

**Office of the Solicitor**  
**CONTINGENCY PLAN**  
**September 2023**



**Department of the Interior  
Office of the Solicitor  
Contingency Plan for a Potential Lapse in Appropriations  
September 2023**

**Overview**

In the event of a lapse in appropriations for the Department, we expect the Office of the Solicitor (Office, SOL) will complete initial orderly shutdown activities within one-half day. Should the lapse continue beyond one week, additional orderly shutdown activities may be required every two weeks. Orderly shutdown activities include requiring all 556 employees to confirm their contact information; confer with Department of Justice attorneys, various courts, and bureau/office client contacts regarding ongoing litigation matters, as appropriate; and assess and report to management (1) ongoing criminal litigation, (2) imminent deadlines that have not been extended by a court in civil litigation, (3) other matters that are necessary for the protection of life and property or to perform activities implied by law, and (4) legal, ethics, Freedom of Information Act (FOIA), and support services that are financed by a resource other than annual appropriations.

**Orderly Shutdown**

Most Office employees will be furloughed for the duration of the shutdown. The Solicitor and 15 additional employees would be immediately retained under our plan for response to matters involving the protection of life and property or to perform duties necessarily implied by law to the extent nonperformance would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions. Additionally, up to approximately 40 employees could be immediately retained under our plan to provide legal, ethics, and support services financed by carryover balances from SOL’s appropriation and those non-lapsing funds allocated to the Office by the Department’s Working Capital Fund (WCF), Bureau of Trust Funds Administration (BTFA), Bipartisan Infrastructure Law (BIL), and other components and programs until such funds are exhausted.

If a lapse extends beyond one week and legal, ethics, or FOIA support is required to further the activities of Department components, SOL carryover or funds available from reimbursable Agreements or allocated budget authority may be implemented to facilitate the designation and funding of exempted personnel.

All remaining Office personnel will be on on-call status and could be called to duty to conduct litigation-related activities with an imminent court-imposed deadline or to respond to an emergency situation related to the protection of life and property or to perform duties otherwise necessarily implied by law. Methods for notifying employees that the shutdown furlough has ended and they are to return to work include email, text, and voice communications.

**Lapse Plan Summary Overview**

**Short-Term Lapse**

<b>Short Lapse Plan (1-5 days) Summary Overview</b>	
Estimated time (to nearest half day) required to complete shutdown activities:	0.50

<b>Short Lapse Plan (1-5 days) Summary Overview</b>	
Total number of agency employees expected to be on board before implementation of the plan:	556
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	490
<b>Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):</b>	
Compensation is financed by a resource other than annual appropriations:	40
Necessary to perform activities expressly authorized by law:	1
Necessary to perform activities necessarily implied by law:	43
Necessary to the discharge of the President’s constitutional duties and powers:	0
Necessary to protect life and property:	14

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

**Compensation is financed by a resource other than annual appropriations.** The Office expects carryover funds from SOL’s appropriation to be available should a lapse in appropriation occur for up to one week. Such carryover funds will only be sufficient to fund approximately 20 Office employees during this period. The Office expects additional limited carryover funds to be available from the Department’s WCF, BTFA, and other Department components for up to approximately 20 employees should a lapse in appropriations occur for up to one week.

**Necessary to perform activities expressly authorized by law.** The Solicitor, as a Senate-confirmed Presidential appointee, is excepted as authorized by law.

**Necessary to perform activities necessarily implied by law.** The Office understands that the Department of Justice will manage litigation during a lapse in appropriations in the following manner:

- Criminal litigation will continue without interruption as an essential function.
- Civil litigation will be curtailed or postponed to the extent that courts will permit such an approach without harm to the interests of the United States. We expect that Department of Justice attorneys will file motions seeking extensions, continuances, or stays of proceedings as appropriate in all civil litigation in which there is an upcoming deadline during the reasonably foreseeable duration of the appropriations lapse. Until the court grants such motions, civil litigation will continue without interruption.
- Office attorneys with responsibility for such matters will be on-call and directed to report for work during a lapse in funding to perform such work as is necessary to support the subject litigation. Attorneys working on an on-call basis are not authorized to perform any work other

than the matters for which they have been called in to perform. The corresponding supervisor with responsibility for managing these matters will be called back to duty status to the extent necessary. Such activities are essential to the protection of human life or property, and part of the Executive Branch's constitutional duty to comply with duly issued and binding orders from the Judicial Branch. Accordingly, we will prepare and maintain a list of individuals who are expected to remain on duty or be recalled to duty in excepted status if such extensions, continuances, or stays are not granted in ongoing litigation. The Office estimates that 30-60 employees will be needed for a lapse in appropriations lasting up to one week.

**Necessary to the discharge of the President's constitutional duties and powers.** None of the employees in the Solicitor's Office are directly engaged in this type of exempt activity.

**Necessary to protect life and property or to perform activities necessarily implied by law.**

Additionally, the following Office officials will be immediately retained for the duration of the shutdown to provide necessary support for activities involving the protection of human life or property or that are necessarily implied by law to the extent nonperformance would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions:

- Principal Deputy Solicitor – Coordinate with Department officials on activities required by SOL that are necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions, and assign and supervise required activities; conduct legal review and provide advice and counsel on such activities.
- Deputy Solicitor for General Law – Coordinate with Department officials on activities required by SOL that are necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions, and assign and supervise required activities; conduct legal review and provide advice and counsel on such activities.
- Executive Assistant to the Solicitor – Provide administrative support necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions.
- Director, Employment and Labor Law Unit – Conduct legal review and provide advice and counsel pertaining to employment and labor law matters that are necessary for activities involving the protection of human life or property or otherwise necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions.
- Associate Solicitor for Administration – Direct orderly shutdown of Office and issuance and confirmation of receipt of furlough notices; coordinate and conduct excepted and ongoing functions, including those necessary for the protection of human life or property, for SOL personnel, including reviewing and authorizing all proposed excepted activities; coordinating with other Department components regarding requests for excepted activities; directing budgetary, human resource, and other activities necessary for excepted personnel; receive notification of policies and guidance from Department on behalf of SOL and provide necessary messaging to personal.
- Associate Solicitor for Water Resources – Conduct legal review and provide advice and counsel pertaining to operations of the Bureau of Reclamation, where such review, advice and counsel are necessary to protect Government property interest from imminent harm, or necessarily implied by law to support the Department's ongoing functions to the extent suspension of such support would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions.

- Designated Agency Ethics Official – Provide legal and ethics advice and counsel to ensure ethical compliance by the Department pertaining to all ongoing activities as necessary to protect Government property interest from imminent harm or as otherwise necessarily implied by law to the extent suspension of such advice and counsel would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions; provide legal and ethics advice and counsel to furloughed employees including, but not limited to, outside employment.
- Alternate Designated Agency Ethics Official – Provide legal and ethics advice and counsel to ensure ethical compliance by the Department pertaining to all ongoing activities as necessary to protect Government property interest from imminent harm or as otherwise necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions; provide legal and ethics advice and counsel to furloughed employees, including, but not limited to, outside employment.
- Senior Counselor to the Associate Solicitor for General Law -- Coordinate with Department officials on activities required by SOL as necessary to protect Government property interest from imminent harm or as otherwise necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions; conduct legal review and provide advice and counsel on such activities.
- Assistant Solicitor, Branch of General Legal Services – Coordinate with Department officials on activities required by SOL as necessary to protect Government property interest from imminent harm or as otherwise necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions; conduct legal review and provide advice and counsel on such activities.
- Assistant Solicitor, Branch of National Parks – Coordinate with officials of the National Park Service on activities required by SOL as necessary to protect Government property interest from imminent harm or as otherwise necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions; conduct legal review and provide advice and counsel on such activities.
- Budget Officer – Coordinate with Department officials to implement budgetary actions involving carryover funds and reimbursable agreements that support activities that are necessarily implied by law to the extent suspension would prevent or significantly damage the execution of ongoing exempt or statutorily-authorized functions.
- Human Resources Officer – Coordinate with servicing HR office to ensure benefits, insurance, and payroll data is moving forward as necessary; conduct such other Human Resources activities that are necessarily implied by law to support exempt and excepted personnel; assist with the issuance and confirmation of receipt of furlough notices
- Law Enforcement Staff Attorney, Division of Parks & Wildlife – Provide legal advice and counsel to the National Park Service, United States Park Police, and other exempt or excepted National Park Service and U.S. Fish and Wildlife Service law enforcement personnel engaged in the protection of human life or property.
- Law Enforcement Staff Attorney, Division of Indian Affairs – Provide legal advice and counsel to the Bureau of Indian Affairs, Office of Justice Services, as necessary to ensure the safety of Indian communities and to otherwise protect human life and property.

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

All other legal, ethics, FOIA, and support services financed by a source of funding with a lapse in appropriations.

**Shutdown activities that will not be completed within one-half day:**

None

## Long-Term Lapse

<b>Extended Lapse Plan (over 5 days) Summary Overview</b>	
Estimated time (to nearest half day) required to complete shutdown activities:	0.50
Total number of agency employees expected to be on board before implementation of the plan:	556
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	440
<b>Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):</b>	
Compensation is financed by a resource other than annual appropriations:	100
Necessary to perform activities expressly authorized by law:	1
Necessary to perform activities necessarily implied by law:	43
Necessary to the discharge of the President's constitutional duties and powers:	0
Necessary to protect life and property:	14

The Solicitor, Principal Deputy Solicitor, Deputy Solicitor for General Law, Associate Solicitor for Administration, and Budget Officer are the designated personnel responsible for implementing and adjusting the plan to respond to the length of the lapse in appropriations and changes in external circumstances.

**Compensation is financed by a resource other than annual appropriations.** The Office expects carryover funds to be available in the event of a lapse in appropriations. Such carryover funds may fund Office employees during this period. Additionally, where another component of the Department has funds available for obligation, such funds may be provided to the Office through a reimbursable agreement or allocated budget authority for purposes of exempting personnel deemed necessary to provide legal and support services required for the activities of the funded Department component. Employees whose salaries and benefits are paid through such agreements will provide legal, ethics, FOIA, or support services to the funding component for a designated period of performance. The actual number of exempted personnel will depend on the availability of funds, the scope of the work required by the funding component, and the duration of the lapse in appropriations. It is estimated that such agreements could support between 60 and 150 exempted personnel.

**Necessary to perform activities expressly authorized by law.** No changes to the plan.

**Necessary to perform activities necessarily implied by law.** No changes to the plan.

**Necessary to the discharge of the President's constitutional duties and powers.** No changes to the plan.

**Necessary to protect life and property or to perform activities necessarily implied by law.** No changes to the plan.

## **Actions to Resume Orderly Operations**

### **Communications**

The Department of Interior (DOI) will notify furloughed employees it is permissible to take home computers and to check and transmit emails once per workday, with each occurrence lasting approximately 15 minutes). This can provide valuable information to staff regarding their furloughed, exempt, or excepted status; information on benefits and pay; and notification of any emergency situation regarding the protection of life and property.

### **Flexibilities Available to Supervisors**

If an employee has an issue returning to work, for instance, due to leave planned in advance, DOI encourages supervisors to allow employees to use normal leave, such as accrued annual leave, compensatory time, credit hours, etc. Employees should coordinate this approval with the supervisor when notified of the return to work.

### **Resuming Normal Operations**

Furloughed employees are expected to monitor public broadcasts and the Internet, including but not limited to DOI.gov, for information and public notices relevant to any appropriation or continuing resolution for DOI passed by Congress and signed by the President. They will be expected to return to regular duty on the next workday immediately after the end of the lapse in appropriations.

### **Additional Information**

**Human Resources (HR).** Servicing HR offices should except sufficient HR staff during shutdown to ensure benefits, insurance, and payroll data is moving forward as necessary.

Lead timekeepers will be available to assist non-furloughed supervisors and managers so that hours are tracked correctly in the time and attendance system as exempt, excepted, or furloughed. This helps ensure employees are correctly paid during and after shutdown.