



# SOL

## Contingency Plans

October 12, 2011

Memorandum

To: Pam Haze  
Deputy Assistant Secretary

From: Arthur E. Gary  
Deputy Solicitor

Re: Solicitor's Office Contingency Plan

In the event of a lapse of appropriations for the Department, we expect that the Solicitor's Office will complete shutdown activities within one half day. Of the approximately 450 employees in the Office, the Solicitor and 14 additional employees would be immediately retained under our plan for response to emergencies involving the safety of human life or to protect property, and 435 employees would be subject to furlough. However, as described below, any of our attorneys and support personnel could be called to duty to manage litigation if courts do not grant extensions, or in an emergency. Except as described below, most employees will be furloughed for the duration of the shutdown.

The following information is provided consistent with OMB Circular A-11:

1. **Employees engaged in military, law enforcement, or direct provision of health care activities.** None of the employees in the Solicitor's Office are directly engaged in these exempt activities.
2. **Employees whose compensation is financed by a resource other than annual appropriations.** Approximately 15 employees are paid from funding sources that do not lapse, and, to the extent that the funding agencies require their legal services, they will be retained in "on call" or duty status:
3. **Employees needed for response to emergencies involving the safety of human life or to protect property who are not otherwise exempt.** In accordance with opinions of the Attorney General, the Solicitor, as a Senate-confirmed appointee, is exempt from the constraints of the Anti-Deficiency Act in the event of a lapse of appropriations. In addition to the Solicitor, the following Solicitor's Office officials will be immediately and indefinitely retained under this plan in the event of a lapse of appropriations to provide necessary support for the Secretary for emergencies involving the safety of human life or to protect property, and to support the Department's excepted and ongoing functions:
  - Deputy Solicitors (7)

- Executive Assistant to the Solicitor (1)
- Associate Solicitor for General Law (1)
- Director of Administration (1)
- Information Systems staff, Division of Administration (2)
- Law Enforcement Staff Attorneys, Division of Parks & Wildlife (2)

**Other Litigation Considerations:** We understand that the Department of Justice will manage litigation during a lapse of appropriations in the following way:

- 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 Justice Department attorneys to file motions seeking extensions or continuances as appropriate in all civil cases in which there are upcoming deadlines during the reasonably foreseeable duration of the appropriations lapse. Until such time as the court grants such motions, civil litigation will continue without interruption.

As a result, SOL 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. The corresponding Associate or Assistant Solicitor 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 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 if such extensions or continuances are not granted in federal and state litigation.

Please contact me at 208-4611 or Bob Bruffy at 208-6067 if we can provide any additional information.