

IRS Lapsed Appropriations Contingency Plan

Cross References

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On January 15, 2019, the U.S. Treasury updated its Lapsed Appropriations Contingency Plan, as the U.S. government partial shutdown continues. The plan says that the IRS needs to continue return processing activities to the extent necessary to protect government property, which includes tax revenue, and maintain the integrity of the federal tax collection process, along with certain other activities authorized under the Anti-Deficiency Act. The IRS must except additional positions beyond those identified in the Non-Filing Season Plan. In the event the lapse extends beyond five business days, the Deputy Commissioner for Operations Support will direct the IRS Human Capital Officer to reassess ongoing activities and identify necessary adjustments of excepted positions and personnel.

During a lapse, the IRS may continue certain activities that fall under established exceptions in the Anti-Deficiency Act. Employees may be designated as excepted only to perform work directly associated with those activities, and only for time necessary to complete that work. For example, if an employee is needed for three hours per week to safeguard revenue arriving by mail, the employee should be instructed to report to work only for those three hours.

Activities otherwise authorized by law. During a government shutdown, agencies may continue performing activities to the extent such activities are:

- 1) Supported by funding that does not expire at the end of the fiscal year (such as multi-year and indefinite appropriations), which do not require enactment of annual appropriations legislations,
- 2) Authorized by statutes that expressly permit obligations in advance of appropriations, and
- 3) Authorized by necessary implication from the specific terms of duties that have been imposed on, or of authorities that have been invested in the agency.

Accordingly, certain agency functions funded through annual appropriations may continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions must continue as well. For example, the government funds Social Security payments out of an indefinite appropriations, and therefore may continue making these payments during a shutdown. Consequently, IRS employees who support this function may continue doing so during a shutdown, even though their salaries come out of annual appropriations.

Activities necessary to safeguard human life or protect government property. The second category represents exceptions for emergencies involving the protection of life or property. The Attorney General has described the following rules for interpreting the scope of these exceptions:

- 1) There must be some reasonable and articulable connection between the function to be performed and the safety of human life or protection of property.
- 2) There must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question.

Tax revenues constitute government property which the IRS must safeguard during a lapse in appropriations. Accordingly, during a lapse in appropriations, the IRS may continue processing tax returns to ensure the protection of those returns that contain remittances. Activities necessary to protect other types of government property, including computer data and federal lands and buildings, may continue during a shutdown as well.

Activities necessary for orderly agency shutdown. The IRS is authorized to perform functions necessary to close-down agency functions that may not continue during a lapse in appropriations.

Disaster or emergency response/recovery. In the event a response to a disaster or emergency is required during a lapse in appropriations, the IRS will amend this plan to activate disaster response and recovery efforts to support activities.

Disaster relief. The IRS is authorized to assist the Federal Emergency Management Agency (FEMA) by responding to disaster assistance calls from victims following a Presidential declaration of a major disaster or emergency.

Tax Cuts and Jobs Act (TCJA). TCJA provisions provide funding for two fiscal years, FY 2018 and FY 2019. Implementing TCJA requires creating or revising hundreds of tax products including worksheets and tax forms, form instructions and publications, as well as changes to current IRS policies and procedures. The IRS inventory of tax products continues to be worked and revisions will be produced during the current government shutdown. The Chief Information Officer is also on track to complete the necessary information technology programming to enable all revised and new forms to be accurately processed in the 2019 filing season.

In enacting the TCJA, Congress provided the IRS with funds that will remain available until September 30, 2019. Thus, some implementation activities are not affected by a lapse in appropriations for Fiscal Year 2019. Additional activities would continue to protect incoming tax revenues during the filing season.

IRS service wide summary of shutdown impact. The updated IRS Lapsed Appropriations Contingency Plan identifies 46,052 employees (57.4% of the total employee population of 80,265 as of 12/28/2018) who are designated as “excepted/exempt” and thus retained during the government shutdown.

Author’s Comment

The contingency plan goes into detail describing the categories of IRS employees who are authorized to work during the government shutdown. Funding other than through annual appropriations by Congress is available to continue supporting these functions. This means that such “excepted/exempt” IRS employees identified in the plan are authorized to work (and be paid) during the government shutdown.