

# **Small Business Administration**

## **PLAN FOR OPERATING IN THE EVENT OF A LAPSE IN APPROPRIATIONS**

SMALL BUSINESS ADMINISTRATION  
PLAN FOR OPERATING IN THE EVENT OF A LAPSE IN APPROPRIATIONS

TABLE OF CONTENTS

I	Objective	4
II	Effect of Lapse of Appropriations on Specific SBA Programs.	4
	A. Continued Programs	
	B. Closed Programs	
III	Actions To Be Taken Prior to Initiating Shutdown Activities	5
	A. Notice to Employees	5
	B. Preparation for Shutdown	5
	C. As soon as the shutdown becomes imminent	6
	D. Day before the shutdown	6
	E. Instructions for Shutdown of Nonexcepted Activities	6
IV.	Phased Procedures	6
	A. Phase 1	6
	B. Phase 2	8
	C. Phase 3	8
	Appendix A – Matrix of Employees	10
	Appendix B – List of Exempt and Excepted Functions	11
	I. Exempt Functions	11
	A. Presidential Appointees	11
	B. Disaster Funded	11
	1. Office of Disaster Assistance	11
	2. Office of Disaster Planning	11
	C. American Recovery and Reinvestment Act (ARRA) Funded	12
	II. Excepted Functions	12
	A. Justification Discussion for Excepted Functions	12
	1. Office of the Administrator	12
	2. Office of Advocacy	12
	3. Office of Capital Access	13
	4. Center for the Faith-based and Neighborhood Partnerships	14
	5. Office of the Chief Financial Officer and Performance Management	14
	6. Office of the Chief Information Officer	15
	7. Office of Communications and Public Liaison	17
	8. Office of Congressional and Legislative Affairs	17
	9. Office of Entrepreneurial Development	17
	10. Office of Equal Employment Opportunity and Civil Rights Compliance	18
	11. Office of Field Operations	18

12. Office of General Counsel	19
13. Office of Government Contracting and Business Development	19
14. Office of Hearings and Appeals	20
15. Office of the Inspector General	20
16. Office of International Trade	21
17. Office of Investments and Innovation	21
18. Office of Management and Administration	22
19. Office of National Ombudsman	23
20. Office of Native American Affairs	23
21. Office of Veterans Business Development	23
Appendix C – SBA Exempt or Excepted Employees	24
Appendix D – Sample Furlough Decision Notice Due to Lapse of Appropriations (5 CFR Part 752)	31
Appendix E – Frequently Asked Questions	33
Appendix F – Resources	36

## I. Objective:

This Small Business Administration (“SBA” or “Agency”) Plan for Operating in the Event of a Lapse in Appropriations (the “Operating Plan”), provides guidance and procedures for the Agency when either an annual appropriations act or continuing resolution has not been enacted for the Agency in a fiscal year. The procedures in the Operating Plan allow for (1) continuing only those excepted functions under various justifications; and (2) initiating orderly shutdown of those activities not considered exempt or excepted.

## II. Effect of Lapse of Appropriations on Specific SBA Programs

### A. CONTINUED PROGRAMS

- Disaster Loan Program
- Certified Development Company (CDC) 504 Loan Program (previously approved and obligated loans only)
- Secondary Market Loan Programs
- Inspector General (disaster funded, Recovery Act funded, and investigatory activities)
- Preferred Surety Bond (PSB) Program

### B. CLOSED PROGRAMS

- Business Loan Programs (7(a) General Business Loans and Pilot Loan Programs (Community Advantage Loan Pilot, Small Loan Advantage Pilot, Dealer Floor Plan Pilot, Patriot Express Pilot, Gulf Opportunity (Go Loan) Pilot, Rural Lender Advantage), Microloans, Intermediary Lending Pilot Program, CDC 504 Loan Origination)
- Venture Capital Programs (Small Business Investment Companies (SBIC) Debenture Program and New Markets Venture Capital Program)
- Surety Bond Program (other than PSB Program)
- Procurement Assistance Programs (8(a) Business Development Program, Historically Underutilized Business Zone (HUBZone) Program, Women-Owned Small Business (WOSB) Concern Contract Assistance Program, Service-Disabled, Veteran-Owned Small Business (SDVOSB) Concern Contracting Assistance Program, Small Business Innovation Research (SBIR) Program, Small Business Technology Transfer (STTR) Program, Size Standards Program, Small Business Goaling Program)
- Technical Assistance and Other Grant Programs (Small Business Development Centers (SBDC), Drug-Free Workplace Program, Women’s Business Centers (WBC), 7(j) Technical Assistance, Microloan Technical Assistance, Program for Investment in Microenterprise (PRIME) Technical Assistance, SCORE, Veterans’ Business Opportunity Centers), Native American Outreach, Regional Cluster Initiative, E-200

Initiative, Small Business Teaming Pilot Program, State Trade and Export Promotion (STEP) Grants, Congressional Earmark Grants)

- SBA Advocacy (Regulatory Flexibility Act (RFA) reviews)
- SBA Ombudsman (Small Business Regulatory Enforcement Fairness Act (SBREFA) activities)
- SBA Inspector General (activities not under CONTINUED heading)
- Cosponsorships
- United States Export Assistance Centers

III. Actions to Be Taken Prior to Initiating Shutdown Activities.

A. Notice to Employees:

For furloughs necessitated by lapsed appropriations, advance written notice prior to implementing the furlough is recommended but not required. When prior written notice is not feasible, any reasonable notice (telephonic or oral) is permissible. Ultimately, SBA must provide each employee with a written notice of a shutdown (see Appendix D for a sample notice).

B. Preparation for Shutdown

In the likelihood of a lapse in appropriations, the following steps should be taken:

- Identify of exempt, excepted and non-excepted personnel. Excepted personnel must be identified by job title; each employee must be notified of his or her classification (exempt, excepted, or non-excepted) and the status and obligations of the classification. Non-excepted employees must be advised that voluntary services by furloughed employees are not permitted.
  - Exempt personnel are those funded by programs with continuing funding and resources, such as the Office of Disaster Assistance and the Office of Inspector General, that may have “no year” appropriations available.
  - Excepted personnel are those conducting activities related to orderly shutdown of the Agency, preservation of property, law enforcement activities, preservation of the financial system, related activities justified by necessary implication, and other activities that are justified by the General Counsel.
  - Non-Excepted personnel are the remaining employees that are not either exempt or excepted and therefore will be furloughed.

- Communicate with employees, supervisors, resource partners, contractors, cosponsors, regarding procedures under this SBA’s Operating Plan.
- Draft “decision to furlough” notices and instructions for distribution to employees. If feasible, draft and distribute “possibility of furlough” notices.
- Prepare SF-8s, *Notice[s] to Federal Employee about Unemployment Insurance*, so employees may more easily file for unemployment compensation, if necessary.

C. As soon as the shutdown becomes imminent:

- Advise the excepted and non-excepted employees on official travel or training status that they may have to return to their regular duty stations.
- Advise contracting officials with authority to obligate funds to refrain from such actions unless the obligation is for shutdown purposes or funded as an exempt activity not funded with annual appropriations.
- No personnel actions will be processed during the period of non-availability of funds except for furlough actions and actions relating to exempt funded programs.
- Advise disbursing and certifying officers that no monies are to be disbursed for obligations incurred after the expiration of appropriations.
- Continue notification to employees, supervisors, resource partners, contractors, cosponsors, and the Union of the actions to be taken under the Operating Plan.
- Program managers must compare programmatic priorities with pending and ongoing contractual and assistance activities as soon as possible to determine which activities to continue or cancel, obtain approval from the General Counsel for those decisions, and then communicate them to interested parties.

D. Day before the shutdown:

- Advise employees to report to work the next workday, even in the event of lapsed appropriations, to allow for an orderly shutdown.

E. Instructions for Shutdown of Nonexcepted Activities.

- No actions under this contingency plan are to be initiated without written notification from the Administrator that the plan is to be put into effect.

IV. Phased Procedures

A. Phase 1:

This phase begins when a continuing resolution expires with no successor appropriations act or continuing resolution. All employees will report to work on the next business day. Annually funded activities of the Agency will begin an orderly shutdown of operations. Functions that will continue include actions necessary to preserve life and property, law enforcement activities, protection of the integrity of the financial system, or necessary implication of those functions. Exempt personnel will continue to work, as their funding is not affected. Excepted personnel will work until notified that their excepted function is completed or no longer needed. Non-Excepted personnel will be furloughed without pay until further notification by the Agency. Temporary employees must be furloughed in the same manner as permanent employees.

Orderly shutdown activities to be initiated in Phase 1 include:

- Personnel processing of furlough actions;
- Issuing ‘stop work orders’ or other work suspensions on contracts as necessary;
- Notifying grantees, lenders, cosponsors and other Agency resource partners of the lapse in funding;
- Coordinating the orderly shutdown of Agency field activities;
- Advising all personnel still on travel or in local training to report back to the office as soon as possible that day;
- Cancelling all leave (annual, sick, administrative, etc.) as of close of business to last for the duration of the furlough;
- Advising employees that the Office of General Counsel has committed to an expedited conflict of interest review for employees seeking outside employment;
- Closing out Agency files and records;
- Making appropriate arrangements for the collection of obligations owed to SBA.

Non-excepted employees will then be furloughed without pay as directed. Employees will be notified when to return to work by the Agency’s Emergency Alert System if possible or through some other form of telecommunications.

The status of excepted employees will be identified as “nonpay duty.” Such employees are advised that the United States will not contest its legal obligation to pay for their services, even in an absence of appropriations.

Supervisors will inform excepted employees (in writing or by telecommunication) that they may perform only those activities identified as essential or part of operation shutdown.

Supervisors must contact any employee on travel status and advise him or her to return to the

duty station immediately, unless the employee volunteers to be furloughed at the travel site and such arrangement is in the best interest of the Federal Government. Travelers should return in accordance with normal Federal Travel Regulations.

Phase 1 is anticipated to last approximately 4 to 5 hours.

B. Phase 2:

A small contingent of excepted employees will complete final closeout actions or conduct required actions needed to finalize Agency “at risk” financial requirements.

Orderly shutdown activities in Phase 2 include:

- Finalizing furlough personnel action processing;
- Inventorying Agency property;
- Arranging to ship necessary official Agency records to the Archives.

Phase 2 is anticipated to last a few days.

C. Phase 3:

The activities in Phase 3 of an orderly shutdown of operations include, but are not limited to the following:

- Canceling meetings, hearings, and other previously arranged business and notifying parties such as other Federal agencies, State governments, and private entities involved in Departmental matters of the cessation of normal business.
- Documenting the status of cases and projects so they can be resumed, transferred, or otherwise appropriately handled when the funding situation is determined.
- Taking steps to plan, control, and maintain orderliness throughout the phase-down of operations.
- Performing the fiscal and accounting tasks required to maintain accountability and reporting obligations and expenditures of all funds.
- Preparing files for permanent storage and preparing for the orderly transfer of property and records as directed by the General Services Administration (GSA) and the Office of Personnel Management (OPM). Property and records are not to be transferred until 30 days after shutdown activities have commenced, and then only after determination that the funding interruption will be substantial or indefinite.

- Preparing inventories of property and records to ensure protection of the Government's interests and the claims of affected private entities and individuals.
- Performing those tasks necessary to protect classified information, including listing all papers to be accorded classified status and securing all appropriate files and automatic data processing information.
- Performing requisite administrative functions, such as processing the payroll for the pay period through the expiration of the continuing resolution.
- Conducting other functions that contribute directly to the orderly shutdown of SBA, and protect life, and safeguard Government property and records.

Supervisors should continue to identify employees or positions that are necessary to perform the functions associated with the orderly cessation of activity. These employees will continue to work for the length of time necessary to complete shutdown activities. The selection of employees to participate in shutdown activities should be based on the number of employees or positions necessary for the orderly termination of an activity and the special knowledge, skills, or abilities required to terminate activities.

As employees required to perform shutdown activities complete their assigned work, they will be placed in a furlough status. Each employee's supervisor is responsible for promptly notifying the servicing personnel office through the organizational point of contact when an employee is placed on furlough so the proper documentation can be placed in the employee's official personnel folder.

All shutdown activities should be accomplished to facilitate efficient reactivation of operations when funds are again available.

No new business for activities funded by one-year appropriations will be initiated unless the Agency action is justified by the General Counsel. Unless they are necessary to the direct support of authorized activities, the following will not be permitted:

- awards of grants, contracts, cooperative agreements, cosponsorships, and small purchases;
- hiring of personnel or extending the appointment of personnel whose appointments have expired, if doing so would result in unauthorized obligation of funds during a lapse of appropriations;
- travel of persons and transportation of things; excepted and non-excepted personnel in travel status on the first day of a no-funds situation will return to their duty stations as soon as possible;

- meetings, conferences, and seminars; or
- new or continued employment of experts and consultants, if such actions will incur a financial obligation;

APPENDIX A – MATRIX OF OF EMPLOYEES

<b>U.S. Small Business Administration Operating Plan in Event of a Lapse in Appropriations</b>				
<b>Program Offices</b>	<b>Exempted Employees</b>	<b>Excepted Employees</b>	<b>Employees Subject to Furlough</b>	<b>Total Employees Onboard as of 03/28/11</b>
Office of the Administrator	2	2	14	18
Office of Advocacy	1	0	43	44
Office of Capital Access	127	35	330	492
Office of the Chief Financial Officer & Associate Administrator for Regulatory Enforcement Fairness	22	6	88	116
Office of the Chief Information Officer	0	20	40	60
Office of Communications & Public Liaison	0	3	26	29
Office of Congressional & Legislative Affairs	0	2	6	8
Office of Disaster Assistance & Disaster Planning	1217	0	0	1217
Office of Entrepreneurial Development	0	5	36	41
Office of Equal Employment Opportunity & Civil Rights Compliance	0	0	9	9
Office of Faith Based & Community Initiatives	0	0	1	1
Office of Field Operations	0	6	886	892
Office of General Counsel	1	46	107	154
Office of Government Contracting & Business Development	0	4	184	188
Office of Hearings & Appeals	0	0	10	10
Office of the Inspector General	22	3	86	111
Office of International Trade	0	2	34	36
Office of Investment	0	3	85	88
Office of Management & Administration	1	16	89	106
Office of National Ombudsman & Assistant Administrator for Regulatory Enforcement Fairness	0	0	7	7
Office of National Women's Business Council	0	0	4	4
Office of Native American Affairs	0	0	4	4
Office of SES Candidate Development Program	0	0	0	0
Office of Veterans Business Development	0	1	8	9
<b>Total</b>	<b>1393</b>	<b>154</b>	<b>2097</b>	<b>3644</b>
<b>Percentage</b>	<b>38%</b>	<b>4%</b>	<b>58%</b>	

## APPENDIX B: LIST OF EXEMPT AND EXCEPTED FUNCTIONS

I. EXEMPT FUNCTIONS. These are functions that are either not affected by the lapse in appropriations or continue under other authorities.

A. Presidential Appointees. (4 Exempt Employees)

Individuals appointed by the President, with or without Senate confirmation, and who otherwise are not subject to 5 U.S.C. §6301 and attendant regulations governing leave in the Federal service, are not subject to furlough. SBA has four Presidentially-appointed, Senate confirmed positions that will continue to serve during any lapse in appropriations, the Administrator, Deputy Administrator, Inspector General, and Chief Counsel of Advocacy. See, 15 U.S.C. 633(b), 15 U.S.C. 634a and 5 U.S.C. App. 3, § 3(a).

B. Disaster Funded.

(1) Office of Disaster Assistance (1215 Exempt Employees)

The Office of Disaster Assistance (ODA) plays a vital role in the aftermath of disasters. Through ODA, the SBA is responsible for providing affordable, timely, and accessible financial assistance to homeowners, renters, and businesses of all sizes affected by disaster. Financial assistance is available in the form of low-interest, long-term loans. The SBA's disaster loans are the primary form of federal assistance for the repair and rebuilding of non-farm, private sector disaster losses. For this reason, the disaster loan program is the only form of SBA assistance not limited to small businesses. ODA makes the following types of disaster loans:

- Physical disaster loans are for permanent rebuilding and replacement of uninsured or underinsured disaster-damaged privately-owned real and/or personal property. The SBA's physical disaster loans are available to homeowners, renters, businesses of all sizes and nonprofit organizations.
- Economic injury disaster loans provide necessary working capital until normal operations resume after a disaster. Economic injury disaster loans are restricted to small businesses and non-profit organizations.

(2) Office of Disaster Planning (2 Exempt Employees)

The Office of Disaster Planning reports directly to the SBA Administrator and is responsible for integrating disaster planning, preparedness activities and disaster response programs for all SBA offices.

The office provides direction and oversight to the Agency's Office of Disaster Assistance in coordinating the utilization of SBA resources to assist citizens, communities and businesses in response to disaster occurrences and long term recovery needs. It also represents the SBA on various inter-governmental bodies related to disaster response and recovery and works to ensure that the Agency and its resource partners coordinate effectively to help serve disaster victims. The Agency's disaster training operations, exercises and simulation programs also fall under the

purview of the Office of Disaster Planning as does the responsibility for monitoring internal and external communications in times of disaster.

The disaster loan program is funded entirely by no-year appropriations. See Pub. L. 109-234, Pub. L. 110-252 and Pub. L. 111-117. Therefore, the disaster funded activities are not subject to the lapse in appropriations. In addition, the Food, Conservation, and Energy Act of 2008, Pub. L. 110-246, added a requirement for SBA to ensure that the number of full-time equivalent employees in the Office of Disaster Assistance is not fewer than 800 employees. 15 U.S.C. 636(b)(7).

### C. American Recovery and Reinvestment Act (ARRA) Funded.

Some activities of the Inspector General related to ARRA are funded through 2013. Pub. L. 111-5, 123 Stat. 150 (2009).

II. EXCEPTED FUNCTIONS. These are functions that are essential to the Agency and can be justified as protection of property, law enforcement, protection of the integrity of the financial system, orderly shutdown of operations, or necessary implication of those functions.

#### A. JUSTIFICATION DISCUSSION FOR EXCEPTED FUNCTIONS

##### (1) Office of the Administrator (2 PAS Exempt Employees; 2 Excepted Employees)

The Office of the Administrator is responsible to the President and the Congress for exercising direction, authority, and control over the Small Business Administration. The Office determines and approves all policies covering the Agency's programs to aid, counsel, assist, and protect the interests of the Nation's small business concerns. In addition, the Office delegates responsibility and authority to various SBA staff. The Office also consults with Federal, State, and local agencies on behalf of small business interests in the national economy. It also periodically evaluates the performance, accomplishments, and short and long-range planning goals of the Agency.

The Administrator and the Deputy Administrator are Presidentially-appointed and Senate confirmed, and therefore will continue to work during the lapse in appropriations. In addition, the Chief of Staff and the Deputy Chief of Staff will continue to work as "excepted employees." These positions are essential as they direct the intergovernmental affairs activities of the Agency, which will continue during the lapse. It is anticipated that various emergency and continuing needs of other Agencies will continue during the lapse that will require coordination within SBA in order to preserve and protect government property of those other Agencies. In addition, these positions will be directing and coordinating internal SBA orderly shutdown activities with various SBA offices.

##### (2) Office of Advocacy (1 PAS Exempt Employee, No Excepted Employees)

The Office of Advocacy is an independent voice for small business within the federal government. It represents the interests of small entities including small businesses, small

organizations, and small governmental jurisdictions. Appointed by the President and confirmed by the U.S. Senate, the Chief Counsel for Advocacy directs the office. The Chief Counsel advances the views, concerns, and interests of small business before Congress, the White House, federal agencies, and state policymakers. Economic research, policy analyses, and small business outreach help identify issues of concern. Regional advocates and an office in Washington, D.C. support the Chief Counsel's efforts. The Office of Advocacy's economic research and regulatory interventions reduce regulatory barriers that impede small business growth and development. The Office of Advocacy's Chief Counsel is Presidentially-appointed and Senate confirmed, and therefore will continue working during the shutdown.

### (3) Office of Capital Access (127 Exempt Employees; 35 Excepted Employees)

The mission of the Office of Capital Access (OCA) is to expand access to capital among small businesses—particularly those that might not otherwise obtain financing. The office does so through a network of programs and services that makes capital available to small business borrowers, working primarily through financing partners to reach those seeking to start new businesses or expand existing enterprises. OCA is primarily known for its 7(a) and 504 loan programs, which offer capital to borrowers on reasonable terms and conditions, but it also oversees a variety of programs targeted at certain markets. The Office of Capital Access also includes:

- The Office of Credit Risk Management, which provides risk management based on monitoring, reviewing, and oversight of the 7(a) and 504 lenders and microloan intermediaries; and monitoring and analysis of the 7(a), 504, microloan and disaster portfolios.
- The Office of Financial Program Operations, which oversees nine financial processing centers located throughout the country. These processing centers collectively underwrite, service, and liquidate SBA loans.
- The Secondary Market Program for 7(a) and 504 lenders, which pools 7(a) and 504 loans for sale to investors.
- The Microloan Program provides small, short-term loans to small business concerns. The SBA makes funds available to specially designated intermediary lenders, which are nonprofit community-based organizations with experience in lending. These intermediaries make loans to eligible borrowers.
- The Surety Bond Guarantee Program, which provides guaranteed bid, payment, and performance bonds on contracts up to \$2 million for small contractors who cannot obtain surety bonds through regular commercial channels. PSB Program sureties are authorized to issue, monitor and service guaranteed bonds without prior approval.

35 OCA employees will be needed to ensure the continued operation of activities critical to the protection of government property and orderly shutdown activities. These include:

- 24 employees at OCA’s commercial loan servicing centers in Fresno, CA, and Little Rock, AR, who will ensure that 504 loan program liquidation and servicing activities continue. SBA is solely responsible for liquidating 504 loans and ensuring the collection of obligations owed to SBA. If this function shuts down, the government would permanently lose critical recovery revenue on defaulted 504 loans.
- 9 employees at OCA’s headquarters office who will be needed to perform orderly shutdown activities, including notifying personnel and stakeholders—including SBA’s 3,000+ lending partners—of the shutdown and its implications; maintaining critical OCA contracts and issuing stop work orders on non-critical contracts; and overseeing OCA’s loan accounting systems and outstanding guaranteed bond portfolio. In addition, employees will ensure the continued operation of the Secondary Market Program, in order that investors of government guaranteed obligations will continue to receive payments, maintaining the integrity of the federal financial system.
- 3 employees at OCA’s National Guaranty Purchase Center in Herndon, VA, who will ensure that the 7(a) loan program liquidation and servicing activities continue. These are loans owned by SBA, therefore SBA is solely responsible for ensuring the collection of obligations owed to SBA. If this function shuts down, the government would permanently lose critical recovery revenue on these government owned loans.

OCA oversees three disaster loan servicing centers that collectively service and liquidate loans approved under SBA’s disaster loan program, which provides low-interest loans to homeowners, renters, businesses and nonprofit organizations to repair or replace assets that have been damaged or destroyed in a declared disaster. The 127 employees that handle these servicing functions are funded by ‘no-year’ disaster funds and are exempt from furlough.

(4) Center for Faith-based and Neighborhood Partnerships (No Excepted Employees)

Faith-based and community organizations can play an important role in helping the SBA reach, train, and finance the entrepreneurs whose businesses will bring jobs and hope to economically distressed communities all across the nation. The Center for Faith-based and Neighborhood Partnerships promotes SBA partnerships with faith-based and community organizations to help build awareness of SBA’s programs that can transform neighborhoods and change lives. Additionally, the office informs faith-based and neighborhood organization of SBA’s loan programs that require non-profit intermediary participation and actively encourages qualified faith-based and neighborhood organizations to apply for certification as microloan intermediaries. The Center will not require any employees for orderly shutdown or protection of property.

(5) Office of the Chief Financial Officer and Performance Management (22 Exempt Employees; 6 Excepted Employees)

The Office the Chief Financial Officer and Performance Management (OCFO) conducts and promotes effective financial management activities for the SBA including budget, credit subsidy, financial operations, financial systems, and internal controls, and procurement. It develops and maintains integrated accounting and financial management systems; directs, manages, and provides policy guidance and oversight of all Agency financial management personnel, activities, and operations; approves and manages financial management systems design and enhancement projects; develops budgets for financial management operations and improvements; implements Agency asset management systems; monitors the financial execution of the Agency budget in relation to actual expenditures; and develops policies and procedures for the procurement of supplies, equipment, and non-personnel services.

The Office of the Chief Financial Officer and Performance Management provides tools and guidance to assist the Agency in expanding its capacity to conduct and utilize the results of program evaluations. It also helps the Agency develop better performance measures in order to facilitate the SBA's continued movement from measuring activity outputs to measuring programmatic and Agency outcomes. It builds Agency capacity for results-based management through training and outreach to program offices and supports the Agency's strategic planning. The office also prepares annual accountability and/or performance reports, and establishes and implements Agency-wide policies for management integrity and audit follow-up, including internal controls.

OCFO also provides disaster accounting services handled by employees that are funded by no-year disaster funds. Employees would be needed to ensure the proper recordation, timely deposit, and accounting of all funds received by SBA. Repayments of thousands of direct loans are handled by OCFO. In addition, staff would be needed for account servicing purposes (e.g. accounting for liquidations and collateral purchases, establishing notes receivable, and posting of court ordered judgments).

The OCFO would have 22 exempt employees report for duty – all are funded by no-year disaster appropriations. In addition, 6 excepted employees are needed for orderly shutdown activities, protection of government property, and to support the SBA's disaster activities.

The exempt no-year funded employees would be needed to ensure the proper recordation, timely deposit, and accounting of all funds received by SBA, process the repayments of hundreds of thousands of direct loans handled by OCFO. In addition, staff would be needed for account servicing purposes (e.g. accounting for liquidations and collateral purchases, establishing notes receivable, and posting of court ordered judgments).

The 6 excepted employees would be needed for the following: office supervision and collections oversight (1 person); protection of the Government's loan investments (2 persons); contracting officer for contract administration and oversight (1 person); and orderly shutdown of headquarters activity related to financial management policies and internal controls (2 persons).

(6) Office of the Chief Information Officer (20 Excepted Employees)

The Office of the Chief Information Officer (OCIO) provides information technology leadership, products, services and operational support for the SBA. The chief information officer is the principal advisor to the Administrator on information technology matters and has overall responsibility for developing, managing and monitoring SBA-wide IT systems, projects, personnel and expenditures. The office provides information technology governance support to the Agency, ensuring that the SBA manages its current and prospective IT investment portfolio in accordance with the laws, regulations and policies applicable across government.

The OCIO manages the SBA's functional IT units encompassing systems development, operations, voice and data communications and user support. Directly or through contractors, the OCIO has responsibility for over 80 current, mission oriented IT systems that support SBA program delivery and enable the Agency to equip and outfit its employees with current hardware, software and computing tools, such as email, wireless capabilities and remote access for telecommuters.

The OCIO is also the Agency's lead office for information security, data privacy, electronic identity protection and incident reporting, including information technology aspects of *COOP*, continuity of operations planning. OCIO has one employee that assists with disaster funded activities and is funded by no-year disaster funds. OCIO also will have 20 employees providing orderly shutdown services and protection of government property.

OCIO's staffing requirements would be dictated by the need to provide minimum information technology support for those business operations which the SBA has determined to be excepted. The scope of these operations includes IT systems and technical support for the computing infrastructure. OCIO's estimated staffing requirement totals 20 persons and can be grouped by the following categories,

1. Executive Management and Oversight to prioritize activities and provide leadership;
2. Information Systems Security and Logical Access Identity Management for maintenance of perimeter security, intrusion detection, and PIV-card access to infrastructure;
3. Emergency IT Support for Employees and Systems at Offices (Nationwide) in a State of Partial Operations;
4. Emergency Acquisition and Budget Operations;
5. IT Support for the Agency's Critical Commercial Loan Guaranty and Portfolio Management Programs, including Disaster Assistance; and
6. Maintenance and Asset Protection for the Agency's Nationwide Office Infrastructure and Key Data;

This core staff can sustain operations during a period of minimal operations without incurring unreasonable risk to the agency's existing investments in its information technology systems and infrastructure.

(7) Office of Communications and Public Liaison (3 Excepted Employees)

The Office of Communications and Public Liaison (OCPL) has the principal responsibility for developing and implementing effective communications strategies to ensure that the SBA's mission, programs, services and initiatives are articulated clearly and consistently to the American public in general and the small business community in specific. It supports field and program offices with planning and implementation of effective communications strategies. OCPL plays the chief role in articulating, explaining and promoting Agency policy and goals to the national news media.

Through Community Relations and the Office of Strategic Alliances within OCPL, the SBA forms alliances with for-profit corporations, small businesses, non-profit organizations, trade and professional associations, academic institutions, and public-sector agencies. The alliances offer opportunities to network on areas of common interest.

This office manages the web content on [www.sba.gov](http://www.sba.gov), an investment integrating web resources to provide small businesses and aspiring entrepreneurs with information services that save time and money, engage citizens to participate, and enable collaboration across all levels of government. OCPL will have three employees providing orderly shutdown services and protection of government property.

(8) Office of Congressional and Legislative Affairs (2 Excepted Employees)

The Office of Congressional and Legislative Affairs (CLA) assist in the development of SBA legislative programs and serves as the communications focal point on legislation and congressional activity. The CLA monitors legislation and policies introduced by Congress and government agencies to determine their effects on the SBA and small business. It furthers the goals of the SBA and enables Members of Congress to best serve their small business constituencies by promptly providing accurate, current, and continuous information to Members of Congress, congressional committees, and others interested in SBA programs. It also devises and implements legislative strategy and has primary responsibility for all matters relating to the congressional and legislative functions of the SBA. It provides liaison with legislative personnel at the White House, the Office of Management and Budget, and various federal departments and agencies. It coordinates with program offices and field offices to ensure continuity and consistency in the SBA's communications with Congress.

CLA will have two employees providing orderly shutdown activities. This is necessary since Congress will continue to work during the lapse in appropriations and if they need information or assistance from SBA, CLA is the main point of contact.

(9) Office of Entrepreneurial Development (5 Excepted Employees)

The Office of Entrepreneurial Development (OED) serves the small business community through outreach and public/private sector collaborative ventures and other creative mechanisms with the purpose of providing management and technical assistance through counseling and training to

America's small businesses that otherwise would not be able to locate or afford trained and professional assistance. OED provides entrepreneurs with free and low-cost education and training, topical information, and management assistance critical for sound decision-making in the start-up and growth phases of the business cycle. The tools used to accomplish this are OED's SCORE, Small Business Development Center, and Women's Business Center programs; the SBA's online training portal; Emerging Leaders; and delivery systems such as the SBA's district offices. Five individuals will be required as excepted employees to provide orderly shutdown.

(10) Office of Equal Employment Opportunity and Civil Rights Compliance (No Excepted Employees)

The Office of Equal Employment Opportunity and Civil Rights Compliance (EEO/CRC) advances Agency-wide diversity at all levels, and equal access to programs and activities receiving SBA financial assistance, this office works to prohibit discrimination against all SBA employees and applicants based on: race, color, sex, age, religion, disability, national origin, and retaliation for opposition to discriminatory practices or participation in the EEO process. The office of EEO and CRC also works to achieve equal employment opportunity for all qualified employees consistent with the nation's workforce diversity. The office works to ensure that no person in the U.S. is denied the benefits of, excluded from participation in, or subjected to discrimination under any program or activity receiving SBA financial assistance, based on race, color, sex, age, disability, national origin, and marital status (extension of credit). In addition, the office ensures that individuals with disabilities have equal access to SBA-conducted or co-sponsored programs and activities. EEO/CRC will not require any employees for orderly shutdown or protection of property. The Office of Equal Employment Opportunity will not be processing cases or holding hearings during the shutdown.

(11) Office of Field Operations (6 Excepted Employees)

The Office of Field Operations (OFO) represents SBA field offices at headquarters. This office provides policy guidance and oversight to regional administrators and district directors in implementing Agency goals and objectives, and in solving problems in specific operational areas. It establishes and monitors performance goals for district offices; provides associate administrators, program heads and the general counsel with a vehicle for overseeing field office program and policy implementation; provides feedback to headquarters management regarding the performance of their programs; ensures that field offices have adequate input into all policy formation and participate in policy deliberations at headquarters; organizes reviews of field offices; informs the SBA Administrator of field activity; and, when necessary, the OFO provides coordination with the ODA.

The Associate Administrator and the Deputy Associate Administrator are the principals of the office and will need to be on hand for the orderly shutdown of field operations functions, including issuing furlough and call to work notice, point of contact to all Field personnel as things develop and change and will be responsible for advising personnel on return to office and close out agency files and records.

The Regional Administrator for SBA Region VIII is the emergency personnel of record for field operations in the event of an emergency in the DC area that impacts the ability of headquarters officials to perform their functions, This Regional Administrator would become the principal of field operation to keep our operations moving (same duties as the Associate Administrator and the Deputy Associate Administrator). In addition, the Union President will be available for Union issues, this is because some of the excepted employees are bargaining unit employees, who, under various circumstances, are entitled to Union representation in conversations with management. The two Business Development special are responsible for the acceptance of contracts and awards and the financial documentation intake and analysis of the 8(a) compliance operations of the field.

(12) Office of General Counsel (1 Exempt Employee, 46 Excepted Employees)

The Office of General Counsel (OGC) provides legal advice in support of all SBA programs and initiatives. The office helps to minimize the Agency's legal risks and costs, reduce litigation exposure; and monitors compliance with the applicable statutes, regulations, Executive Orders and other legal requirements. OGC provides the legal support necessary to defend SBA's interest in judicial and administrative actions, and proactively represents the Agency in all legal matters that arise in the context of its financial assistance, procurement and contracting programs, as well as labor and employment disputes.

The Agency's fiduciary responsibility is not suspended during a shutdown. It is anticipated that the Courts will remain open during the furlough. Accordingly, with respect to litigated matters, substantial impacts can arise in the event the Agency fails to timely file an Answer or other significant pleading or misses an applicable deadline (including a filing prior to an applicable statute of limitations. In such event, SBA could incur substantial liabilities or incur significant losses for which no later opportunity to cure will be available. Further, if a deadline in bankruptcy is missed or collateral is not protected, those assets will be lost forever, potentially resulting in significant losses. Field counsels are necessary to review and approve documentation for 504 loan closings, which represent take-out financing promised by SBA and relied upon by interim/construction lenders and the affected small businesses. Although new 504 loans will not be approved during a shutdown, the currently scheduled 504 closings must continue. SBA also must continue to provide ethics advice, especially to furloughed employees that might need conflict of interest advice.

(13) Office of Government Contracting and Business Development (4 Excepted Employees)

The Office of Government Contracting and Business Development promotes increased small business participation in the federal procurement market for goods and services. The office fulfills the SBA's statutory mission to ensure that a fair share of federal procurement goes to small businesses. Working with federal agencies, the SBA negotiates procurement goals, monitors performance, encourages the use of small business sources, provides procurement training and technical assistance to small firms, and provides policy direction and guidance to federal agencies. Several of the government-wide goals are statutory, including small businesses, small disadvantaged businesses, women-owned small businesses, HUBZone small businesses, and service disabled veterans-owned small businesses.

Four employees will be providing orderly shutdown activities and protection of government property. Additionally, these employees will ensure that the small business contracting programs continue to operate for any agencies or departments not impacted by the shutdown. Key activities include, but are not limited to, certifying firms for the 8(a) business development program and HUBZone program, processing and reviewing protests for small business contracts and combating fraud, waste and abuse in all programs.

(14) Office of Hearings and Appeals (No Excepted Employees)

The Office of Hearings and Appeals (OHA) adjudicates several types of disputes affecting Federal procurements government-wide. Among these types of disputes are appeals of SBA formal size determinations (Size Appeals); appeals from contracting officer designations of North American Industry Classification System codes (NAICS Appeals), and appeals of Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) protest determinations (SDVO SBC Appeals). All NAICS and SDVO SBC Appeals, and nearly all Size Appeals are in connection with pending Federal procurements, and the contracting activity in each of these cases must await OHA's decision before it can award the contract. OHA will not require any employees for orderly shut-down or protection of property.

(15) Office of the Inspector General (1 PAS, 21 Exempt Employees; 3 Excepted Employees)

The Office of Inspector General is an independent office created by law within the SBA to conduct and supervise audits, investigations, and other reviews relating to SBA programs and supporting operations; detect and prevent waste, fraud, and abuse; and promote economy, efficiency, and effectiveness in the administration and management of SBA programs. The Inspector General keeps the SBA Administrator and the Congress fully informed of any problems, recommends corrective actions, and monitors progress in the implementation of such actions. The two operating components of the OIG are the Auditing Division and the Investigations Division. The Auditing and Investigations Divisions each administer their respective activities through staff located in various locations around the country. The Management and Policy and Counsel Divisions support both the inspector general and the operating divisions by providing policy, planning, administrative, and legal services, respectively.

The Inspector General is a Presidentially-appointed and Senate confirmed employee not subject to the shutdown. Twenty-one employees are funded either through no-year disaster funding or funds provided through the American Recovery and Reinvestment Act through FY 13. Three employees will be engaged in orderly shutdown or protection of government property: The Assistant Inspector General for Management and Policy and several OIG Human Resources Specialists will provide necessary personnel services to implement shutdown plans (orderly shutdown). In addition, Criminal Investigators (law enforcement positions) with scheduled court appearances or who are working with offices of the United States Attorney on imminent trials or court appearances (protection of government property) may also be excepted on a case-by-case basis.

#### (16) Office of International Trade (2 Excepted Employee)

The Office of International Trade enhances the ability of small businesses to compete in the global marketplace by facilitating access to capital to support international trade, ensuring the interests of small business are considered and reflected in trade negotiations, and supporting and contributing to the U.S. government's international commercial and economic agenda. One employee will be providing orderly shutdown services and protection of government property.

The Associate Administrator would continue work as the excepted employee responsible for OIT shutdown activities. These activities include: (1) advising OIT headquarters and USEAC field personnel who are in training or on travel to return; (2) closing out OIT files and records that are committed to deadlines; and (3) continuing responses to questions from state agencies during the application phase of the STEP Grant Program (during the interim period of hiring the STEP staff); protecting government property and maintaining basic office functions to ensure continuity of customer services during the interim period of shutdown. The Chief of Operations will also be required to ensure orderly shutdown of OIT services and activities.

#### (17) Office of Investments and Innovation (3 Excepted Employees)

The Office of Investments and Innovation (OII) assist small businesses through the administration of the Small Business Investment Company (SBIC) and the Small Business Innovation Research (SBIR) programs. SBICs are privately owned and managed investment funds that are licensed and regulated by the SBA. They use their own private capital plus funds borrowed with an SBA guaranty to make investments in qualifying small businesses, especially those with potential for substantial job growth and economic impact. The SBIR program helps small businesses to develop innovations to meet the research and development needs of the federal government and then commercialize those innovations in the marketplace. The SBIR program can also advance American innovation and competitiveness in the broader economy.

OII will have three employees providing orderly shutdown services and protection of government property. There are approximately \$2 billion of obligations owed to SBA in the office of SBIC Liquidations. OII oversees approximately 75 SBICs and a number of assets owned by SBA. The Office of Liquidation anticipates collecting between \$200 and \$300 million this fiscal year. There are approximately 30 SBIC receiverships for which SBA has been appointed Receiver owing SBA several hundred million dollars. The SBA receiverships require approval from SBA personnel to conclude transactions. In a number of instances this includes execution of investment or sale transaction documents. Among the activities required to be completed are approving and authorizing the expenditure of receivership funds, including the issuing of receivership checks to pay the various bills and obligations of the receivership estates. OII is crucial for arranging the collection of obligations, paying bills, and meeting SBA's duties. These are fiduciary obligations not only for the benefit of SBA but other creditors, claimants, and stakeholders of the receivership estates. Failure to meet these obligations and protect the receivership estates is not only harmful to the federal government but would harm other parties. The result of SBA not meeting these obligations and breaching accepted duties would subject the federal government to additional liability. In addition, personnel will be needed for the orderly shutdown and protection of property of the SBIC, SBIR and STTR Programs.

(18) Office of Management and Administration (1 Exempt Employees, 17 Excepted Employees)

The Office of Management and Administration (M&A) is responsible for all aspects of personnel, employee relations, grants management, space management, mailroom operations, and controlled correspondence. The Associate Administrator for the Office of Management and Administration, as head of this office, has oversight responsibility for the Office of Human Capital Management, the Office of Grants Management, the Office of Administrative Services, and the Office of the Executive Secretariat. Generally, the excepted employees in these offices will conduct activities necessary for the orderly shutdown of office functions and protection of property. They will be responsible for facilities management and security, infrastructure support, continuity planning and execution, non-executive records management, and other core facility operations. Two M&A excepted employees will provide overall management and ensure Agency continuity of operation activities.

- The Office of Human Capital Management (OHCM) develops and provides innovative human capital strategies. The OHCM advises SBA management with respect to selecting, developing and managing a high-quality, productive workforce. This office sets the SBA's workforce development strategy; assesses current workforce characteristics and future needs based on the SBA's strategic plan; aligns human resources policies with organization mission, strategic goals, and performance outcomes; develops and advocates a culture of continuous learning to attract and retain employees with superior abilities; identifies best practices and benchmarks studies; and creates systems for measuring intellectual capital and identifying links of that capital to organizational performance and growth. This office also implements laws, rules and regulations governing the civil service. OHCM will perform the following critical functions: issuing furlough notices, payroll, and human resource specialists needed to process furlough notices and payroll. This office will have 12 excepted employees. One of the SES Candidates is disaster funded and attributed to this office.
- The Office of Grants Management (OGM) awards and administers all grants under SBA's authorization and appropriations, with the exception of the small business development center and women's business center grants which are awarded and administered by the respective program offices. In the case of congressional earmark grants, the OGM serves as the technical representatives for the grants as well. The director of OGM serves as SBA's senior grant officer and represents the Agency on all interagency grant-related policy making groups. This office will not require any employees for orderly shutdown or protection of property.
- The Office of the Executive Secretariat (Exec. Sec.) works with senior management officials to formulate the Administrator's and Deputy Administrator's written correspondence. Under the leadership of the associate deputy administrator for management and administration, ExecSec reviews, edits,

and manages correspondence. Exec. Sec. ensures that correspondence and written products are delivered in the most timely and efficient manner, while providing useful, reliable information, and advice to Congress, other federal agencies, and small business owners nationwide. The Director for the Office of Executive Secretariat has oversight responsibility for the following critical functions: records management for the agency's executive team, managing the administrator's written correspondence, managing the agency's call center operation, and managing the agency's official circulation and approval process. One employee will remain in this office for orderly shutdown activities and protection of government records.

- The Office of Administrative Services provides facilities and space management, mail services, and physical security, and manages personal identity verification (PIV) card systems. Two employees will remain in this office for orderly shutdown activities, physical security of exempt and excepted employees, and protection of government records.

#### (19) Office of the National Ombudsman (No Excepted Employees)

The Office of the National Ombudsman (ONO) fosters a more small-business-friendly federal regulatory enforcement environment by assisting small businesses when they experience excessive federal regulatory enforcement actions, such as repetitive audits or investigations, excessive fines, penalties, threats, retaliation, or other unfair enforcement action by a federal agency. It does this by evaluating how federal agencies treat small businesses during enforcement or compliance actions. ONO will not require any employees for orderly shutdown or protection of property.

#### (20) Office of Native American Affairs (No Excepted Employees)

The SBA, through its Office of Native American Affairs (ONAA), coordinates Native American initiatives and develops policies and procedures to ensure that SBA assistance is made available to American Indians, Native Alaskans, and Native Hawaiians. The initiative consists of three major components: marketing, outreach, and training to enhance business opportunities. ONAA will not require any employees for orderly shutdown or protection of property.

#### (21) Office of Veterans Business Development (1 Excepted Employee)

The Office of Veterans Business Development (OVBD) conducts comprehensive outreach on behalf of the Agency and is responsible for the formulation, execution, and promotion of policies and programs of the Administration. To accomplish these tasks, OVBD operates its national outreach initiative and provides direct service delivery through funding agreements with resource partners, coordination of outreach and service delivery with other federal agency partners, and development of Agency program initiatives. OVBD will require an employee for orderly shutdown or protection of property, in order to provide procurement guidance to veteran-owned small businesses and grant guidance to the Veteran Business Outreach Centers.

## APPENDIX C -- SBA EXEMPT OR EXCEPTED EMPLOYEES

Administrator: (2 PAS Exempt Employees; 2 Excepted Employees)

- Administrator
- Deputy Administrator
- Chief of Staff
- Deputy Chief of Staff

Advocacy: (1 PAS Exempt Employees; No Excepted Employees)

- Chief Counsel for Advocacy

Capital Access: (127 Exempt Employees; 35 Excepted Employees)

Excepted Employees (35)

- Office of Capital Access (OCA), Washington, DC
  - Acting Associate Administrator
  - Deputy Associate Administrator
  - Director, Office of Credit Risk Management
  - Director, Office of Financial Assistance
  - Director, Office of Financial Program Operations
  - Director, Office of Surety Bond Guarantees
  - Acting Director, Loan Management and Accounting System
  - Financial Analyst
- Fresno Commercial Loan Servicing Center, Fresno, CA
  - Center Director
  - Supervisor
  - 7 Loan Officers
  - Loan Servicing Assistant
  - Attorney
- Little Rock Commercial Loan Servicing Center, Little Rock, AR
  - Center Director
  - Supervisor
  - 8 Loan Officers
  - Loan Servicing Assistant
  - Attorney
  - Paralegal
- National Guaranty Purchase Center (NGPC), Herndon, VA
  - Deputy Director
  - Loan Officer

- Center Counsel

Exempt Employees (127)

- Office of Financial Program Operations (OFPO), Washington, DC
  - 1 Deputy Director (Disaster)
  - 1 Program Analyst (Disaster)
- El Paso Disaster Loan Servicing Center, El Paso, TX
  - Director
  - 1 Administrative Officer
  - 3 Attorney Advisors
  - 1 Financial Analyst
  - 2 Information Technology Specialists
  - 9 Loan Servicing Assistants
  - 3 Loan Specialists
  - 5 Office Automation Assistants
  - 1 Program Support Assistant
  - 1 Supervisory Financial Analyst
  - 1 Supervisory Loan Specialist
- Birmingham Disaster Loan Servicing Center, Birmingham, AL
  - 1 Attorney Advisor
  - 1 Center Counsel
  - 1 Director
  - 3 Financial Program Specialists
  - 2 Information Technology Specialists
  - 2 Legal Assistants
  - 18 Loan Servicing Assistants
  - 12 Loan Specialists
  - 4 Office Automation Assistants
  - 1 Supervisory Financial Specialist
  - 1 Supervisory Loan Specialist
  - 3 Team Leaders
- Santa Ana National Disaster Loan Resolution Center, Santa Ana, CA
  - 1 Administrative Officer
  - 2 Attorney Advisors
  - 1 Deputy Director
  - 1 Director
  - 1 Financial Analyst

- 2 General Attorneys
- 1 Information Technology Specialist
- 1 Lead Loan Specialist
- 1 Legal Assistant
- 4 Loan Servicing Assistants
- 24 Loan Specialists
- 3 Office Automation Assistants
- 1 Paralegal Specialist
- 1 Supervisory General Attorney
- 2 Supervisory Loan Specialists

Center for Faith Based Initiatives: (No Excepted Employees)

- None

Chief Financial Officer: (22 Exempt Employees; 6 Excepted Employees)

- Chief Financial Officer
- Deputy Chief Financial Officer

Management and Administrative Staff

- Management & Program Analyst (1)
- Accountant (1)
- Management & Program Assistant (2)

Administrative Accounting Branch Staff

- Accountant (1)
- Accounting Technician (6)
- Financial Specialist (2)
- File Clerk (1)

Financial Reporting Branch

None

Acquisition Division

- Contract Specialist (2)

Financial Operations Branch

- Supervisory Accountant (1)
- Financial Specialist (1)
- Accounting Technician (3)

Financial Assurance Branch

None

Programmatic Accounting Branch

- Accounting Technician (2)
- Financial Specialist (1)

Financial Systems

- IT Specialist (1)
- Disaster Servicing Funded IT Specialist (1)

Chief Information Officer: (20 Excepted Employees)

- Chief Information Officer
- Deputy CIO
- Information Security
- Field Information Technology Specialist (2)
- Principal E-mail Administrator
- Acquisition Support Analyst , IT
- Acquisition Support Analyst; Budget
- Acquisition Support Analyst; Web Content
- Acquisition Support Analyst; Systems & Commercial Loan Guaranty Contracts
- IT Specialists, Commercial Loan Guaranty and Portfolio Management Program (2)
- IT Specialists, Maintenance and Asset Protection for the Agency's Nationwide Office Infrastructure and Key Data (7)
- Chief Information Security Officer (CISO)

Communications & Public Liaison: (3 Excepted Employees)

- Associate Administrator
- Online Media Information Specialist
- Press Secretary

Congressional & Legislative Affairs: (2 Excepted Employees)

- Associate Administrator
- Deputy Associate Administrator

Disaster Assistance and Office of Disaster Planning (1,217 Exempt Employees)

- All employees

Entrepreneurial Development: (5 Excepted Employees)

- Associate Administrator
- Deputy Associate Administrator
- Deputy Associate Administrator/Office of Small Business Development Centers
- Deputy Director/Office of Entrepreneurial Education
- Deputy Assistant Administrator/Office of Women's Business Ownership

Equal Employment Office: (No Excepted Employees)

- None

Field Operations: (6 Excepted Employees)

- Associate Administrator
- Deputy Associate Administrator
- Regional 8 Administrator
- Business Development Specialist
- Business Development Specialist
- Economic Development Specialist (Union President)

General Counsel: (1 Exempt Employee; 46 Excepted Employees)

- General Counsel
- Deputy General Counsel (1)
- Associate General Counsel (1)
- Trial Attorney (2)
- Attorney-Advisor (1)
- General Attorneys (district offices) (39)
- Designated Agency Ethics Official (1)

Government Contracting & Business Development: (4 Excepted Employees)

- Acting Associate Administrator
- Deputy Associate Administrator
- Associate Administrator of Business Development
- Director, Office of Government Contracting

Hearings & Appeals: (No Excepted Employees)

- None

Inspector General (1 PAS, 21 Exempt Employees; 3 Excepted Employees)

- Inspector General

- Criminal Investigator (10)
- Assistant Inspector General (1)
- Auditor (7)
- Program Analyst (1)
- Mission Support Specialist (1)
- Student Intern (1)
- Secretary (1)
- OIG Human Resources Specialist (2)

International Trade (2 Excepted Employees)

- Associate Administrator
- Chief of Operations

Investment and Innovation (3 Excepted Employees)

- Associate Administrator
- Senior Advisor
- Financial Analyst

Management & Administration: (1 Exempt Employee; 16 Excepted Employees)

- Acting Associate Administrator
- Chief Human Capital Officer
- Director, Office of Administrative Services
- Director, Executive Secretariat
- Human Resource Specialists (10)
- Supervisor (Mail Facilities)
- Senior Policy Advisor
- Program Analyst

National Women's Business Council: (No Excepted Employees)

- None

Native American Affairs (No Excepted Employees)

- None

Ombudsman: (No Excepted Employees)

- None

Veterans Business Development: (1 Excepted Employee)

- Associate Administrator

## APPENDIX D --\_SAMPLE FURLOUGH DECISION NOTICE DUE TO LAPSE OF APPROPRIATIONS (5 CFR PART 752)

*This would be used for a "shutdown" furlough, where the agency no longer has the necessary funds to operate and must curtail those activities not excepted by OMB standards. In such instances there is no advance written notice proposing the action. See 5 CFR 752.404(d) and 359.806(a).*

In the absence of either an FY 2011 appropriation, or a continuing resolution for the Small Business Administration (SBA), no further financial obligations may be incurred by SBA, except for those related to the orderly suspension of SBA's operations or performance of excepted activities as defined in the Office of Management and Budget memorandum for Heads of Executive Departments and Agencies dated November 17, 1981. Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective (enter date). This furlough, e.g., non-pay, non-work status, is not expected to exceed 30 days. Therefore, this furlough will be in effect until further notice.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d)(2) and under 5 CFR 359.806(a) for SES career appointees.

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined by the Office of Management and Budget.

During the furlough period, you will be in a non-pay, non-duty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, but must remain away from your work place unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. SES career appointees adversely affected may also appeal. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. The Board's regulations may be found by visiting the MSPB website at <http://www.mspb.gov/appeals/appeals.htm> and explain the appeal procedure should you decide to file an appeal. Additionally, a copy of the appeal form may also be obtained at the MSPB website at: <https://e-appeal.mspb.gov/PDFTemplate/MspbAppealForm.pdf>.

Bargaining unit employees may grieve this action in accordance with the 1999 Master Agreement, Articles 34 & 39, or may appeal to MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact (name of exclusive union representative).

\_\_\_\_\_  
Deciding Official                      Date

I acknowledge receipt of this decision.

\_\_\_\_\_  
Employee's Signature                      Date

## APPENDIX E --- FREQUENTLY ASKED QUESTIONS

The Office of Management and Budget (OMB) has issued OMB Memorandum #M-11-13, Planning for Agency Operations During a Lapse in Government Funding, which is available at <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2011/m11-13.pdf>. This Memorandum contains Frequently Asked Questions regarding a lapse in appropriations. In addition, below are answers to some Frequently Asked Questions concerning a furlough created by a lapse in appropriations. For additional information on furloughs generally, including furloughs caused by a lapse in appropriations, please visit the OPM website at <http://www.opm.gov/furlough/furlough.asp>.

### 1. What is a Shutdown?

Answer. Shutdown occurs when there is a lapse in appropriations. The Antideficiency Act does not permit agencies to expend or obligate funds except to maintain the minimum level of emergency activities and to affect an orderly shutdown of Government operations. As a result, all “non-excepted” staff is subject to furlough.

### 2. What is the current status?

Answer. As of today, our FY11 Appropriations have not been signed. We are currently operating under a continuing resolution which expires December 16, 2011.

If there are no appropriations or a new continuing resolution as of December 17, 2011, we expect to be told by the Office of Management and Budget (OMB) to report to work to report to work on Monday, December 19, 2011. If our appropriations or a new continuing resolution has not been signed or is not expected to be signed that morning, we will be told by OMB to begin shutdown procedures.

### 3. What are “emergency” activities?

Answer. Agencies activities which, if suspended, would threaten the safety of human life or the protection of property. Such activities are permitted to continue. In the past, these activities have been determined to include: some liquidation activities; some counsel activities where default or judgment may occur. Disaster activities, loan servicing and loan making will continue because of their “no-year” appropriations.

### 4. Will I be paid at some point for the time I am furloughed?

Answer. At this time, we don’t know if you will be paid for the time you are furloughed. In the past, Congress has authorized retroactive pay. There is no guarantee this will occur again.

### 5. What if I am designated “excepted”?

Answer. “Excepted” staff will be paid late when appropriations issues are resolved, as this is a legal obligation.

6. May I volunteer my services?

Answer. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual.

7. May an employee not excepted from the furlough take previously approved paid time off (e.g., annual, sick, court, military leave, or leave for bone marrow/organ donor leave, or compensatory time off, including religious compensatory time off) during a shutdown furlough?

Answer. No. All paid time off during a shutdown furlough period must be canceled because the requirement to furlough supersedes leave and other paid time off rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid time off creates a debt to the Government that is not authorized by the Act. Therefore, agencies are instructed that during a shutdown furlough, all paid time off must be canceled.

8. Are employees who are not excepted from the furlough allowed to take paid leave or other paid time off during periods when other employees are performing work necessary for an orderly suspension of agency operations?

Answer. No. All paid leave or other paid time off is cancelled during a period when a lapse in appropriations is in effect. There is no authority to obligate funds for paid time off during a lapse in appropriations. Employees who are not excepted from the furlough are allowed to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. Being on paid leave is not an activity necessary to execute an orderly suspension of agency operations. Agencies should determine on a case-by-case basis whether it is necessary to require employees who had been scheduled to take paid time off to report to duty to perform orderly suspension activities.

9. If the continuing resolution budgetary authority expires before my retirement under VERA/VSIP becomes effective, will the retirement be processed?

Answer: In the event the continuing resolution budgetary authority expires before your VERA/VSIP retirement becomes effective, all human resources operations and processing will cease. Processing will resume as soon as the Federal government is provided additional funding and employees are permitted to return to work. If you have specific questions, please contact the mailbox at [vera/vsip@sba.gov](mailto:vera/vsip@sba.gov).

10. What other issues should I consider if I am furloughed?

Unemployment compensation: It is possible that employees may be eligible for unemployment compensation during a furlough. State unemployment compensation requirements and waiting periods differ. Employees should submit their questions to the appropriate State office. When

you visit your local unemployment office, you will want to take along Standard Form 8, a copy of your last earnings and leave statement, and a copy of your furlough letter. All SBA unemployment claims are handled by the TALX Company, which is noted on the SF-8. The TALX Company is responsible for processing claims and employee appeals with the State unemployment offices. If you have questions regarding your claim, please contact TALX. If you collect unemployment compensation and retroactive pay is eventually authorized, you will be required to pay back the unemployment compensation you received.

Health benefits, life insurance and within grade increases:

- Health benefits: enrollment continues for up to 365 days in a non-pay status. The Government contribution continues while employees are in a non-pay status. Employees can choose between paying the agency directly on a current basis or having the premiums accumulate and be withheld upon return to duty.
- Life Insurance: coverage continues for up to 12 consecutive months in a non-pay status without cost to the employee (5CFR 870.401(c)) or to the agency 5CFR 870.401 (d)).
- Within grade increase: Employees may be in a non-pay status for the following periods before the within grade due date is affected – 2 workweeks for advancement to steps 2,3 and 4; 4 workweeks for advancement to steps 5, 6 and 7; and 6 workweeks for advancement to steps 8, 9 and 10.

Annual/sick leave: all annual and sick leave is cancelled for furloughed workers because furlough takes precedence over prior approved leave.

Outside Employment: While on furlough, all government ethics rules (5 CFR Part 2635) and SBA Standards of Conduct rules (13 CFR Part 105) still apply, including rules relating to conflicts of interest with your official position. Thus, you should not engage in outside employment with a person who is an applicant for or recipient of SBA Assistance, or who has an official matter pending before the Agency, without first consulting with an SBA ethics official. In addition, while engaging in outside activity (with or without compensation), no Government materials, resources or non-public information may be used; every effort should be made to ensure that your statements or positions are understood to be personal and not sanctioned by SBA; and you shall not use or permit the use of your official SBA title. In addition, you may not make representational appearances before any Federal department, agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest. If you have questions concerning these rules, please consult your Agency ethics official.

## APPENDIX F -- RESOURCES

In developing this Plan, SBA relied on guidance provided by the Department of Justice (DOJ), Office of Management and Budget (OMB), and the Office of Personnel Management (OPM). This guidance also incorporates findings from the Government Accountability Office (GAO) as well as various statutory provisions governing employee relations and the Antideficiency Act.

### A Department of Justice:

(1) Opinion of the U.S. Attorney General issued on April 25, 1980, concerning the effect of the Anti-Deficiency Act on a Federal agency during a prolonged lapse in its appropriations from Congress once its current appropriations have expired. The Attorney General determined that an agency may not incur any obligation that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law. However, the Attorney General determined that an agency may incur limited obligations during a prolonged lapse in funding, if those obligations are necessary for the orderly termination of the agency's activities. The opinion made it clear that DOJ would actively enforce the criminal provisions of the Anti-Deficiency Act in the case of willful violations.

(2) Opinion from the U.S. Attorney General dated January 16, 1981. This second opinion from DOJ on the effect of the Anti-Deficiency Act during funding gaps, also incorporated OMB policy guidance and addressed how the Anti-Deficiency Act would affect an agency whose funds expire during a temporary funding lapse (i.e., no prolonged lapse in agency appropriations is anticipated). The Attorney General opined that if the funding lapse is anticipated to be temporary, an agency whose appropriations have expired could incur obligations only for activities related to the safety of human life or the protection of property. The categories of essential activities contained in the OMB memorandum were expressly approved by the Attorney General. No approval was given for obligations involving orderly termination activities during a temporary funding lapse.

(3) Opinion from Assistant U. S. Attorney General to the Director of OMB issued on August 16, 1995, which clarified that only those functions considered emergencies involving the safety of human life or the protection of property would continue upon exhaustion of available funding.

### B. Office of Management and Budget:

(1) OMB Memorandum, *Agency Operations in the Absence of Appropriations*, dated September 30, 1980, which states that in the absence of new appropriations, agencies may continue only those activities otherwise authorized by law, and those necessary to begin phasing down other activities.

(2) OMB Bulletin No. 80-14, *Shutdown of Agency Operations Upon Failure by Congress to Enact Appropriations*, "dated August 28, 1980, as amended by Memorandum dated November 17, 1981 and Bulletin 80-14, Supplement No.1, dated August 20, 1982. These bulletins provided policy guidance and instructions for executive branch agencies to follow when Congress fails to enact regular appropriations, a continuing resolution, or a needed supplemental appropriation,

thereby interrupting funds availability. The guidance instructed each agency to develop a contingency plan for the orderly shutdown of operations. The memorandum also included examples of essential activities that could be continued during these funding gaps because they involve the safety of human life and the protection of property.

(3) OMB Circular A-11, Section 124, *Agency Operations in Absence of Appropriations* (2010) provides policy guidance and instructions for actions to be taken by in the event of a lapse in funding availability.

#### C. United States Code

(1) Title 5 CFR, Part 752, Adverse Actions, which incorporates the principal statutory requirements for suspensions of 14 days or less for employees in the SES.

(2) Title 5 U.S.C., Chapter 71, “Labor Management Relations,” protects the right of employees to organize, bargain collectively, and participate through labor organizations of their own choosing in decisions that affect them.

(3) Title 5 U.S.C., Section 6301, “Federal Employees Family Friendly Leave Act,” which governs leave in the Federal service.

(4) Title 31 U.S.C., Section 1341, “Anti-Deficiency Act,” which states that no Federal officer or employee may authorize Government obligations or expenditures in advance of or in excess of an appropriation, unless otherwise authorized by law.

(5) Title 31 U.S.C., Section 1342, which states no Federal officer or employee may accept voluntary services, except as authorized by law.

#### D. Government Accountability Office

GAO Report, B-202135, *Funding Gaps Jeopardize Federal Government Operations*, dated March 3, 1981, which addressed the problems created by late appropriations and funding interruptions; described the factors that delay the enactment of legislation; and recommended actions to prevent funding delays in the future.

GAO Report, B-202135, *Cost to the Government of the Recent Partial Shutdown of Government Offices*, dated December 10, 1981, discussing costs of a partial shutdown in 1981.

GAO Testimony, B-221681, *Charles Bowsher, Comptroller General, before the Committee on Rules, House of Representatives*, dated April 21, 1982, which discussed issues arising from funding gaps.

GAO Report, B-241730, *Government Shutdown: Data on Effects of 1990 Columbus Day Weekend Funding Lapse*, dated October 19, 1990, which addressed issues arising from a shutdown over the Columbus Day weekend of 1990.

GAO Letter, B-087761, *James Hinchman, General Counsel, to John Kominski, General Counsel, Library of Congress*, dated October 23, 1990, which discusses incurrence of obligations to bring about an orderly termination of an Agency's activities.

GAO Report, GGD-91-76, *Government Shutdown: Permanent Funding Lapse Legislation Needed*, dated June 6, 1991, which addressed issues relating to shutdowns and made a recommendation of new legislation.

GAO Report, B-270634, *Summary of Data Available on the Number of Federal Employees Who May be Subject to Furlough in the Event of a Further FY 1996 Funding Lapse*, dated December 1, 1995, which discusses employees affected by a shutdown in FY 1996.

E. Congressional Research Service

CRS Report, *Shutdown of the Federal Government: Causes, Processes, and Effects*, February 18, 2011.