



Contingency Plan for Shutdown in the Absence of Appropriations

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Summary

In accordance with the Office of Management and Budget (OMB) Circular No. A-11, Section 124.2, the National Labor Relations Board (NLRB or the Agency) plan to enact an orderly shutdown of the Agency in the absence of appropriations is summarized here and detailed below.

References

- OMB Bulletin 80-14 dated August 28, 1980.
- OMB Circular No. A-11, Section 124 – Agency Operations in the Absence of Appropriations (2020).
- Antideficiency Act (ADA), 31 U.S.C. §§ 1341–1342.
- “Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations,” 5 Op. Office of Legal Counsel (OLC) 1 (1981).
- Department of Justice (DOJ) Advisory Opinion dated August 16, 1995, Government Operation in the Event of a Lapse in Appropriations.
- Federal Service Labor-Management Relations Statue, 5 U.S.C. §§ 7101-7135.

Lapse Plan Summary Overview

| Lapse Plan Summary Overview | |
|---|-------------|
| Estimated time (to nearest half day) required to complete shutdown activities: | 1 ½ days |
| Total number of agency employees expected to be on board before implementation of the plan: | 1,241 |
| Total number of agency employees expected to be furloughed under the plan (unduplicated count): | 1,234 |
| Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts): | |
| Compensation is financed by a resource other than annual appropriations: | 0 employee |
| Necessary to perform activities expressly authorized by law: | 7 employees |
| Necessary to perform activities necessarily implied by law: | 7 employees |
| Necessary to the discharge of the President's constitutional duties and powers: | 0 employee |
| Necessary to protect life and property: | 1 employee |
| Brief summary of significant agency activities that will continue during a lapse: | |
| The NLRB will continue the following activities during a lapse: <ul style="list-style-type: none"> • Necessary court actions - To protect federal legal actions already taken • Office of Inspector General Hotline - Necessary for safety of life and protection of property • Emergency contact - Necessary for safety of life and protection of property or to protect federal legal actions already taken | |

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| Brief summary of significant agency activities that will cease during a lapse: |
| The NLRB will discontinue the following activities during a lapse: <ul style="list-style-type: none"> • Casehandling • Information Officer • Outreach and Public Affairs |
| Key citizen services that will be impacted: |
| <ul style="list-style-type: none"> • Representation Case Petition Docketing, Investigations, Hearings and Elections • Unfair Labor Practice Charge Docketing, Investigations, Hearings, Complaints, Settlements • District, Circuit and Supreme Court Litigation – injunctions, enforcement, contempt, intervening • Issuance of Administrative Law Judge and Board Decisions • Resolution of Workplace Disputes – collective bargaining, protected concerted activities, representational issues • Resolution of Employee/Employer Disputes with Union • Remedial Action - Backpay, Reinstatement, Reimbursement of Union Dues and Fees, and Bargaining Orders • Information Officer Services • Outreach and Congressional and Public Affairs Services, including public website • Inspector General Services, other than the Hotline referenced above. |

Purpose

The purpose of this instruction is to establish procedures to govern the operations of the NLRB in the event of a lapse in appropriations. All federal agencies are required to maintain a contingency plan in the event of an appropriations hiatus.

Scope

This instruction applies to all offices and employees within the NLRB.

Policy

In the event of an appropriations hiatus, it is the policy of the NLRB to:

- A. Commence the orderly and expeditious shutting down of all but emergency NLRB functions by securing files, property, and office facilities.
- B. Ensure that the NLRB meets its responsibilities to the parties in current unfair labor practice and election case proceedings consistent with the Anti-Deficiency Act.

- C. Ensure that NLRB employees are fully informed as to the reasons for the shutdown; and that payroll and other employee benefit responsibilities are met.
- D. Ensure that the NLRB retains the ability to respond to unfair labor practice incidents that might result in irreparable harm to the private sector economy.

Concept of Operations

This plan provides the Board and the General Counsel the required flexibility to: protect federal legal actions already taken (but not pursue new cases) and to deal with events that might occur during a shutdown. Here are the main points of the plan:

- The plan recognizes that the Board Chairman, the General Counsel, and four Board Members are not subject to furlough and thus will continue fulfilling their responsibilities described below in the next section.
- The plan assumes that Headquarters (HQ) will have the following minimal staff of excepted personnel present: the Deputy General Counsel, the Executive Secretary, the Chief of Staff, the Solicitor, the Chief Information Officer, the Chief Financial Officer, and the Chief of Security, for a potential total of seven employees.
- Approximately 1,234 employees will be furloughed if there is a lapse in our appropriations for fiscal year 2024.
- Each Division/Office/Regional Director will develop and hold a list with contact information of minimum personnel required (one per function, plus a backup) to deal with emergency situations that cannot be delayed during the shutdown period. Those personnel will be called in to work and travel, as necessary. To protect federal legal actions already taken, the General Counsel will work with each Division/Office/Regional Director to designate the NLRB personnel necessary to deal with emergency situations that cannot be delayed during the shutdown period.
- The Inspector General will seek excepted personnel status solely to handle urgent criminal matters and, once status is granted, will report the necessary time spent.
- If a member of the public or NLRB staff informs the HQ excepted personnel of an emergency situation (examples of which could range from workplace violence to a non-functioning website), the General Counsel and/or Board and/or designee will make the determination of what resources are required to respond to the situation and contact the appropriate Division/Office/Regional Director. The Division/Office/Regional Director will either address the situation or use their list to call in the appropriate NLRB personnel to work on the problem. The personnel attending the situation will make the determination to work on the issue until it is sufficiently resolved for immediate purposes or deferred until normal operations are restored.

Responsibilities

The plan assigns the following responsibilities:

- The **Board and the General Counsel** are responsible for ensuring that all necessary determinations are made to carry out the emergency functions of the NLRB during an appropriation hiatus.
- The **Chairman and Board Members** are responsible for ensuring that Board offices take all necessary actions related to shutdown activities.
- The **General Counsel** is responsible for ensuring that HQ General Counsel offices and Regional offices take all necessary actions related to shutdown activities.
- The **Deputy General Counsel** is responsible for ensuring that all necessary and appropriate actions are taken with regard to administrative activities to ensure the orderly and expeditious shutdown of Agency activities. These actions include the issuance of appropriate announcements and directives and implementing the contingency plan.

All Agency Employees are responsible for taking appropriate action, consistent with the guidance given in this contingency plan, regarding the orderly shutdown of activities. When the Agency has reason to believe that a shutdown is likely to occur, management will ask all National Labor Relations Board Union (NLRBU) and National Labor Relations Board Professional Association (NLRBPA) unit employees to update, if necessary, their telephone number information.

All Agency employees are responsible for checking the Agency public website (www.nlr.gov), and/or calling the Agency employee information phone line (202-273-2255) for status updates and information regarding a recall to work date. Agency employees may also monitor various media sources (local radio, television, and Internet) for status updates and information regarding a recall to work date. Agency employees are NOT to monitor their Agency email or consult the Agency intranet. At the conclusion of the shutdown, in addition to posting messages concerning a recall to work on the public website and information phone line, the Agency will use existing telephone trees to inform headquarters NLRBU and NLRBPA bargaining unit employees of the date and time they are to return to work. The Agency will use existing telephone trees to inform Field NLRBU bargaining unit employees of the date and time they are to return to work, provided that no bargaining unit employees will be required to notify any other bargaining unit employee of the date and time they are to return to work.

The Deputy General Counsel for the General Counsel and the Chief of Staff for the Board are designated for these purposes as union points of contact for the General Counsel and Board-side bargaining units, respectively. In addition, the Deputy General Counsel is responsible for acting on any employee requests for outside employment for

General Counsel-side employees and the Chief of Staff is similarly responsible for Board-side employees.

Staff Retained After Shutdown

Critical operations of this Agency are widely dispersed. NLRB has personnel located in HQ, 48 regional, sub-regional and resident offices, and three Administrative Law Judge (ALJ) branches outside of Washington D.C. Further, the NLRB, unlike many departments and agencies, has no discretionary program susceptible to total shutdown on a temporary basis. Each matter brought before the Board (or turned away due to the absence of staff) has the potential for serious labor relations strife posing a potential national emergency and may have to be addressed, if only on an interim basis pending resumption of normal operations.

The Board Chairman, Board Members, and General Counsel are Presidential Appointees (PAS); therefore, are not considered excepted employees or subject to furlough.

Advisory staff will augment that core group:

- 1 – Deputy General Counsel
- 1 – Executive Secretary
- 1 – Chief Information Officer
- 1 – Chief of Security
- 1 – Chief of Staff
- 1 – Chief Financial Officer
- 1 – Solicitor

The Advisory staff will assist in ensuring the orderly shutdown of operations and will also identify and determine how to address emergency situations affecting ongoing federal law enforcement activities or posing an imminent threat to human life and the protection of property. The Agency has determined that any emergencies requiring immediate attention can be identified at the headquarters level and will have no excepted personnel in any of its field offices retained for that purpose. Additional HQ and/or Field staff may be called to handle emergencies arising during an appropriations lapse.

Orderly Shutdown Activities – General Principles

Upon notification of an appropriation hiatus:

1. Agency employees will be advised to report to work to begin an immediate and orderly shutdown of Agency activities. The process of communicating the shutdown order including to employees in travel status; securing files and physical facilities; notifying parties of the cancellation of hearings; canceling court appearances and meetings will take approximately one-half workday and, in any event, no more than one- and one-half workday. (see ***Communications Plan and Proposed Shutdown Procedures***).
2. After completion of shutdown activities, employees who are not necessary to perform excepted Agency activities will be furloughed.

3. Employees will be allowed to complete Agency business previously scheduled for the day of the shutdown and which would cause serious disruption to the public if canceled without notice. Such business includes representation elections; trials; hearings; and appearances in federal court. Those employees will be authorized to complete such Agency business by close of business on the day of shutdown to assure that those essential services are performed.

Overview of Shutdown Activities

The following shutdown activities will take place:

- A. All materials of a confidential nature will be identified and secured.
- B. Incomplete projects will be listed with priorities for the orderly resumption of activities upon the return to work.
- C. Emergency situations (e.g., current, or imminent labor disputes which are adverse to the public interest) requiring immediate attention will be identified, and brought to the attention of the appropriate Excepted Personnel.
- D. Telephone and e-mail contacts will be made whenever required to advise parties in active cases, court personnel, contractors, and other members of the public of the Agency shutdown, and appropriate arrangements will be made for each situation. Incomplete contacts will be identified for follow-up by personnel remaining to conclude the orderly shutdown. Telephone messages will be recorded at all office locations throughout the NLRB indicating to the public that the Agency is in a “temporary” shutdown mode. The NLRB will post in the Federal Register a notice of procedures to be followed in the event Board offices are closed due to lack of appropriated funds.
- E. All Field offices will have recorded messages to identify to the public that the NLRB is in a “temporary” shutdown mode. The message should advise the caller that if a true emergency exists involving a job action, the caller should call an emergency number. On the outside door of each Field office, a notice will be posted advising the public of phone and fax numbers to contact for assistance if there is an imminent threat to the safety of human life or protection of property as a result of a violation of the National Labor Relations Act. Additionally, the Office of Congressional and Public Affairs (OCPA) will post an advisory notice on the Agency website. An automated email response message will be sent to the sender of any external email, notifying the sender of the NLRB’s shutdown mode.
- F. Instruct all employees who are scheduled for travel or in training status as to the requirements of a possible shutdown in advance of travel or training.
- G. No financial obligations may be incurred unless strictly required to effectuate the shutdown or protect life and property. Although these obligations may be incurred, no funds may be disbursed.
- H. Equipment will be secured to the maximum extent possible.
- I. Supervisors will secure files and ensure all computer data will be backed up and computers turned off.

- J. Local General Services Administration (GSA) Building Managers will be notified of the shutdown so that GSA may take appropriate action to secure facilities and discontinue services.

Proposed Shutdown Procedures

The following is a list of procedures to be followed by every NLRB office and organization:

1. Record voicemail message on field office telephone numbers
2. Post paper notice on field office doors
3. The Office of the Chief Information Officer (OCIO) will post approved out of office messages in response to all external emails
4. Record voicemail message on all staff phones
5. Receive Shutdown Packet by email
6. Notify local United States Postal Service (USPS) and express couriers (e.g., UPS and FedEx) at each office of the shutdown and provide specific instructions on delivery, holding, and securely storing mail, correspondence, parcels, and packages
7. Shut down equipment
8. Load fax machines with ink and paper
9. Secure individual work areas and offices
10. Store and lock any sensitive materials
11. Turn out lights

Communications Plan

The Communications section of the plan is designed to facilitate communications between:

- The NLRB and the public (status, how to contact the Agency in an emergency)
- The NLRB and its staff (status, recalls)

The Communications Plan covers preparation leading up to a shutdown, implementation the day of a shutdown, operation during a shutdown, and recall ending a shutdown. Communications activities are summarized in the table below:

| Communication Process | | |
|----------------------------|---|---|
| Activity | To the Public | To Employees |
| Preparation (Pre-shutdown) | <ul style="list-style-type: none"> ▪ Prepare and approve public website, Facebook, and Twitter notices ▪ Prepare and approve regional webpage notices | <ul style="list-style-type: none"> ▪ Prepare and approve two shutdown email messages to all staff: preparation and notification (four total) ▪ Prepare and approve Operations email |

| Communication Process | | |
|------------------------------|--|---|
| Activity | To the Public | To Employees |
| | <ul style="list-style-type: none"> ▪ Prepare and approve 202-273-1000 telephone message ▪ Prepare and approve 202-273-4483 for emergency faxes and EmergencyContact@nlrb.gov for emergency emails ▪ Prepare and approve suggested field office main telephone message ▪ Prepare and approve paper notice for field offices ▪ Contact parties in each pending case/trial/election/etc. ▪ Prepare and approve suggested out of office email message ▪ Prepare and approve suggested staff voicemail message ▪ Prepare and approve notice in Federal Register | <ul style="list-style-type: none"> ▪ Prepare and approve Secure Remote Access message ▪ Prepare, approve, and plan distribution of shutdown packets ▪ Prepare and approve 202-273-2255 telephone message ▪ Direct Division/Office Heads and Regional Directors to prepare contact lists of minimum personnel required by function (one per function and an alternate) for emergency recalls ▪ Ask all NLRBU and NLRBPA unit employees to update, if necessary, their telephone number information ▪ Prepare Contact list for excepted personnel ▪ Contact employees in travel status and advise them to return to their duty station immediately in case of a shutdown ▪ Prepare and approve 'Day Of' shutdown procedures (secure equipment and files, turn off computer, email auto-reply, voicemail message, etc.) ▪ Prepare and approve voicemail message to all HQ staff ▪ Send Operations email ▪ Send Chairman/GC all-staff preparation email message ▪ Send email to all Division Heads, RDs and ALJs to |

| Communication Process | | |
|------------------------------|---|---|
| Activity | To the Public | To Employees |
| | | <p>make sure they have in their possession up-to-date telephone trees</p> <ul style="list-style-type: none"> ▪ Train Excepted Personnel on web, email, and phone updating, monitoring 202-273-4483 for emergency faxes and EmergencyContact@nlrb.gov email and PACER ▪ Update telephone trees |
| Implementation (Day of) | <ul style="list-style-type: none"> ▪ Post public website notice ▪ Post regional webpage notices ▪ Post Facebook and Twitter message ▪ Post notice in Federal Register ▪ Record 202-273-1000 and ▪ Notify phone vendors to activate alternate script for 202-273-1000 telephone message ▪ Ready 202-273-4483 for emergency faxes and EmergencyContact@nlrb.gov for emergency emails ▪ Record voicemail message on field office telephone numbers ▪ Post paper notice on field office doors ▪ Post out of office messages on staff emails ▪ Record voicemail message on all staff phones | <ul style="list-style-type: none"> ▪ Send global email shutdown notification, including copy of shutdown packet ▪ Send Chairman/GC shutdown email (email will be pre-approved by OMB) ▪ Send all-staff shutdown procedures ▪ Send voicemail message to all HQ staff on shutdown ▪ Place notice on Secure Remote Access ▪ Provide all staff with shutdown packet by e-mail ▪ Notify local USPS and express couriers (e.g., UPS, FedEx) at each office of shutdown and provide specific instructions on delivery, holding, and securely storing mail, correspondence, parcels, and packages ▪ Shut down equipment ▪ Load fax machines with ink and paper ▪ Record and activate script for 202-273-2255 phone number ▪ Ready 202-273-4483 for emergency faxes and |

| Communication Process | | |
|-----------------------|---|---|
| Activity | To the Public | To Employees |
| | | EmergencyContact@nlrb.gov for emergency emails |
| Operation (During) | <ul style="list-style-type: none"> Communicate any change in status using public website and 202-273-1000, and the field office main phone numbers | <ul style="list-style-type: none"> Communicate any change in status using public website and 202-273-2255 phone number Use emergency recall procedure, if required |
| Recall | <ul style="list-style-type: none"> Communicate recall using public website, Facebook, and Twitter accounts End public-facing global messages: voice and email | <ul style="list-style-type: none"> Communicate recall using public website and 202-273-2255 phone number and other media sources Communicate recall procedures using NLRB email system Change email and voice messages Use existing telephone trees to inform headquarters NLRBU and NLRBPA bargaining unit employees of the date and time they are to return to work Use existing telephone trees to inform Field NLRBU bargaining unit employees of the date and time they are to return to work, provided that no bargaining unit employees will be required to notify any other bargaining unit employee of the date and time they are to return to work |

Note: Agency employees will be notified of options in the event they have problems returning to work on the day specified by the agency including the use of annual leave, compensatory time, or credit hours.

Shutdown Package

The proposed contents of the Shutdown Package to be distributed to all staff via e-mail will include:

- Official Notice
- Emergency Contact Information
- Frequently Asked Questions (FAQs) for NLRB-specific questions
- Administrative Bulletin on Outside Employment During Shutdown
- Administrative Bulletin on Unemployment Insurance During Shutdown
- Personal Phone Script

Acquisitions

The Acquisitions Branch is charged with ensuring all service contracts that can be severed receive stop work orders and upon the lapse being lifted ensuring services resume in a timely manner.

The Acquisitions Branch's role in the shutdown plan is summarized here:

Protection of Life and Property

The following contracts will remain operational in order to ensure the NLRB is base level operational information technology wise.

- Lumen Technologies: Colocation facility
- Verizon: WAN
- AT&T: MTIPS access to network
- Microsoft: G5 contract for email, Azure, and Teams
- AT&T: Analog Telephone lines for Duress Alarm AT&T: Agency mobile devices
- Tactical Digital Corporation: (Retarus) Fax on Demand Service

Agency servers will remain operational during the shutdown.

The Anti-Deficiency Act generally prohibits agencies from incurring financial obligations except as necessary to handle emergencies involving the safety of human life or the protection of property. The term "emergency" does not include ongoing regular functions of government that can be suspended without an imminent threat to the safety of human life or the protection of property. Thus, employees are not authorized to work and cannot use the Agency's equipment or systems to perform work while they are furloughed, nor can they check their status or the status of the Agency on their Agency email account. However, if a matter comes to their attention that could present an imminent threat involving the safety of human life or the protection of property, they may

report that to an excepted employee. The names and contact information of excepted personnel will be provided to all members of the staff.

Responsibility to use Agency systems in accordance with our existing policies remains in effect. Senior staff will be allowed to retain their Agency-provided smartphones, but they have been instructed not to use them to perform work during the shutdown.

Contracts will be managed according to the type and status during a shutdown as follows:

- No Contractual Impact (on shutdown operations): These contracts do not depend on NLRB Activity during a shutdown.
- Non-severable Contracts (non-severable and paid in full which provide continuing benefit to the Agency): These contracts may be difficult or impossible to stop on a temporary basis without issuing a termination for convenience and then having to go through a new solicitation and award process.
- Contracts Based Solely on Orders: These contracts do not incur costs if an order is not made.
- For all other contracts, prepare to issue Stop Work Orders: The Acquisitions Management Branch will prepare and then issue Stop Work Orders for all other ongoing contracts, with the exception of non-severable contract actions. The Stop Work Orders will be issued the day of the shutdown. This action may be modified based on guidance from OMB. As part of the preparation, the Acquisitions Management Branch Director will provide information to contractors to assist with preparation of a stoppage if the Government shuts down.
- Only official guidance from OMB will be used for providing guidance to contractors seeking information about the status of contracts during a shutdown.

Human Resources

Human Resources considerations during a shutdown will be summarized and communicated to NLRB personnel as part of the FAQs on the day of shutdown.

Excepted Personnel Contact List

| NAME | TITLE | OFFICE # | E-MAIL |
|-----------------------|---------------------------|-----------------|-----------------------------|
| Andrew J Krafts | Chief of Staff | 202-316-6249 | andrew.krafts@nlrb.gov |
| Peter Sung Ohr | Deputy General Counsel | 312-273-2929 | peter.ohr@nlrb.gov |
| Fred B. Jacob | Solicitor | 202-273-1711 | fred.jacob@nlrb.gov |
| Roxanne L. Rothschild | Executive Secretary | 202-273-2917 | roxanne.rothschild@nlrb.gov |
| Prem Aburvasamy | Chief Information Officer | 202-273-3925 | prem.aburvasamy@nlrb.gov |
| Raymond Hankins | Security Chief | 202-273-3790 | raymond.hankins@nlrb.gov |
| Isabel L. McConnell | Chief Financial Officer | 202-273-3726 | isabel.mcconnell@nlrb.gov |

AGENCY INFORMATION

Agency website: <http://www.nlrb.gov>
Agency Phone: 202-273-1000
Employee information line: 202-273-2255

Emergency contact information for public:
202-273-1000 (phone)
202-273-4483 (fax)
EmergencyContact@nlrb.gov (e-mail)