



SOCIAL SECURITY

Office of Budget, Finance and Management

September 25, 2013

Ms. Sylvia Mathews Burwell
Director
The Office of Management and Budget
725 17th Street, NW
Washington, D.C. 20503

Dear Ms. Burwell:

This letter sets forth the contingency plan of the Social Security Administration (SSA) to continue activities during a potential lapse in Federal appropriations and resulting partial shutdown of agency operations. Our 2013 contingency plan is consistent with the plan we submitted to your office in December 2011, with slight adjustments in the number of employees we are excepting from furloughs under applicable exceptions to the Antideficiency Act. The functions of the excepted employees will remain essentially the same as those described in our 2011 plan. Because of the fluidity of the current budget situation, we will reevaluate and adjust our plan as necessary. I have enclosed a chart setting forth our proposed employee count by agency component, as well as a brief description of the functions those employees will perform. This letter further explains our legal basis for conducting those functions during a partial shutdown.

During a lapse in appropriations, we must cease all activities for which our annual funding has expired, unless an exception to the Antideficiency Act applies. *See* 1980 and 1981 Opinions from Attorney General Civiletti (1980 and 1981 Opinions). Three exceptions apply to our work: the wind-down activities exception, the protection of life and property exception, and the Necessary Implication exception. *See id.* With respect to the wind-down exception, Attorney General Civiletti explained that, “[F]ederal officers [may] incur those minimal obligations [during a lapse in appropriations] necessary to closing their agencies.” 1980 Opinion. In 1981, Attorney General Civiletti advised that Federal agencies may obligate funds during a lapse under the protection of life and property exception by showing a “reasonable necessity” of the funded activity to ensure the safety of human life or protection of property. 1981 Opinion. Attorney General Civiletti also opined that the Necessary Implication exception allows a limited number of Government functions funded through annual appropriations to continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions continue as well. *Id.*

In 1995, the Department of Justice, Office of Legal Counsel (OLC), issued a memorandum specifically noting that the activities necessary for disbursing Social Security benefits that “operate under indefinite appropriations” are examples of activities permitted by necessary implication. Further, the 1995 OLC memorandum extended the Necessary Implication exception

to those functions performed by one agency necessary to support the funded functions of another agency.

Funding for the programs under Titles II, XVI, and XVIII of the Social Security Act will continue, even in the event of a lapse in appropriations. Title II and Title XVIII benefits are funded indefinitely through trust funds. Title XVI payments are funded through general revenues. However, the current Continuing Resolution (CR) funds those payments through the first quarter of Fiscal Year 2014. Because there is funding to pay these benefits, the Necessary Implication exception allows us to perform those activities needed to ensure that benefits are accurately and timely paid, despite a lapse in appropriations. Our continuing functions related to making accurate payments during a lapse in appropriations is consistent with our December 2011 plan and is legally justified under the 1981 Opinion that permits us to “continue the administration of the program[s] to the extent of the remaining benefit funding.”

The enclosed charts detail the critical functions we would continue and the approximate numbers of employees who would work during a lapse in annual appropriations. Under the Necessary Implication exception, we will except only those employees critical to our direct-service operations and those employees whose work and oversight are critical to support those operations. Specifically, with respect to our adjudication of claims for benefits, we will continue limited service in our hearing offices in the Office of Disability Adjudication and Review (ODAR). Our approach in ODAR could evolve over time depending on the length of the shutdown. We will also retain a limited number of SSA employees and necessary law enforcement agents from our Office of the Inspector General under the protection of life and property exception. As the enclosed chart notes, we will allow employees to conduct orderly wind-down activities for no more than four hours on the first day of a lapse in appropriations consistent with the guidance of your office.

If we have a lapse in appropriations, we will encourage the Disability Determination Services (DDSs) to continue limited services during a lapse under the Necessary Implication exception with the understanding that we will reimburse the DDSs for their work once we receive funding. However, because DDS employees are State employees, we cannot direct the States to except or furlough their employees during a lapse. Each State will have to determine whether it can maintain limited DDS operations and pay its employees during a lapse.

We are committed to ensuring that, consistent with the constraints of a partial shutdown, we conform with applicable law, regulation, and guidance, yet continue to serve the American people in these difficult times.

Sincerely,



Peter D. Spencer
Deputy Commissioner
for Budget, Finance and Management

Enclosure

cc:

Carolyn W. Colvin, Acting Commissioner
David F. Black, General Counsel

SSA CONTINGENCY PLAN – 2013

Status of Service Activities During a Funding Lapse

To promote service to the public and fiscal responsibility, we will implement the following plans:

| Operations Field Offices (FO) | |
|--|--|
| Continued FO Activities | Discontinued FO Activities |
| <ul style="list-style-type: none"> ▪ Application for benefits (including appointments; limited data exchanges and record corrections, including earnings, for mandatory benefits) ▪ Request for appeals (reconsiderations, hearings, Appeals Council) ▪ Normal post-entitlement actions (change of address, Supplemental Security Income living arrangement changes, non-citizen verification/changes, direct deposit, death inputs, etc.) ▪ Non-receipts and critical payments ▪ Payee changes ▪ Critical information technology (IT) support for daily processing activities | <ul style="list-style-type: none"> ▪ Original and replacement Social Security cards ▪ Benefit verifications ▪ Earnings record corrections and updates ▪ Payee accountings ▪ Completing program integrity workloads (redeterminations, continuing disability reviews (CDRs), overpayments) ▪ Prisoner activities ▪ Requests from third parties for queries ▪ Request for Numi-lites (i.e., Social Security Number verifications) ▪ Freedom of Information Act (FOIA) requests ▪ IT enhancement activities, public relations, and training ▪ Replacement Medicare cards |

| State Disability Determination Services (DDS) | |
|---|---|
| Continued DDS Activities | Discontinued DDS Activities |
| <ul style="list-style-type: none"> ▪ Initial claims, including terminally ill, compassionate allowances, quick disability determinations, dire need, and wounded warriors ▪ Reconsiderations ▪ Critical IT support for daily processing activities | <ul style="list-style-type: none"> ▪ CDRs ▪ Assistance requests for hearings ▪ End-of-line quality assurance reviews, IT enhancements activities, public relations, and training |

| Offices of Disability and Adjudicative Review (ODAR) | |
|---|--|
| Continued ODAR Activities | Discontinued ODAR Activities |
| <ul style="list-style-type: none"> ▪ Hearing cases ▪ Deciding cases | <ul style="list-style-type: none"> ▪ Screening cases for On-the-Record decisions ▪ Scheduling hearings ▪ Hearings appeals ▪ Docketing and tracking new cases ▪ Drafting relevant notices for claimants ▪ Preparing electronic records for claimants and representatives ▪ Identifying missing evidence and developing the record ▪ Exhibiting case files for Administrative Law Judges ▪ Quality assurance review activities ▪ Adding new medical and vocational experts to blanket purchase agreements ▪ Decision-writing ▪ Processing bias complaints from claimants and representatives ▪ Responding to congressional inquiries regarding support for casework on constituent hearings and appeals ▪ Conducting all activities dependent on Operations support, including enrollment of appointed representatives for eFolder access ▪ Responding to FOIA requests and public inquiries ▪ Providing training and IT support or enhancements for hearing offices |

The table below reports our planned personnel on duty to perform these functions.

| SSA STAFF ON DUTY EXCEPTIONS AND FURLOUGHS September 25, 2013 | | | | | | |
|--|---------------|--|-------------------|---|------------------|---|
| OFFICE | TOTAL | REQUIRED FOR WIND- DOWN | EXCEPTIONS | AUTHORITY FOR EXCEPTIONS | FURLOUGHS | EXPLANATION |
| Actuary | 56 | 56 | 2 | Necessary Implication | 54 | Programmatic actuarial support |
| Budget, Finance & Management | 851 | 851 | 102 | Necessary Implication - 59 Safety of Human Life and Protection of Property - 43 | 749 | Health and safety, budgetary support, and benefit payment certification |
| Chief Strategic Officer | 4 | 4 | 0 | N/A | 4 | N/A |
| Commissioner | 27 | 27 | 5 | Necessary Implication - 4 Senate-confirmed Presidential Appointee - 1 | 22 | Executive leadership and support |
| Communications | 156 | 156 | 5 | Necessary Implication | 151 | Executive leadership, Press Office, and web support |
| Disability Adjudication & Review | 10,581 | 10,581 | 1,973 | Necessary Implication | 8,608 | Executive leadership, ALJs, and Support Staff |
| General Counsel | 724 | 724 | 70 | Necessary Implication | 654 | HQ and Regional Offices for legal support and litigation |
| Human Resources | 362 | 362 | 12 | Necessary Implication | 350 | Executive leadership, labor relations support, and personnel policy |
| Inspector General | 552 | 552 | 302 | Safety of Human Life - 301 Senate-confirmed Presidential Appointee - 1 | 250 | Presidential Appointee, IT infrastructure, fraud hotline, and law enforcement |
| Legislation & Congressional Affairs | 58 | 58 | 10 | Necessary Implication | 48 | Communications with Congress and hearing preparation |
| Operations | 44,074 | 44,074 | 41,505 | Necessary Implication | 2,569 | Front-line work |
| Quality Performance | 1,096 | 1,096 | 12 | Necessary Implication | 1,084 | Support for DDSs that are open |
| Retirement & Disability Policy | 615 | 615 | 29 | Necessary Implication | 586 | Executive leadership, IT server support, and front-line work |
| Systems/Chief Information Officer | 3,187 | 3,187 | 310 | Necessary Implication - 309 Protection of Property - 1 | 2,877 | IT infrastructure and programmatic support |
| TOTAL | 62,343 | 62,343 | 44,337 | | 18,006 | |