Dec. 12, 2014

U.S. Department of Justice
FY 2015 Contingency Plan

This FY 2015 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 about 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.

Agency Summary:

The total number of agency employees on-board at the time of the implementation of the Contingency Plan was 114,341 (see attached Table 2).[1] As of December 12, 2014 for the first 5 calendar days, 95,564 DOJ employees were excepted from furlough.

Department of Justice Contingency Plan Exceptions – FY 2015 – Table 1
Employees Excepted from Furlough

		Total Excepted Employees
Categories		**FY 2015**
Category 1[2]	Employees whose compensation is financed by a resource other than annual appropriation (also referred to as "exempt employees")	6,342
Category 2	Employees necessary to perform activities expressly authorized by law to continue during a lapse in appropriations	1,001
Category 3	Employees necessary to perform activities necessarily implied by law	15,185
Category 4	Employees necessary to the discharge of the President's constitutional duties and powers	—
Category 5	Employees necessary to protect life and property	73,036
Total		95,564

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.

[1] Onboard staffing data are derived from DOJ's payroll system and reflect information from pay period 20, ending October 18, 2014. Data excludes Public Health Service (PHS) employees working in the Federal Prison System.

[2] 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.

> Component heads were directed to be conservative in designating employees as "excepted," especially those in headquarters or other "overhead" functions and occupations. Also, components may call some employees back to work if the need for their services becomes critical, and to furlough others as conditions change.
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> 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 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. While mail will continue to be an excepted function, the number of staff on board to process mail will be reduced, therefore the public should reasonably expect delays in mail delivery.
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> 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.

With respect to litigation, the Department's plan assumes that the Judicial Branch will continue to operate through the furlough.[3] Therefore:

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

[3] The federal courts are continuing to hear and decide cases during the lapse in appropriations utilizing fees and no-year appropriations. When this source of funding is exhausted, furloughs may impact the number of cases courts will hear.

Assumptions relating to training activities (in components whose funding has lapsed) are as follows[4]:

> 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.
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> 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.
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> New employees who are not in positions designated as "emergency" should not start work during the lapse and should not be trained.
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> In-service training of current employees, even those excepted from furlough, will be cancelled.
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> Training of state and local officers will be discontinued for the duration of the lapse in appropriations.
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> 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.

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 (and are also referred to as "exempted positions" in other contexts) because their funding is not dependent upon an enacted appropriation. Also, the Bureau of Prisons' (BOP) Buildings and Facilities and Commissary accounts have multi-year authority and have adequate carryover funding to meet expenses during a lapse in appropriations. Employees paid from these funding sources are not dependent upon an enacted appropriation and are therefore considered excepted. Also included in the total are Presidential Appointees, most of whom are

[4] The Department of Homeland Security closed the Federal Law Enforcement Training Center (FLETC). DOJ staff assigned to FLETC and trainees at FLETC are furloughed unless they are directed to work on excepted activities.

excepted from furlough because they are not covered by the leave system in 5 U.S.C. chapter 63.[5] This does not include non-career SES and Schedule C employees.

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 implemented; 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):** Accounts include the Department's Leadership and Senior Policy/Management Offices. This includes Presidential Appointees, who are not subject to furlough. 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 is funded by reimbursements from a variety of sources, but primarily from sources that are appropriated annually and would not be available if there is a lapse in appropriations; therefore, only JMD employees performing excepted functions are excepted from furloughs. In addition, a number of JMD employees are funded by the Three Percent Fund for debt collection and the Assets Forfeiture Fund, which are not subject to annual appropriation, and thus these employees may continue to work during a lapse in appropriations.

  JMD also oversees the Justice Information Sharing Technology and the Working Capital Fund 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.

[5] 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.

- **Executive Office for Immigration Review**: Excepted 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 (OPA):** There are no employees excepted from furlough. OPA's mission is to assist the President in the exercise of his constitutional clemency power. Therefore, if an inmate facing execution in a capital case filed an application for commutation of sentence and appropriations lapsed, it is possible that some OPA employees would be excepted temporarily. Such applications for clemency are infrequent, but if one were to be pending during a lapse in appropriations, the exception for "discharge of the President's constitutional duties and powers" might in fact apply to OPA employees needed to timely investigate the application, prepare the report and recommendation on the case, and effectuate the President's decision under the Constitution to grant or deny clemency to the capital offender.

- **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.

- **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 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.

- **General Legal Activities (GLA)**: The Solicitor General and the Assistant Attorneys General are Presidential Appointees, who 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 employee 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.

- **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.

- **U.S. Trustees Program:** Excepted 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 are 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**: As Presidential Appointees, the Commissioners are not subject to furlough. All staff are furloughed; therefore, staff activity related to the settlement of foreign claims is postponed.

- **U.S. Marshals Service:** Even though they are Presidential Appointees, the Director and the U.S. Marshals are subject to the Leave Act and therefore subject to furlough. However, since they 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, and management functions that include law and policy, budget and finance, procurement, information technology, human resource administration, and security.

- **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 program (OCDETF) have excepted their ICDE-funded personnel from furlough as appropriate within their agency designations. 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 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):** As a Presidential Appointee, the Director is not subject to furlough. Excepted personnel 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 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):** As Presidential Appointees, the Administrator and Deputy Administrator are not subject to furlough. [6] 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, 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 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**: 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 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 expenses during a lapse in appropriations.

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[6] DEA's current Administrator and Deputy Administrator have elected to retain SES leave benefits and are, therefore, subject to furlough unless otherwise excepted.

- **Grant Programs (Office of Justice Programs, Community Oriented Policing Services, Office on Violence Against Women):** As Presidential Appointees, the OVW and COPS Directors, 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 carryover funds remain. Funding for OJP operations has been exhausted and the current number of excepted employees reflects the number needed to support excepted functions only. DOJ grant payment request systems will be unavailable to users between October 4, 2013 and funding restoration.

FY 2015 - DEPARTMENT OF JUSTICE - CONTINGENCY PLAN

		Excepted					
Name	**Total On-Board**	**Total**	***Special Agent***	***Intel Analyst***	***Atty***	***Other Staff***	**% Excepted**
AFF	**22**	22	0	0	0	22	100%
ATF	**4,791**	4,006	2,487	116	39	1,364	84%
ATR	**617**	236	0	0	129	107	38%
BOP	**39,294**	38,057	18,268	0	190	19,599	97%
CIV	**1,284**	602	0	0	456	146	47%
COPS	**100**	100	0	0	5	95	100%
CRM	**886**	696	0	0	471	225	79%
CRS	**43**	15	0	0	1	14	35%
CRT	**605**	166	0	0	123	43	27%
DEA	**9,239**	7,877	4,621	593	72	2,591	85%
ENRD	**615**	272	0	0	225	47	44%
EOIR	**1,348**	1,043	0	0	448	595	77%
FBI	**34,750**	29,246	12,753	2,695	130	13,668	84%
FCSC	**8**	1	0	0	0	1	13%
GA/WCF	**1,067**	205	0	0	0	205	19%
INTERPOL	**58**	48	0	0	1	47	83%
JIST	**36**	2	0	0	0	2	6%
NSD	**348**	270	0	6	208	56	78%
OCDETF	**6**	6	0	0	3	3	100%
OIG	**406**	145	115	0	6	24	36%
OJP	**684**	41	0	0	2	39	6%
OLC	**27**	21	0	0	17	4	78%
OPA	**15**	0	0	0	0	0	0%
OSG	**44**	38	0	0	20	18	86%
OVW	**57**	9	0	0	1	8	16%
TAX	**466**	252	0	0	216	36	54%
USA	**10,945**	6,785	25	68	4,729	1,963	62%
USMS	**5,408**	4,998	3,842	31	10	1,115	92%
USPC	**61**	22	0	0	0	22	36%
USTP	**1,111**	383	0	0	167	216	34%
TOTAL	**114,341**	**95,564**	**42,111**	**3,509**	**7,669**	**42,275**	**84%**

Categories		Employees Excepted from Furlough				
		Total	Agents	Intell. Anal.	Atty	Other
Category 1		6,342	940	84	457	4,861
Category 2		1,001	7	0	886	108
Category 3		15,185	1,120	2,436	199	11,430
Category 5		73,036	40,044	989	6,127	25,876
TOTAL		**95,564**	**42,111**	**3,509**	**7,669**	**42,275**

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, Senate-confirmed employees and the Director of the SMART Office in OJP).
Category 5 = Employees necessary to protect life and property

Note: DOJ does not use Category 4: Employees necessary to the discharge of the President's constitutional duties and powers; therefore, it is not reflected in this template. However, this category could apply to the Pardon Attorney, a staff attorney, and one support staffer if a petition for commutation of a death sentence required action during a lapse.