

# AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

## U.S. OFFICE OF SPECIAL COUNSEL

5 December 2016 Update

### 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 supplementals, 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.

A. 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:

- All OSC field offices in Detroit, MI, Dallas, TX, and Oakland, CA, under the authority of OSC will be closed to the public.
- The OSC headquarters' facility in Washington, DC will remain open to support excepted activities only. All non-excepted personnel will secure their areas, as per OSC shutdown checklist.
- The Special Counsel (or senior agency official responsible for management of agency operations under OSC directives or other authority), Chief Operating Officer (COO), Director of Human Resources, Director of Finance, Chief Information Officer (CIO), Supervisory Administrative Security Officer (records and mail operations), and field

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- office chiefs will be responsible for the orderly shutdown of all agency operations in their respective areas that are not required to support excepted activities.
- B. 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.
- C. 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 in the headquarters and IT assets in the field offices. The Director of Human Resources, or designee, will be responsible for securing OSC headquarters, and field office chiefs will be responsible for securing field offices during any shutdown. These staff members will be in a pay status only as required to provide for the protection of OSC property from imminent risk.
- D. Processing of Final Actions. The Director of Human Resources, or designee, will be responsible for ensuring that all required personnel, payroll, or other shutdown actions are completed. The Director of Human Resources, or designee, will be in a pay status, and will limit this time to the minimum time required to complete these actions. Processing of all final payroll actions for work hours completed prior to the shutdown will be completed by the Director of Human Resources, or designee, during the normal payroll cycle. After the Director of Human Resources, 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.
- E. Legal Proceedings.
- 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 it be

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determined 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.

- Merit Systems Protection Board (MSPB) / Equal Employment Opportunity Commission (EEOC) litigation: 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**

The OSC's workforce is currently composed of 148 paid employees (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:

- 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 designee.
- 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.
- Those specified in section 2.D., above, required to process final personnel, payroll, and other shutdown actions;<sup>1</sup>
- The Special Counsel, who as a Presidential appointee subject to Senate confirmation, is not subject to furlough;<sup>2</sup>
- Those required for protection of property - for example, a breach of physical or IT security, if any such breach occurs during a furlough;
- Those required for any litigation deadlines that could not be extended
- Those required to provide necessary support to the above excepted activities, to facilitate shutdown, and support minimum required services or support.

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<sup>1</sup> It may become necessary that some personnel conduct limited activities after the initial shutdown.

<sup>2</sup> Per OPM Furlough Guidance (question 16).

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<b>FTE before shutdown</b>	<b>Retained/excepted personnel after orderly shutdown</b>	<b>Dismissed/furloughed personnel after orderly shutdown</b>
138	17	113

### **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 a CR or appropriation ends without definitive notice from OMB as to the status of appropriations action, non-expected OSC employees will be prohibited after midnight that day from working remotely, including by accessing agency technology (*e.g.*, mobile devices, or access to the computer network via Office 365 or Citrix), except that OSC management will use such technology to provide non-expected employees with updates on any shutdown and their furlough status – *i.e.*, to transmit OMB’s determination that normal operations will resume, or that shutdown implementation will proceed. For example, if the CR 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, Office 365, Citrix, and/or the agency’s emergency notification alert roster.

Normal operations will resume when OSC receives notification from OMB that the lapse of appropriations has ended. This information will be communicated from supervisors to staff through the emergency notification alert roster. Employees should also monitor the news media, OPM or White House/OMB websites, or contact the OPM operations status hotline at (202) 606-1900 for information on the funding of the Government and status of operations.

### **Section 5. Point of Contact**

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