

**HUMAN CAPITAL CONTINGENCY PLANNING
IN ADVANCE OF A LAPSE IN APPROPRIATIONS**

1. **REASON FOR ISSUE:** This new directive establishes the Department of Veterans Affairs (VA) policy for human capital contingency planning in the event of a lapse in appropriations. Contingency planning ensures compliance with Office of Management and Budget (OMB) Circular A-11, Section 124, OMB Memorandum, M-18-05, the Antideficiency Act and other legal and regulatory requirements.
2. **SUMMARY OF CONTENTS:** This directive establishes the policies and responsibilities for administering the Department-wide human capital contingency planning process. The purpose of contingency planning is to prepare for continuance of operations in the event of a lapse in appropriations and provide for an orderly shutdown in the event of a lapse in appropriations. This directive will be maintained on the [Office of the Chief Human Capital Officer Website](#) and [VA Publications Website](#). Templates and additional detailed instruction will be available on the Office of the Chief Human Capital Officer Contingency Planning [website](#).
3. **RESPONSIBLE OFFICE:** Office of the Chief Human Capital Officer (OCHCO) (05), Strategic Human Capital Planning Service (053).
4. **RELATED DIRECTIVES/HANDBOOKS:** None.
5. **RESCISSIONS:** None.

CERTIFIED BY:

**BY DIRECTION OF THE SECRETARY
OF VETERANS AFFAIRS:**

/s/
Guy T. Kiyokawa
Assistant Secretary for
Enterprise Integration

/s/
Gina M. Grosso
Assistant Secretary for
Human Resources and Administration/
Operations, Security and Preparedness

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HUMAN CAPITAL CONTINGENCY PLANNING IN ADVANCE OF A LAPSE IN APPROPRIATIONS

1. PURPOSE.

- a. This directive sets forth the Department of Veterans Affairs (VA) policy for human capital contingency planning. It defines the roles and responsibilities across VA for human capital contingency planning and incorporates regulatory and other legal requirements to be used in the event of a lapse in appropriations.
- b. This directive applies to all VA Administrations and Staff Offices except for the Office of the Inspector General.

2. POLICY.

- a. Executive Branch agencies must take certain actions when Congress fails to enact regular appropriations, needed supplemental appropriations, or a continuing resolution, resulting in a lapse in appropriations.¹ Contingency planning is the process used to prepare agencies to continue operations in the event of a lapse in appropriations. During this process, the agency head is tasked with identifying which agency activities are excepted or otherwise legally authorized to continue during a lapse in appropriations.
- b. The Department's Contingency Plan shall:
 - (1) Describe actions to be taken during a short lapse (1-5 days);
 - (2) Identify anticipated changes if the lapse extends beyond that time period;
 - (3) Designate personnel responsible for implementing and adjusting the plan to respond to the length of the lapse in appropriations and changes in external circumstances;
 - (4) Estimate the time period (to the nearest half day) required to complete shutdown activities;
 - (5) Describe the extent that specific shutdown activities will not be completed within one-half day (4 hours);
 - (6) Include the total number of employees in VA on-board before implementation of the plan;
 - (7) Include the total number of employees excepted from the furlough in VA for each category listed in section d below;

¹ When federal agencies and programs lack appropriated funding, they experience a "funding gap." The absence of a Continuing Resolution or annual appropriations act on October 1 generally will not lead to a "funding gap" for activities funded by (a) appropriations that do not expire at the end of the fiscal year, such as multi-year or no-year appropriations, including revolving funds, and (b) advance appropriations. To the extent funds remain in such accounts, normal activities may continue.

- (8) Describe the legal basis for each of its determinations for the excepted categories of employees;
 - (9) Describe the actions that will be necessary to resume orderly operations once appropriations are restored; and
 - (10) Be approved by the Assistant Secretary for Human Resources and Administration / Operations, Security and Preparedness, as developed by the VA Chief Human Capital Officer.
- c. VA functions are stratified into two categories: non-excepted from furlough and excepted from furlough (which includes exempt² employees/functions). During this stratification process, all VA functions shall be determined as either non-excepted or excepted, regardless of:
- (1) Service (Competitive Service, Excepted Service, or Senior Executive Service);
 - (2) Hiring authority (Title 5, Title 38);
 - (3) Work schedule (full-time, part-time, intermittent, or seasonal);
 - (4) Pay status (paid, volunteer/unpaid, student, leave without pay); or
 - (5) Bargaining unit status.
- d. Under Secretaries, Assistant Secretaries and Other Key Officials must place Administration and Staff Office positions that are excepted from furlough into one of five categories, prescribed in the OMB Circular A-11:
- (1) **Compensation is Financed by a Resource other than Annual Appropriations:** Positions that are funded by sources other than lapsed annual appropriations such as advance appropriations, no-year appropriations, carryover of multi-year funds appropriated in a prior year, permanent indefinite appropriations, trust funds, user fees received in advance, reimbursements received in advance, or other indefinite appropriation provisions that do not require passage of annual appropriations legislation;
 - (2) **Necessary to Perform Activities Expressly Authorized by Law:** Positions that have been declared to be necessary via a clear, distinctly stated law, contract, or regulation. In this case, functions or positions have been granted permission (usually by U.S. Congress) to continue to perform their activities, such as Presidential appointees who are not covered by the leave system in 5 U.S.C. chapter 63;³

² If Congress fails to enact a Continuing Resolution or regular appropriations act in a timely manner, certain employees are "exempt" from furlough if their work is funded by a source of funds that has not expired, such as a revolving fund or advance appropriations. Presidential appointees who are not subject to a Federal employee leave system and cannot be placed in non-duty/non-pay status are also "exempt" from furlough.

³ According to the Department of Justice, "... there are circumstances in which employees do not incur any obligation by continuing to work. Those few employees who are paid by virtue of holding an office like presidential appointees who are

- (3) **Necessary to Perform Activities Necessarily Implied by Law:** Positions that are excepted from a furlough because the lawful continuation of certain excepted activities inevitably implies that these additional activities will continue;
- (4) **Necessary to the Discharge of the President's Constitutional Duties and Powers:** This exception applies where the Constitution itself authorizes the President to take action as commander-in-chief, to make treaties, and to engage in those other essential functions of national defense and foreign relations. These positions are typically filled by individuals who have been appointed by the President however, not all presidential appointees should automatically be assigned to this exception category;

or

- (5) **Necessary to Protect Life and Property:** Positions in which their suspension will imminently threaten the safety of life or the protection of property. For positions or functions in this category, there is a reasonable likelihood that the safety of life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function.
- e. Functions that are determined to be non-excepted from furlough will be furloughed if there is a lapse in appropriations. Employees supporting these functions are barred from working during an absence of appropriations and may not volunteer to work without pay. Acceptance of voluntary services is a violation of the Antideficiency Act and will not be permitted. Violations of the Antideficiency Act may lead to administrative and criminal penalties.
 - f. Functions or positions that are excepted from furlough will continue to be performed during a lapse in appropriations. Such activities qualify as exceptions to the Antideficiency Act. Employees performing such functions or holding such positions will generally continue to work in a non-paid status.⁴ However, 31 U.S.C. 1341 authorizes retroactive pay for Federal employees affected by a lapse in appropriations. After the lapse ends, excepted employees will receive their standard rate of pay for the actual hours they worked (e.g., including any overtime or other premium pay, allowances, and differentials earned based on actual hours worked). Any time that an excepted employee is placed in a furlough status the employee will be compensated under the rules for furloughed employees.

confirmed by the Senate, do not bring about an obligation to be paid by coming to work, but merely by holding the office. So there is no obligation created by those individuals coming to work and they are therefore outside the Antideficiency Act." See prepared statement of Walter Dellinger, Assistant Attorney General, in U.S. Congress, Senate Committee on the Budget and House Committee on the Budget, Effects of Potential Government Shutdown, hearing, 104th Cong., 1st sess., September 19, 1995, S.Hrg. 104-175 (Washington, DC: GPO, 1995), p. 14.

⁴ OMB Circular A-11, See 'Applicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriations,' 4A Op. O.L.C. 16 (1980); 'Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations,' 5 Op. O.L.C. 1 (1981) (1981 Opinion); and Memorandum for Alice Rivlin, OMB, from Walter Dellinger Assistant Attorney General Re: Government Operations in the Event of a Lapse in Appropriations (August 16, 1995).

3. RESPONSIBILITIES.

- a. **The Assistant Secretary for Human Resources and Administration/Office of Security and Preparedness (ASHRA/OSP)** serves as the principal advisor to the Secretary on all VA human capital contingency planning matters.
- b. **Under Secretaries, Assistant Secretaries and Other Key Officials** shall:
 - (1) Oversee human capital contingency planning activities within their respective organization and ensure compliance with all requirements in this directive;
 - (2) Appoint individual(s) responsible for establishing, managing, and retaining human capital contingency planning requirements and submissions for the organization;
 - (3) Direct supervisors, managers, and other leaders to disseminate official lapse in appropriation/furlough notifications to employees;
 - (4) Ensure employees receive communication necessary to resume orderly operations once appropriations are restored;
 - (5) Respond to Department level requests for information and data calls by established due dates; and
 - (6) Ensure that the appropriate authorizing/approving officials digitally or electronically sign official lapse in appropriation/furlough notifications in accordance with [VA Directive 5021, Employee/Management Relations](#).
- c. **The Chief Human Capital Officer** shall:
 - (1) Advise and assist the ASHRA/OSP and other Agency officials in carrying out the Department's responsibilities for human capital contingency planning in the event of a lapse in appropriations;
 - (2) Implement the rules and regulations of the Office of the President, the Office of Management and Budget, the Office of Personnel Management and the laws governing contingency planning in the event of a lapse in appropriations within VA;
 - (3) Liaise with OMB and VA's Office of Management to receive and disseminate up to date lapse in appropriation and human capital contingency planning information for the Department;
 - (4) Lead, engage and obtain support of senior leaders in Department-wide human capital contingency planning initiatives;
 - (5) Disseminate communication to the Department at various points in the human capital contingency planning process;
 - (6) Ensure Department-wide compliance with this directive;

- (7) Provide final approval authority for all Department-level human capital contingency planning initiatives, actions and reports; and
 - (8) Support the goals of this directive and develop and maintain a biennial VA Contingency Plan to prepare the Department for continuance of operations in the event of a lapse in appropriations.
- d. **The Assistant Secretary for Management and Chief Financial Officer** shall
- (1) Liaise with OMB and HRA/OSP to receive and disseminate up to date lapse in appropriation and human capital contingency planning information for the Department; and
 - (2) Coordinate with HRA/OSP and the Chief Human Capital Officer to support the goals of this directive.
- e. **Director, HRA/OSP, OCHCO, Strategic Human Capital Planning Service** shall:
- (1) Support the goals of this directive by leading, facilitating and providing advisory services for human capital contingency planning to:
 - (a) Provide advisory services, policy guidance, fact sheets and templates to increase the readiness of Administrations and Staff Offices to prepare for a lapse in appropriations;
 - (b) Review exception determinations submitted by Administrations and Staff Offices for compliance with established policies and guidance;
 - (c) Provide recommendations to strengthen and improve the efficiency and effectiveness of Administrative and Staff Office contingency plans in meeting VA goals, OMB guidelines and program outcomes;
 - (d) Monitor the overall progress VA makes in meeting human capital contingency planning goals and objectives;
 - (e) Develop and implement accountability tools and measures to ensure compliance with this directive; and
 - (f) Periodically assess the efficiency and effectiveness of the policy to ensure VA is meeting intended outcomes.
 - (2) Ensure major human capital contingency planning adjustments affecting VA are addressed in the most recent contingency plan.
 - (3) Implement Department-wide human capital contingency planning policy, guidance, tools and processes.
 - (4) Develop and maintain a biennial VA Contingency Plan to prepare the Department for continuance of operations in the event of a lapse in appropriations.

4. DEFINITIONS.

- a. **Emergency employee:** employees who must report for work in emergency situations-- e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or which require agencies to close all or part of their activities.
- b. **Excepted employee:** employees whose work is funded by appropriations that have lapsed but are excepted from a furlough because they are performing tasks that are authorized by law to continue during a lapse in appropriations, such as (1) emergency work involving the safety of human life or the protection of property due to imminent threat, (2) orderly suspension of agency operations, or (3) other functions that fall within an exception to the Antideficiency Act.
- c. **Exempt employee:** employees whose work is funded by appropriations that have not lapsed (for example, the majority of Veterans Health Administration employees are funded by advance appropriations) or who are exempt from furlough because of the nature of their appointments (for example, presidential appointees who are not covered by the leave system in 5 U.S.C. Chapter 63 are not subject to furlough because their salary is an obligation incurred by the year, without consideration of hours of duty required, so they cannot be placed in a non-duty, non-pay status).
- d. **Non-excepted employee:** employees whose work is not excepted from furlough and thus will be placed in a furlough status during a lapse in appropriations. Employees in this group are not performing tasks that are legally authorized to continue during a lapse nor are their positions funded by appropriations that have not lapsed.

5. REFERENCES.

- a. [The Antideficiency Act \(ADA\), Pub. L. 97-258, 96 Stat. 923.](#)
- b. The Office of Management and Budget, [Agency Contingency Plans.](#)
- c. The Office of Management and Budget, [OMB Circular A-11, Section 124](#), dated August 15, 2022.
- d. The Office of Management and Budget, [OMB Memorandum, M-18-05](#), dated January 19, 2018.
- e. U.S. Department of Veterans Affairs, [Human Resources and Administration/Operations, Security and Preparedness, Office of the Chief Human Capital Officer Contingency Planning.](#)
- f. U.S. Department of Veterans Affairs, [Frequently Asked Questions: Shutdown Furlough](#), dated September 29, 2021.
- g. U.S. Department of Veterans Affairs, [VA Directive 5021, Employee/Management Relations](#), dated April 15, 2002.

- h. The U.S. Office of Personnel Management, [Fact Sheet: Pay and Benefits Information for Employees Affected by the Lapse in Appropriations](#), dated January 23, 2019.
- i. The U.S. Office of Personnel Management, [Guidance for Shutdown Furloughs](#), dated December 2021.