

U.S. OFFICE OF SPECIAL COUNSEL

AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

September 24, 2021

Section 1. Introduction

This plan provides guidance and instructions for actions to be taken by the U.S. Office of Special Counsel (OSC) when Congress fails to enact regular appropriations, a continuing resolution, or needed supplemental appropriations, resulting in an interruption of funds availability. Based on decisions and guidance from the Office of Management and Budget (OMB) and the Attorney General, in the absence of appropriations:

- Federal officers **may not** incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.
- Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but funds **may not** be disbursed.

Section 2. Status of OSC Operations

OSC operations, in the absence of appropriations or other sources of funding, will be confined to an orderly shutdown of operations, limited expenditures required to protect agency property in headquarters and field offices, and processing of actions required for the necessary release of employees including final payroll. The status and possible cessation of action in pending legal proceedings will be monitored and acted upon as required. Significantly, **whistleblower disclosures involving a substantial and serious risk to public health or safety or those requiring emergency action to protect property will continue to be processed.** OSC personnel performing these activities will be in a pay status during the orderly shutdown, and for the minimum time it takes to complete the performance of any such "excepted" activities.

- 1) Orderly shutdown. The following actions will be completed within one-half day or less of notification by OMB that shutdown plans are to be implemented:
 - a) The OSC headquarters facility in Washington, D.C. will remain open to support excepted activities only. All non-excepted personnel will secure their areas, as per OSC shutdown checklist. Note that during the COVID-19 pandemic, most OSC employees are working from home and will conduct shutdown activities, if any, from home.
 - b) The Special Counsel (or senior agency official responsible for management of agency operations under OSC directives or other authority), Principal Deputy Special Counsel, Chief Operating Officer (COO), Chief Human Capital Officer (CHCO), Director of Finance, Chief Information Officer (CIO), and the Chief of the Administrative Services Office (ASO), will be responsible for the orderly shutdown of all agency operations in their respective areas that are not required to support excepted activities.

- 2) Excepted Functions. The Special Counsel (or senior agency official responsible for management of agency operations under OSC directives or other authority) will make the final determination as to “excepted” functions and employees required. The Special Counsel (or senior agency official responsible for management of agency operations under OSC directives or other authority) will notify OMB immediately when shutdown activities have been initiated. Excepted employees will be limited to those required to protect life and property, and other required activities in direct support of that protection of life and property activity. Excepted personnel will work only for the minimum required time to support the excepted activity. All other employees will be furloughed and released from duty after shutdown activities have been completed.
- 3) Protection of Property. OSC headquarters and field offices will continue to provide for protection of property in much the same way as they do after hours or during normal closures. The CIO will be responsible for securing the data center. The Chief of the ASO, or designee, will be responsible for securing OSC headquarters.
- 4) Processing of Final Actions. The CHCO, or designee, will be responsible for ensuring that all required personnel, payroll, or other shutdown actions are completed. Processing of all final payroll actions for work hours completed prior to the shutdown will be completed by the CHCO, or designee, during the normal payroll cycle. After the CHCO, or designee, completes the human resources portion of the shutdown process, the CIO will be responsible for the final shutdown of OSC’s information technology assets.
- 5) Legal Proceedings.
 - a) Federal court litigation: OSC and/or OSC employees may be named parties in civil suits pending in various Federal courts. OSC is defended in such matters by Department of Justice (DOJ) attorneys, primarily those in U.S. Attorney’s offices. (OSC does not have direct litigating authority.) Prior to any shutdown, OSC would contact the appropriate DOJ offices to confer on any filing deadlines that might occur during the shutdown, and to request that extensions of time to file until after the shutdown be sought, as needed, from the appropriate courts. OSC would also provide DOJ with a limited number of points of contact on its legal staff, should DOJ determine that OSC participation in any case during any shutdown became essential to avoid a default judgment or adverse judgment that could result in loss of funds/property.
 - b) Merit Systems Protection Board (MSPB) / Equal Employment Opportunity Commission: OSC could also have litigation pending before the EEOC and MSPB. We anticipate that both entities would suspend all litigation operations for the duration of any shutdown, with the result that no OSC personnel services would be required in connection with matters before these bodies. To the extent feasible, OSC would verify that litigation would be suspended before any anticipated shutdown.

Section 3. Retention of Personnel

OSC’s workforce is currently composed of 135 Full Time Equivalent (FTE) (not including interns). Within one-half day of notification of closure by OMB, all employees will be released from duty after orderly shutdown activities except:

- 1) Those specified in Section 2 to support disclosures of a substantial and serious risk to public health or safety or of an emergency nature involving the destruction of property. This will consist of the Disclosure Unit Chief or Deputy Chief and an employee who does intake for the Unit.
- 2) A minimal staff of Information technology personnel required to provide necessary Information Technology support to the Disclosure activity above. This will consist of the Chief Information Officer or designee.
- 3) Those specified above, required to process final personnel, payroll, and other shutdown actions. Note: It may become necessary that some personnel conduct limited activities after the initial shutdown.
- 4) The Special Counsel, who as a Presidential appointee subject to Senate confirmation is not subject to furlough. See OPM Furlough Guidance, Question 16.
- 5) Those required for protection of property – for example, a breach of physical or IT security, if any such breach occurs during a furlough.
- 6) Those required for any litigation deadlines that could not be extended.
- 7) Those required to provide necessary support to the above excepted activities, to facilitate shutdown, and support minimum required services or support.

FTE before shutdown	Retained/excepted personnel after orderly shutdown	Dismissed/furloughed personnel after orderly shutdown
135	19	116

Section 4. Employee Notification

OSC will attempt to provide advance notice of the status and timing of a potential shutdown. However, due to the often uncertain nature of the budget appropriations process, advance notification may not be possible.

If the final day of an appropriation or continuing resolution ends without definitive notice from OMB as to the status of appropriations action, non-excepted OSC employees will be prohibited after midnight that day from working remotely, including by accessing agency technology (e.g., mobile devices, access to the computer network via Office 365), except that OSC management will use such technology to provide non-excepted employees with updates on any shutdown and their furlough status – i.e., to provide updates as to operational status, to transmit OMB’s determination that normal operations will resume, or that shutdown implementation will proceed. For example, if the continuing resolution ends on Friday without the status of the Government shutdown being clearly known, OSC will transmit OMB’s determination that normal operations will resume, or that shutdown implementation will proceed, by means of mobile devices and/or Office 365 via government-furnished equipment. In addition, per OPM guidance, all employees should monitor news outlets and OPM’s website (www.opm.gov) for notification that a continuing resolution or appropriation has been signed by the President. Normal operations will resume when OSC receives notification from OMB that the lapse of appropriations has ended. It is also permissible for all employees to access their email accounts daily for the sole purpose of checking to see if the Special Counsel has provided an update on the status of operations.

Section 5. Point of Contact

All questions regarding this plan should be directed to OSC’s Chief Operating Officer.