

EEOC has developed this Shutdown Contingency Plan in the event of an absence of appropriations, as required by OMB Circular A-11, and in accordance with the Antideficiency Act, 31 U.S.C. 1341-1342, the Comptroller General's opinion of March 3, 1980, and the Attorney General's opinions of April 25, 1980, and January 16, 1981. This plan identifies excepted activities which will continue during the shutdown. It is expected that the shutdown process itself will be completed in less than one day. Office Directors who believe that certain shutdown procedures will take longer than one day will need to get approval for an extension from the Chair.

I. SUMMARY

EEOC ACTIVITIES DURING GOVERNMENT SHUTDOWN:

Pursuant to the plan, only activities involving the safety of human life or the protection of property will continue. Specifically, EEOC will: preserve the rights of aggrieved individuals under the federal employment discrimination statutes by docketing new charges and federal sector appeals; continue to litigate lawsuits where a continuance has not been granted; examine new charges to determine whether prompt judicial action is necessary to protect life or property and, if appropriate, file such action to obtain preliminary relief; maintain the integrity and viability of EEOC's information systems; maintain the security of our offices and property; and perform necessary administrative support to carry out those excepted functions. The bulk of these activities would be handled by staff in our field offices.

EEOC ACTIVITIES THAT WILL NOT OCCUR DURING SHUTDOWN:

1. Staff will not be available to answer questions from the public, or to respond to correspondence from the public.
2. While we will accept charges that must be filed in order to preserve the rights of a claimant during a shutdown, these charges will not be investigated.
3. Insofar as the courts grant EEOC's requests for extensions of time, EEOC will not litigate in the federal courts.
4. Mediations will be cancelled.
5. Federal sector hearings will be cancelled, and federal employees' appeals of discrimination complaints will not be decided.
6. Outreach and education events will be cancelled.
7. No FOIA requests will be processed

II. OVERVIEW

Section 124 of OMB Circular A-11 requires that agencies submit plans for an orderly shutdown in the event of a lapse in appropriations to OMB. The Circular requires that agencies include the number of employees to be retained under the plan in the following three categories of employees:

1) employees engaged in military, law enforcement, or direct provision of health care activities -- EEOC would retain 0 employees;

2) employees whose compensation is financed by a resource other than annual appropriations -- EEOC would retain 0 employees; and

3) employees who will protect life and property -- EEOC would retain 131 staff and contract personnel, many part-time or on call.

In a February 28, 2011 memorandum, the EEOC's Office of Legal Counsel provided guidance on Government operations in the event of a lapse of appropriations. As described in more detail below, after effecting an orderly shutdown of the agency, EEOC would retain a very limited number of employees under the third category to protect government and individual property rights (the "emergency" exception).

Employees necessary to effect an orderly shutdown of the agency. These "shutdown personnel" can be excepted from the Antideficiency Act bar based on the "necessary implication" exception. "Shutdown personnel" may only work on shutting down the agency and must leave the workplace when their shutdown responsibilities are completed. Shutdown responsibilities include, among other things, placing messages about the government shutdown on voicemail and email accounts, canceling meetings and travel plans, requesting extensions in litigation, identifying excepted personnel and their functions, and posting a notice on the website explaining the shutdown and EEOC's retained functions.

Employees who perform any of the following six functions that are excepted from a general government shutdown under the "emergency" exception. This exception to the Antideficiency Act allows an agency to accept voluntary services in emergencies involving the safety of human life or the protection of property. EEOC has determined that, to ensure that charging parties' or other workers' rights under EEOC's laws are not lost, the following six functions at EEOC fall within the emergency exception:

1. Intake of charges of discrimination and OFO appeals.
2. Evaluation and handling, if necessary, of any charge that might require EEOC to seek a temporary restraining order or other preliminary relief under Section 706(f)(2) of Title VII, 42 U.S.C. § 2000e-5(f)(2).
3. Work on ongoing litigation for which an extension has not been granted. Where an extension has not been granted, the attorney would be excepted from the furlough only for that matter.
4. Maintenance of the security, integrity, and viability of EEOC information systems.
5. Maintenance of the security of EEOC's offices and property.
6. Administrative support for the excepted "emergency" functions. For example, depending on the timing of a shutdown, staff may be retained for the purpose of submitting time cards through the Quicktime electronic time card system. Support staff, including paralegals, could be retained to assist in unextended litigation.

A. COVERAGE. This Shutdown Contingency Plan covers all EEOC officers, employees, and on-site contract personnel, except as noted below. All activities of the agency are subject to shutdown provisions when invoked, except as noted below.

B. EXCEPTIONS. In the event of a lapse of appropriations, the agency is to prepare for orderly shutdown by releasing through furlough all employees except for the following:

- a. Presidential appointees, who are not subject to furlough provisions;
- b. Employees and contract personnel engaged in shutdown activities. (Unless designated to perform excepted functions in accordance with section (c), these employees and contract personnel are to be furloughed at the conclusion of their respective shutdown activities.)
- c. Employees and contract personnel designated by Headquarters Office Directors and agency District Directors to perform the six excepted functions listed above. (Such employees are authorized to work only for that period of time in which they are performing excepted activities.)

C. POLICY.

- a. With regard to a projected shutdown in the event of a lapse of appropriations, EEOC will keep employees fully informed of developments, as known, that affect the status of their employment. If shutdown is unavoidable, EEOC will follow this Shutdown Contingency Plan in preparing for the orderly suspension of EEOC operations and the maintenance of excepted functions.
- b. No EEOC employees or contract personnel are to be retained after a funding hiatus for the purpose of protecting of life and property except when they have been designated as excepted employees as discussed below. During a shutdown, any district or headquarters office director may request authorization from the Chair to recall additional staff to engage in excepted functions.
- c. We do not expect that the total number of employees and contractor personnel assigned to perform the excepted functions listed above will exceed 5 percent of the total number of employees and contract personnel on board immediately preceding the shutdown.

III. PLANNING FOR SHUTDOWN

To prepare for a possible lapse in appropriations, the Commission will do the following:

24 hours prior:

- Advise all employees and contractors of any developments and final guidance provided by the Office of Management and Budget.

- Prepare and distribute furlough letters and supplementary information to Office Directors, District Directors or their designees.
- Advise all employees and on-site contract personnel to report to duty the next business day after the shutdown for instructions and to engage in shutdown activities.

IV. SHUTDOWN ACTIVITIES

The orderly shutdown of Agency operations is an excepted activity. The suspension of Agency operations, which is to be completed as soon as possible on the day after the Commission's appropriation has lapsed, is to be coordinated by Office Directors and District Directors. Shutdown responsibilities would include, among other things, placing messages about the government shutdown on voicemail and e-mail accounts; canceling meetings and travel plans; requesting extensions in litigation; identifying excepted personnel and their functions; and posting a notice on the website explaining the shutdown and EEOC's retained functions. Employees not retained or excepted should depart upon completion of their *excepted shutdown functions*. It is anticipated that the majority of employees will complete their shutdown responsibilities in 4 hours or less, but a small number of employees may require 8 to 16 hours.

V. CONTINUING EXCEPTED FUNCTIONS

In order to maintain the six identified excepted functions, the following staffing levels have been authorized.

Office of Field Programs

In the absence of an appropriation, the bulk of the Commission's emergency functions would be handled by staff in the Office Field Programs (OFP). Of specific concern would be the preserving the rights of potential charging parties to timely file a charge of employment discrimination; and obtaining preliminary relief when we conclude, after receiving a charge, that prompt judicial action is necessary to protect workers from harm. Depending upon the size of the office, OFP would authorize between one and two enforcement staff daily at each field location part-time. The retained staff would open and date-stamp all incoming mail and review mail for two purposes: 1) to determine whether any submitted charge(s) must be processed immediately in order to avoid expiration of the limitations period for filing and 2) to identify charges where emergency preliminary relief is required to protect the safety of life or property. For inquiries close to the limitations period, staff would contact the Charging Party, and conduct any necessary interview to ensure that a timely charge is taken and served. Preliminary relief cases would be given to the retained legal staff (see Office of General Counsel below). For the 13 offices with the largest inquiry and charge activity (5001 -11,000 annually), OFP would retain two staff each day; for the 16 offices with the next largest activity (3001 - 5,000), 1.5 staff would be retained; for the 13 offices with activity of 2001 -3,000, 1 staff person would be retained; and for the 11 offices with 2000 or less, OFP would retain one staff member on a part-time basis each day.

With regard to customer service and information needs, the Commission's Interactive Voice Response (IVR) will have a message informing people of the shutdown, providing specific instructions for potential charging parties who are nearing the time limits for filing, and telling all other potential charging parties to send a letter or questionnaire to the EEOC office nearest them or to EEOC Headquarters. The external website would also have a message informing the public of the shutdown with similar information and a link to the questionnaire. Depending on the availability of security in some of the offices, face-to-face accessibility may be limited. Therefore we anticipate that most contact with the public will be made by phone or email and not in person during the shutdown.

Finally, two staff members would also be retained in order to review all incoming Intake Information Group (IIG) e-mails to filter inquires approaching the tolling of their statute of limitations period.

Total staff: 84 OFP staff would be retained – some full-time and some part-time.

Office of General Counsel

In the absence of an appropriation, staff will be needed to monitor incoming mail concerning pending litigation; to review new charges in order to seek emergency judicial relief as authorized by statute or procedural rules; and/or to comply with litigation responsibilities and obligations under court orders where extensions and stays have not been granted.

The Office of General Counsel will retain 20 staff members—15 Regional Attorneys in the Field¹ and 5 Staff in Headquarters in order to support these excepted emergency functions.

Office of Federal Operations

In order to carry out the intake and logging of appeals and requests for reconsideration, three to four staff will be retained as needed to protect filing dates for intake, phone, and mail functions.

Office of the Chair and Commissioners

The Chair, and all other presidentially-appointed staff subject to Senate confirmation, will continue to carry out their responsibilities. To support the duties of the Chair, the Chief Operating Officer and one additional support staff (the Administrative Officer, the Executive Assistant, or Administrative Support Assistant) will remain on call as needed. To support the duties of the remaining Commissioners, the Chair's support staff person will also be able to perform payroll functions and address travel emergencies for all Commissioners as necessary

Total staff: Two staff would be retained or on call.

Office of Communications and Legislative Affairs

In order to maintain needed communication with Congressional and media stakeholders and provide timely and necessary information to the Office of the Chair concerning congressional

developments and actions, the Office of Communications and Legislative Affairs will retain the Office Director and Deputy Director on a rotational basis.

Total Staff: One staff member would be retained on call.

Office of Information Technology

To provide IT support for the retained staff, the Office of Information Technology will:

- Keep all telecommunications and information systems up and running (no IT systems will be purposefully shutdown during the government closure).
- Monitor systems remotely for automated alerts indicating system degradation or failures.
 - Retained staff will be informed to contact the Nationwide Help Desk (NHD) in the event of system issue/support needs. The NHD will be provided with a list of emergency IT contacts and processing guidance for use during the shutdown period.
 - OIT staff and select contractors (described below) will be on an “on-call” status during the government shutdown. There will be no on-site presence at HQ nor at field sites unless in response to an incident, as outlined below. In the event of a system/NHD alert, the notified individual will contact his/her supervisor or COTR to alert them of the issue, the estimated number of hours needed to resolve the issue, and to seek approval for “on-call” retained function hours.
 - Upon approval, the notified individual(s) will work either remotely or on-site, as necessary, to return the affected system to normal operations. Upon completion, management will be notified of the resolution and total hours worked. Staff will enter approved hours into the Quicktime system.
 - Hours/actions spent in support of maintaining emergency functions will be reported by OIT Management to the appropriate EEOC officials, as requested.
 - Due to the “on call” status, response times needed to return systems to normal operations may be elongated/delayed.

Total Staff: To support the above emergency functions, the OIT will have 8 staff members and one contractor on call for security/COOP issues/incidents, to oversee computer room operations, to monitor and perform incident response for telecommunications, and to monitor and perform incident response for essential systems. In addition, OIT will retain one part-time (4 hours a day) contractor to perform system backup and monitoring functions.

Office of Human Resources

Under a shutdown, OHR will have to ensure that timecards are certified and released for the pre-shutdown pay period; process furlough actions, approve furlough actions; respond to inquiries from employees; and obtain daily roll call from essential employees for payroll purposes. The

following employees will be retained to support these operations: The Chief Human Capital Officer, Personnel Operations Director (initially for three days and possibly on rotation with the Chief Human Capital Officer) and an HR specialist.

Total Staff: Three staff members will be retained, some full-time and some part-time.

Office of the Chief Financial Officer

In the event of a shutdown, the Office of the Chief Financial Officer (OCFO) will need to retain one employee to ensure the security of EEOC's offices and property and to monitor the security of EEOC offices. In addition, OCFO will need to retain staff for the following functions: monitoring contractors performing excepted functions, financial/E2 system issues and as a point of contact for NBC business transactions. OCFO will also need to retain one staff member to oversee financial issues including overseeing the use of credit cards and exceptions. Finally, OCFO will need to retain skeletal staff to handle incoming mail/express delivery, PO Box pickup etc.

Total Staff: Five to six staff members would be retained.

Office of Legal Counsel

In order to respond to legal questions from staff performing excepted functions, the Office of Legal Counsel would retain two staff members on a rotating, on-call basis.

Total Staff: One staff member will be on call.

Other Offices

The Offices not named above Office of Equal Opportunity (OEO), Office of the Inspector General (OIG), and Office of Research, Information and Planning (ORIP)) will not have designated retained employees beyond the shutdown period. However, should an emergency situation arise involving the protection of human life or property and necessitating the involvement of individuals from these offices, the Chair or COO will notify and retain appropriate staff for the amount of time necessary to address the specific emergency.

VI. STAFF TOTALS

A. STAFF ON-BOARD: EEOC expects to have approximately 2600 staff and contract personnel on board before implementation of the shutdown contingency plan.

B. STAFF RETAINED: EEOC expects to retain 131 staff and contract personnel, many part-time or on call, during an agency shutdown.

¹ There is one Regional Attorney for each of EEOC's 15 Districts. Each Regional Attorney manages all litigation and supervises all trial attorneys in the district.