division, Environment and Natural Resources Division, Office of Legal Counsel, Civil Rights Division, and INTERPOL Washington. The excepted employees are necessary to provide legal advice on ongoing excepted functions of the Executive Branch, including matters of national security and presidential authority, to the Attorney General, the Deputy Attorney General, others within the Department, the White House, the National Security Council, and the Departments of State and Defense. Excepted employees will also review Attorney General Orders, Executive Orders and Proclamations, and presidential memoranda and directives; ensure that criminal litigation continues uninterrupted; seek continuances for civil and appellate litigation, except as necessary for the immediate protection of life or property; proceed with civil and appellate litigation should attempts to secure continuances fail; provide administrative advice and resource allocation guidance to Civil Rights Prosecution personnel and the Assistant Attorney General, Civil Rights Division, in the event of civil disorder; respond to and investigate complaints of alleged criminal civil rights violations involving endangerment of life or property and handle complaints from institutionalized persons concerning life-threatening situations. Also, excepted employees are needed to provide uninterrupted communications among federal, state, local and international law enforcement entities in furtherance of, among other things, criminal investigations and the apprehension of fugitives and criminal and illegal aliens. If a court denies a litigator's request to postpone a case and orders it to continue, the litigation will become an excepted activity that can continue during the lapse.
- **Antitrust Division (ATR):** As a Presidential Appointee, the Assistant Attorney General is not subject to furlough. The excepted employees are needed to conduct or directly support ongoing criminal trials, prepare for criminal proceedings that have been scheduled for court (including the handling of arraignments, pleas, and sentencing hearings), and conduct or support ongoing civil litigation in which a continuance cannot be obtained. They will also prepare cases that must be filed due to Hart-Scott-Rodino or statute of limitations deadlines, only when an extension or waiver cannot be obtained and ATR leadership determines that allowing a proposed merger to go forward without objection would pose a reasonable likelihood of peril to property in which the United States has an immediate interest. The work conducted by the Division is funded from no-year appropriations, as are the employees. As a result, these activities may continue during a lapse as long as sufficient S&E carryover funds remain and based upon input

from Department leadership regarding mission requirements. However, for the sake of the FY 2022 contingency exercise, the Division is reflecting the level of personnel that would be needed if they had to reduce the personnel to only those most critical during a shutdown. This level of personnel reflects 267 positions (or 42% of the total 643 current on-board staff), which includes 135 attorneys and 132 other staff positions.

- **U.S. Attorneys:** As Presidential Appointees, U.S. Attorneys are not subject to furlough. Excepted employees are needed to address ongoing criminal matters and civil matters of urgency throughout the Nation. Criminal litigation will continue without interruption as an excepted activity to maintain the safety of human life and the protection of property. Civil litigation will be curtailed or postponed to the extent this can be done without compromising to a significant degree the safety of human life or the protection of property. If a court denies a litigator's request to postpone a case and orders it to continue, the litigation will become an excepted activity that can continue during the lapse. Headquarters support is maintained only to the extent necessary to support excepted operations. The Executive Office for United States Attorneys (EOUSA) has identified a greater number of excepted positions than in past contingency plans. The additional attorneys are included for two primary reasons: (1) the number of on-board attorneys has increased, and (2) a determination that many attorneys are funded out of non-lapsed resources. Additional staff will also be needed, including to assist with payments that it was determined during the last lapse could be paid. EOUSA also expects that it will need to except additional employees in the event of an extended lapse.
- **U.S. Trustees Program (USTP):** The USTP anticipates ending FY 2021 with carryover funding to cover at least one week of payroll for all staff. During this time, all staff would be excepted under Exception 1. As a result, all USTP activities may continue during a lapse as long as sufficient S&E carryover funds remain. Once carryover funding has been depleted (most likely in the first week of the second pay period of the lapse), staff levels would be reduced to the 441 excepted personnel that would continue to work without pay until the lapse was over. These excepted employees are needed to protect bankruptcy estate property through the appointment and oversight of fiduciaries and through other means. Excepted employees are responsible for coordinating meetings of debtors and creditors, as well as civil and criminal matters, including cases with the U.S. Attorneys and the Federal Bureau of Investigation. Excepted employees are limited to performing only those functions in which there is a definite risk of substantial property loss or violation of law. Staff would include an even number of attorneys and other staff, with one-fifth of each category comprised of headquarters staff and the rest comprised of field staff. Other staff include auditors in the field, as well as primary and back-up support for ongoing bankruptcy fee collection duties, statutory trustee oversight responsibilities and public affairs activities. In addition, this period would necessitate coverage in the areas of budget, physical security, and facilities support for our excepted field operations.

- **Foreign Claims Settlement Commission:** As Presidential Appointees, the Commissioners are not subject to furlough. All staff would be furloughed; therefore, staff activity related to the settlement of foreign claims would be postponed.
- **U.S. Marshals Service (USMS):** As a Presidential Appointee, the Director of USMS is not subject to furlough. The 94 U.S. Marshals in the Federal Districts are Presidential Appointees, but are subject to the Leave Act and, therefore, are subject to furlough. However, since they all have duties directly related to the protection of life and property, they are excepted from furlough and will continue working. The excepted employees, including the U.S. Marshals, are needed to carry out duties associated with judicial security; prisoner custody, security, and transportation; and fugitive apprehension. Some Headquarters personnel are also excepted as their functions are critical to the support of the U.S. Marshals and Deputy U.S. Marshals in the field – this support includes integrity assurance, oversight of investigative operations and judicial security, tactical operations, witness security, Basic Deputy U.S. Marshal training, and management functions that include law and policy, budget and finance, procurement, information technology, human resource administration, and security. In the event of an extended lapse in appropriations, the USMS would require additional excepted positions across their Divisions.
- **Community Relations Service (CRS):** As a Presidential Appointee, the Director is not subject to furlough. CRS provides critical assistance in resolving and preventing racial, ethnic and national origin community conflicts, violence, and civil disorder, and it helps communities struggling to recover in the aftermath of alleged violent hate crimes. A minimum number of employees are necessary to provide a rapid response to emergency situations to protect the safety of human life or the protection of property.
- **Interagency Crime and Drug Enforcement (ICDE):** DOJ components participating in the Organized Crime Drug Enforcement Task Force (OCDETF) program have excepted their ICDE-funded personnel from furlough as appropriate within their components. OCDETF provides reimbursable funding to its member agencies to support the salaries and expenses of their participating personnel. A small number of Executive Office employees are needed to provide day-to-day administrative support to the 12 member agencies, the OCDETF Co-Located Strike Forces and to the OCDETF Fusion Center (OFC), which also houses the Department's International Organized Crime Intelligence Operations Center (IOC-2). The 18 Co-Located Strike Forces are designed to serve a dual purpose: they aggressively target the highest-level drug trafficking organizations; and they also function as a central point for gathering intelligence and disseminating investigative leads throughout the neighboring areas. The OFC is a comprehensive data center containing all drug and related financial intelligence information from all OCDETF-member investigative agencies and the Financial Crimes Enforcement Network.

- **Federal Bureau of Investigation (FBI):** As a Presidential Appointee, the Director is not subject to furlough. Excepted personnel are needed because the operations of the FBI are directed toward national security and investigations of violations of law involving protection of life and property. Thus, the FBI must be able to continue existing investigations, open new investigations, and respond to all contingencies which might arise during a lapse of appropriations. Accordingly, all FBI agents and support personnel in the field are considered excepted from furlough.

At FBI headquarters, the excepted personnel will provide direction and investigative support to all field operations and excepted headquarters functions. This includes personnel in the Criminal Justice Information Services Division, which provides fingerprint identification services to criminal and national security investigations, and the Records Management Division, which provides name check services to criminal and national security investigations. Excepted personnel also include nearly all federal employees supporting the National Instant Criminal Background Check System (NICS).

- **Drug Enforcement Administration (DEA):** DEA's Administrator is a Presidential Appointee and is not subject to furlough. All agents in DEA field organizations are excepted from furlough because they support active counternarcotics investigations. This encompasses 23 domestic divisions, 7 regional foreign divisions, critical tactical support groups including the El Paso Intelligence Center and the Special Operations Division, forensic sciences, and technical surveillance support. DEA investigations need to continue uninterrupted so that cases are not compromised and the health and safety of the American public is not placed at risk. In addition, some headquarters personnel are critical to the support of agents actively engaged in investigative actions in the field – this support includes agency direction and priorities, legal support, integrity assurance and oversight of investigations, and critical support of emergency field functions, such as coordination of joint efforts involving other federal, state, local and foreign agencies; 24/7 tactical Command Center, tactical analytical support to investigations, programs and operations worldwide; as well as worldwide support in the areas of financial management, contract oversight, personnel, and basic training. Headquarters support will be maintained only to the extent necessary to support excepted operations.

DEA Diversion Control Fee Account: All employees on-board are excepted since these positions are fully fee-funded; therefore, all drug diversion control activities will continue. These activities include preventing, detecting, and investigating the diversion of controlled substances from legitimate channels, while ensuring an adequate and uninterrupted supply of controlled substances to meet legitimate needs.

- **Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF):** As a Presidential Appointee, the Director of ATF is not subject to furlough. Excepted employees include:

all agents in ATF's field divisions, who conduct the full range of criminal investigations in the firearms, arson, explosives, alcohol and tobacco program areas; Industry Operations Investigators who conduct compliance inspections of Federal firearms and Federal explosives licensees (including those mandated under the Safe Explosives Act), as well as application inspections; and other personnel who collect, review and analyze intelligence data in support of criminal investigations. Headquarters support will be maintained only to the extent necessary to support excepted operations.

- **Bureau of Prisons (BOP):** All staff at the Federal prisons, including Public Health Service Officers necessary to provide medical care of inmates, are considered excepted since they have direct daily inmate custody responsibilities. Employees are also needed to continue inmate custody responsibilities for over 28,800 inmates in contract facilities and process all new designations to federal prisons from the Courts. Regional and headquarters support will be maintained only to the extent necessary to support excepted operations. BOP's Buildings and Facilities, Prison Industries and Commissary accounts have multi-year authority and should have adequate carry-over funding to meet expenses during a lapse in appropriations.
- **Grant Programs (Office of Justice Programs, Office of Community Oriented Policing Services, Office on Violence Against Women):** As Presidential Appointees, the OVW Director and the Assistant Attorney General for OJP are not subject to furlough. The grants awarded by the Department are funded from no-year appropriations, as are the employees who administer those grants. As a result, these activities may continue during a lapse as long as sufficient S&E carryover funds remain and based upon input from Department leadership regarding mission requirements. However, for the sake of the FY 2021 contingency exercise, the grant programs are reflecting the level of personnel who would be needed if they had to reduce the personnel to only those most critical during a shutdown. For OJP this level of personnel is approximately 41 (or 7% of the total 615 current on-board staff); for OVW this level is approximately 13 (or 21% of the total 62 current on-board staff); and for COPS this level is approximately 9 (or 13% of the total 72 current on-board staff).

**Table 2: FY 2022 Department of Justice Contingency Plan
On-Board vs. Excepted Employees**

Name	Total On-Board	Excepted					
		Total	Agents	Intel Analysts	Attorneys	Other Staff	% Excepted
AFF	31	31	0	0	1	30	100%
ATF	5,046	4,349	2,597	202	63	1,487	86%
ATR	643	267	0	0	135	132	42%
BOP	36,981	35,856	16,947	0	193	18,716	97%
CIV	1,396	688	0	0	542	146	49%
COPS	72	9	0	0	1	8	13%
CRM	1,066	955	0	0	641	314	90%
CRS	28	1	0	0	0	1	4%
CRT	592	167	0	0	124	43	28%
DEA	9,086	7,809	4,299	668	91	2,751	86%
ENRD	581	197	0	0	156	41	34%
EOIR	2,281	898	0	0	452	446	39%
FBI	36,560	32,316	13,164	2,972	124	16,056	88%
FCSC	9	2	0	0	0	2	22%
GA/WCF	944	276	0	0	32	241	29%
INTERPOL	49	49	0	36	1	12	100%
JIST	19	4	0	0	0	4	21%
NSD	327	220	0	5	171	44	67%
OCDETF	42	10	0	3	6	1	24%
OIG	500	280	115	0	4	161	56%
OJP	615	41	0	0	2	39	7%
OLC	30	25	0	0	22	3	83%
PARDON	19	2	0	0	1	1	11%
OSG	46	42	0	0	21	21	91%
OVW	62	13	0	0	1	12	21%
TAX	453	247	0	0	187	60	55%
USA	12,173	7,944	31	54	5,365	2,494	65%
USMS	5,434	4,908	3,729	29	22	1,128	90%
USPC	41	29	0	0	3	26	71%
USTP	1,000	1,000	0	0	382	618	100%
TOTAL	116,126	98,635	40,882	3,969	8,746	45,038	85%

**Table 3: FY 2022 Department of Justice Contingency Plan
Excepted Employees by Category**

Categories	Employees Excepted from Furlough				
	Total	Agent	Intel Analyst	Attorney	Other
Category 1	6,082	491	96	1,298	4,197
Category 2	961	0	0	773	188
Category 3	1,508	190	25	247	1,046
Category 4	3	0	0	2	1
Category 5	90,081	40,201	3,848	6,426	39,606
TOTAL	98,635	40,882	3,969	8,746	45,038

Category 1 = Employees whose compensation is financed by a resource other than annual appropriations.

Category 2 = Employees necessary to perform activities expressly authorized by law.

Category 3 = Employees necessary to perform activities necessarily implied by law (including presidentially appointed and Senate-confirmed employees).

Category 4 = Employees necessary to the discharge of the President's constitutional duties and powers.

Category 5 = Employees necessary to protect life and property.