

**U.S. Department of Justice
2011 Contingency Plan**

The Department of Justice has developed the following Contingency Plan, consistent with Office of Legal Counsel (OLC) opinions and Office of Management and Budget (OMB) guidance, to be implemented in the event of a lapse in appropriations. Pursuant to the requirements of OMB Circular A-11, Section 124 – Agency Operations in the Absence of Appropriations, the Department provides the following summary information regarding its plan for an orderly shutdown in the absence of appropriations:

- Estimated time to complete the shutdown: one-half day
- Number of employees estimated to be on-board before implementation: 117,579
- Number of employees to be retained under the plan: 94,261
 - Number engaged in military, law enforcement, or direct provision of health care activities: 88,206
 - Number where compensation is financed by a resource other than annual appropriations: 6,055
- Number of employees, not otherwise exempt, to be retained to protect life and property: None

The Antideficiency Act restricts the government’s ability to obligate funds in advance of appropriations or beyond appropriated levels. If the Department is faced with a lapse in appropriations it will only be able to continue the following types of activities that qualify as exceptions to the Antideficiency Act restrictions:

1. Those needed for a brief time to ensure the orderly shutdown of functions that will not continue during the lapse;
2. 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.
3. Those funded through multi-year appropriations and permanent appropriations;
4. Those for which there is an express authority to continue during an appropriations lapse;
5. Those for which authority to continue during an appropriations lapse arises by necessary implication; and
6. Those related to the discharge of the President’s constitutional duties and powers.

See, e.g., Memorandum for Alice Rivlin, Director, Office of Management and Budget, from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, Re: Government Operations in the Event of a Lapse in Appropriations (Aug. 16, 1995) and opinions cited therein.

The Department of Justice is responsible for investigating and prosecuting federal crimes as well as detaining prisoners. Therefore, a significant portion of the Department's mission involves the protection of human life and 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 required to implement a shutdown by suspending operations in an orderly manner (including the filing of litigation extensions with the courts), they are funded with multi-year and no-year appropriations, or they are Presidential appointees who are exempt from furlough by statute. The Department's 2011 Contingency Plan has been formulated assuming a two week lapse in appropriations implemented after a hiring freeze has been in place for approximately three months.¹ Depending upon the duration of the shutdown, the Department may need to revisit the plan and submit an amended version.

The Department's plan is based on OLC opinions and 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.

Component heads are to be conservative in designating employees as "excepted," especially those in headquarters or other "overhead" functions and occupations. Also, in the event of a prolonged furlough, it will be possible to bring some employees back to work if the need for their services becomes critical, and to furlough others as conditions change.

Ancillary support services will be maintained only 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 only to the extent the failure to perform those functions would prevent or significantly damage the functioning of a funded component, the operations of other funded parts of the government, or the performance of an otherwise 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.

¹ The Federal Government is currently operating under a Continuing Resolution (CR) which expires on April 8, 2011. Operating the Department of Justice under a CR for over half of the fiscal year has been extremely challenging. The Department is already doing everything it can to maintain its mission requirements under the CR levels. To ensure efficient Departmental operations within the constrained CR funding levels, the Attorney General has ordered a Department-wide temporary hiring freeze and reductions to other non-essential spending.

With respect to litigation, the Department's plan assumes that the Judicial Branch will continue to operate through the furlough, therefore:

Criminal litigation will continue without interruption as an activity essential to the safety of human life and the protection of property.

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 need to approach the courts and request that active cases, except for those in which postponement 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. Supervisors are reminded that they need to limit their staffing to the minimum level of essential activities to comply with the court's order and to protect life and property.

Assumptions relating to training activities 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.

The Department of Justice has determined that 94,261 of the 117,579 employees (80.2 percent) on-board at the Department of Justice (as of the pay period ending February 12, 2011) would be excepted from furlough because: they must be retained to protect life and property (for example, law enforcement); their compensation is financed by a resource

other than annual appropriations; there is express authority for them to continue their work during a lapse; authority for them to continue their work arises by necessary implication; they are needed to conduct an orderly shutdown; or because they are Presidential appointees remaining at work by statute.

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 mandatory, Debt Collection, Assets Forfeiture Fund, Federal Prison Industries), are displayed in the plan as excepted positions because their funding is not dependent upon congressional action. Also, BOP's Buildings and Facilities and Commissary accounts have multi-year authority and have adequate carry over funding to meet the expenses for the period covered in this plan. Employees paid from these funding sources are not dependent upon an enacted 2011 appropriation and are therefore considered excepted. A total of 6,055 of these employees will remain on duty in the event of an appropriations hiatus. Therefore, these employees, along with 88,206 employees excepted because they must be retained to protect life and property (such as law enforcement), will result in a total of 80.2 percent of the Department's workforce remaining on board during a lapse in appropriations. Included in these amounts are 222 authorized Presidential appointee positions, which by statute are not subject to furlough.

Given the mission of the Department and the tremendous responsibility it has in protecting life and property throughout this country and the world, the decision that 80.2 percent of our employees are excepted during an appropriations hiatus is reasonable and consistent with the articulated Office of Legal Counsel standards.

Following is a synopsis of the components' plans for the Department of Justice:

- **General Administration (GA):** accounts include the Department's Leadership and Senior Policy/Management Offices: 30 of 237 employees on-board are excepted. This includes 5 Presidentially Appointed positions, which are not subject to furlough by statute. The excepted employees will be providing overall Departmental leadership and policy management to ongoing emergency life and safety operations and 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). Portions of JMD are also funded by the Working Capital Fund, Debt Collection, and the Assets Forfeiture Fund, which are programs funded with permanent indefinite appropriations or other funding not subject to annual appropriation. The 173 excepted employees identified in JMD, of the total 988 on-board employees, will be performing such services as: overall direction for staffs providing support to emergency life, safety and property activities Department-wide; basic building services and property security at the Main Justice Building; and management functions that include law and policy, budget and finance, procurement, information technology, human resource administration, and security.

JMD also oversees the Justice Information Sharing Technology (JIST) and the Law Enforcement Wireless Communications (LEWC) accounts and has identified 16 of 85 employees funded from these accounts as excepted. These employees 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 contract oversight of the Integrated Wireless Network implementation in the National Capital Area, information technology operations, and systems that support ongoing law enforcement operations that will continue during any lapse in appropriations situation.

- **National Drug Intelligence Center (NDIC):** 38 of 216 employees on-board are excepted from furlough. These employees are primarily Intelligence Analysts who will continue to perform the Document and Media Exploitation (DOMEX) function in support of criminal investigations, as well as a small number of executive and support positions necessary for direct support of DOMEX operations.
- **Office of the Detention Trustee (OFDT):** none of 24 employees on-board are designated as excepted. Daily detention operations in the field would continue under the supervision of the U.S. Marshals Service during an appropriations hiatus.
- **Executive Office for Immigration Review (EOIR):** 380 of 1,511 employees on-board are excepted. These employees are needed to process all immigration cases and appeals involving detained aliens, including criminal aliens; 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:** none of 13 employees on-board are excepted from furlough.
- **Office of the Inspector General (OIG):** 158 of 468 employees on-board are excepted. This includes the authorized position for the Presidentially Appointed Inspector General, which is not subject to furlough by statute. 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.
- **U.S. Parole Commission (USPC):** 9 of 76 employees on-board are excepted. These 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, the USPC is assuming that this litigation will continue in all judicial districts. The Chairman and 4 additional Commissioners, as Presidentially

Appointed positions, are not subject to furlough by statute and are included in the excepted employee count. 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. In contrast to the federal system where the failure rate is about 20 percent, DC parolees have a failure rate of nearly 80 percent.

- **National Security Division:** 229 of 307 employees on-board are excepted. This includes the authorized position for the Presidentially Appointed Assistant Attorney General, which is not subject to furlough by statute. 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 (FISC), which will remain open to facilitate the national security activities of 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 (FISA). 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.
- **General Legal Activities (GLA):** 1,818 of 4,724 employees on-board are excepted. They include the authorized positions for the Solicitor General and 6 Assistant Attorneys General, which are Presidentially Appointed and not subject to furlough by statute, and another 150 employees who are funded from resources unaffected by a lapse in appropriations. The GLA account includes the following components: Solicitor General, Tax Division, Criminal Division, Civil Division, Environment and Natural Resources Division, Legal Counsel, Civil Rights Division, INTERPOL Washington, and the Office of Dispute Resolution. 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, and others within the Department, the White House the National Security Council and the Departments of State and Defense and to review Attorney General Orders, Executive Orders and Proclamations, and presidential memoranda and directives; to ensure that criminal litigation continues uninterrupted; seek continuances for civil and appellate litigation, except as necessary for the immediate protection of property; proceed with civil and appellate litigation should attempts to secure continuances fail, or as otherwise necessary for the immediate protection of property; 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 to handle complaints from institutionalized persons concerning life threatening situations. Excepted employees are also needed to continue the review process to meet statutory deadlines under Section 5 of the Voting Rights Act. Excepted employees will also continue to defend challenges to U.S. Government immigration procedures and regulations and to administrative determinations of EOIR. 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.

- **Antitrust Division:** 234 of 790 employees on-board are excepted. This includes the authorized position for the Presidentially Appointed Assistant Attorney General, which is not subject to furlough by statute. The excepted employees are needed to provide direct support or conduct ongoing criminal trials, prepare for a criminal trial that has been scheduled for court (including the handling of arraignments, pleas, and sentencing hearings); provide support or conduct ongoing civil trials; participate in court-ordered hearings in a civil proceeding; or prepare for a civil trial or hearing that has been scheduled by the court, only when 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 Antitrust Division 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 or a duty to perform.
- **U.S. Attorneys:** 6,300 of 12,244 employees are excepted. This includes the authorized positions for the 93 Presidentially Appointed U.S. Attorneys, which are not subject to furlough by statute, and another 360 employees funded from resources unaffected by the lapse in appropriations. The 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 activity essential to 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 will be maintained only to the extent necessary to support essential operations.
- **U.S. Trustees Program:** 383 of 1,270 FTP employees on-board are excepted. These employees are needed to protect bankruptcy estate property through the appointment and oversight of fiduciaries and through other means. Excepted employees would be 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. Attempts will be made to curtail or postpone appearances before the Bankruptcy Courts. Excepted employees would be limited to performing only those

functions in which there is a definite risk of substantial property loss or violation of law.

- **Foreign Claims Settlement Commission:** 3 of 7 employees on-board are designated as excepted because they are the authorized positions for the 3 Presidentially Appointed Commissioners, which are not subject to furlough by statute.
- **U.S. Marshals Service (USMS):** 5,155 of 5,691 employees on-board are excepted, including the authorized positions for the Presidentially Appointed Director and the 94 U.S. Marshals, which are not subject to furlough by statute. A total of 100 percent of USMS field personnel and an overall total of 90.6 percent of USMS personnel are excepted. The excepted employees are needed to carry out duties associated with judicial security, prisoner security, prisoner transportation, and fugitive apprehension. Approximately 59 percent of headquarters employees will be required to provide overall direction and support to excepted activities. These functions are critical to the support of Deputy U.S. Marshals in the field – this support includes integrity assurance, oversight of investigative operations and judicial security, tactical operations, witness security, and management functions that include law and policy, budget and finance, procurement, information technology, human resource administration, and security.
- **Community Relations Service:** 3 of 44 employees on-board are excepted including the authorized position for the Presidentially Appointed Director, which is not subject to furlough by statute. CRS provides critical assistance in resolving and preventing racial, ethnic and national origin community conflicts, violence, and civil disorder and to help communities struggling to recover in the aftermath of an alleged violent hate crime committed on the basis of actual or perceived race, color, national origin, religion, disability, gender, gender identity, or sexual orientation. A minimum number of employees is necessary to respond 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):** 2 of 25 employees on-board in the Executive Office are excepted. Note that DOJ components participating in the Organized Crime Drug Enforcement Task Force program (OCDETF) have excepted their ICDE-funded personnel from furlough as appropriate within their agency designations. OCDETF provides reimbursable funding to the member agencies to support the salaries and expenses of their participating personnel. The two Executive Office employees are needed to provide day-to-day administrative support to the nine member agencies of 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 nine 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):** 30,208 of 35,267 employees on-board are excepted. These include the authorized position for the Presidentially Appointed Director, which is not subject to furlough by statute, plus 2,057 other employees funded from resources unaffected by a lapse in appropriations. A total of 100 percent of FBI field personnel and an overall total of 85.7 percent of FBI personnel are excepted. They are needed because all 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 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. This includes the 56 domestic field offices, 400 resident agencies, 61 Legal Attaché (Legat) offices and 14 Legat sub-offices.

At FBI headquarters, a total of 59 percent of staff are excepted, including 90 percent of the agents, 88 percent of intelligence analysts, and approximately 49 percent of other support personnel are considered excepted to provide direction and investigative support to all field operations and excepted headquarters functions. This includes 63 percent of the Science and Technology Branch that encompasses the Criminal Justice Information Services Division, which provides fingerprint identification services to criminal and national security investigations, and the Laboratory Division. Personnel in the other branches and divisions would be reduced to the following levels: Criminal Cyber Response and Services Branch, which includes the Critical Incident Response Group (80 percent); Human Resources Branch (38 percent); National Security Branch (83 percent); Information and Technology Branch (27 percent); and other Divisions and Executive Offices (34 percent).

- **Drug Enforcement Administration (DEA):** 7,437 of 8,842 employees on-board are excepted, including the authorized position for the Presidentially Appointed Administrator, which is not subject to furlough by statute. A total of 92 percent of DEA field personnel and an overall total of 84.1 percent of DEA personnel are excepted. All agents in DEA field organizations are excepted from furlough because they support active counternarcotics investigations. This encompasses 21 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, approximately 50 percent of 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 essential operations.

DEA Diversion Control Fee Account (DCFA): All of the 1,046 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):** 4,206 of 5,117 employees on-board are excepted, including the authorized position for the Presidentially Appointed Director, which is not subject to furlough by statute. A total of 92.1 percent of ATF field personnel and an overall total of 82.2 percent of ATF personnel are excepted. All agents in ATF's 25 field divisions are considered excepted from furlough to 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 conduct collection, review and analysis of 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):** 34,187 of 35,522 employees on-board or 96.2 percent are excepted. These employees' salaries are paid from BOP's Salaries and Expenses Account. All staff at the 116 Federal prisons, including Public Health Service (PHS) 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 over some 38,700 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 the expenses for the period covered in this plan. Employees paid from these funding sources are not dependent upon an enacted 2011 appropriation and are therefore considered excepted.
- **Grant Programs:** While the grants awarded by the Department are funded from no-year appropriations, the employees who administer those grants are funded from current-year appropriations. Thus, the administration and related support of grants already awarded will continue only to the extent necessary to prevent significant damage to the execution of the terms of the statutory provision underlying the grant program, or to the extent necessary to protect the safety of human life. New grants will not be awarded during a lapse in appropriations.

- **Office of Justice Programs (OJP):** 42 of 688 employees on-board are excepted including 6 Presidentially Appointed authorized positions, which are not subject to furlough by statute.
- **Office of Community Oriented Policing Services (COPS):** 16 of 137 employees on-board are excepted.
- **Office on Violence Against Women (OVW):** 7 of 64 employees on-board are excepted, including the authorized position for the Presidentially Appointed Director, which is not subject to furlough by statute.