United States Government Accountability Office

Report to the Ranking Member
Committee on Finance, U.S. Senate

FY 2019 GOVERNMENT SHUTDOWN

Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls

Accessible Version

June 2020

GAO-20-377

GAO Highlights

Highlights of GAO-20-377, a report to the Ranking Member, Committee on Finance, U.S. Senate

June 2020

FY 2019 GOVERNMENT SHUTDOWN

Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls

Why GAO Did This Study

A lapse in appropriations resulted in the federal government partially shutting down from December 22, 2018, to January 25, 2019.

GAO was asked to evaluate agency contingency plans and operations during the FY 2019 shutdown. This report assesses the extent to which selected agencies and selected components (1) had contingency plans that were consistent with applicable OMB guidance, (2) planned for a potential prolonged shutdown and changed operations during the shutdown, and (3) had shutdown policies and procedures consistent with relevant internal control principles.

GAO selected CBP, IRS, ITA, and USTR as agency components for review because they are under the jurisdiction of the Senate Committee on Finance and were affected by the FY 2019 shutdown. GAO reviewed OMB's guidance, agencies' contingency plans, and other documentation. GAO interviewed agency and component officials.

What GAO Recommends

GAO is making 14 recommendations, including that certain agency components improve contingency plans, document shutdown procedures, and improve controls for physical and virtual workspace access during a shutdown. CBP and ITA agreed with the recommendations directed to them; IRS partially agreed with one and disagreed with two; and USTR did not state whether it agreed or disagreed, but has begun taking steps to implement two recommendations.

View GAO-20-377. For more information, contact James R. McTigue, Jr. at (202) 512-9110 or mctiguej@gao.gov.

What GAO Found

The Office of Management and Budget (OMB) issues shutdown guidance for agencies in *Circular A-11.* Of four selected agency components, three—U.S. Customs and Border Protection (CBP), the Internal Revenue Service (IRS), and the International Trade Administration (ITA)—operated in fiscal year (FY) 2019 under contingency plans that included most of the key information elements specified in *Circular A-11*. The plan that the fourth one—Office of the U.S. Trade Representative (USTR)—operated under, authored by the Executive Office of the President, did not include a majority of the key information elements.

OMB guidance instructs agencies to have plans in place for both short and prolonged—longer than 5 days—shutdowns. None of the four selected agencies' FY 2019 contingency plans fully addressed anticipated changes in the event of a prolonged shutdown. GAO found that IRS, ITA, and USTR internally discussed and planned for anticipated operational changes in the event of a prolonged FY 2019 shutdown. CBP officials said they only focused on short-term operational needs. Having a comprehensive plan for a potential prolonged shutdown would help provide clearer workforce expectations during any future shutdowns.

Having sufficient internal controls, such as documented policies and procedures, in place prior to a shutdown can help agencies implement changes in day-to-day operations during a shutdown. Selected agency components all incorporated some internal controls in their shutdown-related activities, as shown in the table below. However, none of the agency components had controls for limiting both physical and virtual workspace access for employees during a shutdown, each citing the difficulty of implementing such controls. Having these controls in place would help components ensure that they operate consistently with their contingency plans and avoid misuse of government resources.

Selected Agency Components Varied in the Sufficiency of Their Internal Controls

Shutdown-related activities	U.S. Customs and Border Protection	Internal Revenue Service	International Trade Administration	Office of the U.S. Trade Representative
Develop roles and responsibilities	✔	✔	✔	✔
Document roles and responsibilities	✔	✔	☐	☐
Develop shutdown preparation processes	✔	✔	✔	✔
Document shutdown preparation processes	✔	✔	☐	☐
Inform employees of shutdown processes	✔	✔	✔	✔
Develop employee recall processes	✔	✔	✔	✔
Document employee recall processes	✔	✔	☐	☐
Track the number of employees working	☐	✔	✔	✔
Control access to physical workspaces	☐	☐	✔	☐
Control access to virtual workspaces	☐	☐	☐	☐

✔ Component had sufficient internal controls ☐ Component did not have sufficient internal controls

Source: GAO analysis of selected component information. | GAO-20-377

Contents

Letter 1

Background 5
Three of Four Selected Agencies' Contingency Plans Generally Followed OMB Guidance but None Addressed a Potential Prolonged Shutdown 8
Three of Four Selected Agency Components Discussed Potential Changes during a Prolonged Shutdown, and All Made Operational Changes 14
Two of Four Selected Agency Components Documented Shutdown Procedures, and None Had Sufficient Controls for Workspace Access during a Shutdown 19
Conclusions 34
Recommendations for Executive Action 35
Agency Comments and Our Evaluation 37

Appendix I: Objectives, Scope, and Methodology 41

Appendix II: Comments from the Department of Commerce 45

Appendix III: Comments from the Department of Homeland Security 48

Appendix IV: Comments from the Internal Revenue Service 53

Appendix V: GAO Contact and Staff Acknowledgments 58

Appendix VI: Accessible Data 59

Data Table 59
Agency Comment Letters 59

Tables

Table 1: Selected Agency Components' Mission and Operations during the Fiscal Year (FY) 2019 Shutdown 2
Table 2: Examples of Exempt and Excepted Work that Continued during the Fiscal Year 2019 Partial Government

Shutdown, as Identified in Selected Agency Contingency Plans 11

Figures

Figure 1: Definition of Exempt and Excepted Work 6
Figure 2: Number and Duration of the Government Shutdowns, Fiscal Years 1991–2019 7
Figure 3: Selected Agencies Addressed Some but Not All OMB Contingency Plan Information Elements 10
Figure 4: Selected Agency Components Varied in the Sufficiency of Their Internal Controls for Shutdown-Related Activities 20
Figure 5: Internal Revenue Service Process Map Shows Order of Necessary Planning Steps and Responsible Party 23
Accessible Data for Figure 2: Number and Duration of the Government Shutdowns, Fiscal Years 1991–2019 59

Abbreviations

ADA	Antideficiency Act
CBP	U.S. Customs and Border Protection
Circular A-11	OMB *Circular No. A-11 Section 124—Agency Operations in the Absence of Appropriations*
Commerce	Department of Commerce
DHS	Department of Homeland Security
EOP	Executive Office of the President
FY	fiscal year
Internal Control Standards	*Standards for Internal Control in the Federal Government*
IRS	Internal Revenue Service
ITA	International Trade Administration
OMB	Office of Management and Budget
Treasury	Department of the Treasury
USTR	United States Trade Representative

This is a work of the U.S. government and is not subject to copyright protection in the United States. The published product may be reproduced and distributed in its entirety without further permission from GAO. However, because this work may contain copyrighted images or other material, permission from the copyright holder may be necessary if you wish to reproduce this material separately.

U.S. GOVERNMENT ACCOUNTABILITY OFFICE
441 G St. N.W.
Washington, DC 20548

June 1, 2020

The Honorable Ron Wyden
Ranking Member
Committee on Finance
United States Senate

Dear Senator Wyden,

From December 22, 2018, to January 25, 2019, some agencies within the federal government shut down because of a lapse in appropriations, making it the longest government shutdown in history. Agencies that did not have funding curtailed activities, and an estimated 340,000 employees were furloughed for all or part of the 35-day period. While shutdowns are not regular events, agencies are required to have contingency plans in place that describe how they will conduct an orderly shutdown and what limited functions will continue during a shutdown.

How well agencies plan for and operate during a shutdown is important to ensure compliance with applicable laws and continuation of certain functions, such as those for emergencies involving the safety of human life or the protection of property, or carrying out core constitutional powers. Additionally, it is important for agencies to sufficiently plan for changes over the course of a shutdown to ensure effective operations.

You asked us to review agency contingency plans and operations during the fiscal year 2019 shutdown. This report assesses the extent to which (1) selected agencies' contingency plans were consistent with Office of Management and Budget (OMB) guidance, (2) selected agency components planned for a potential prolonged shutdown and changed operations during the shutdown, and (3) selected agency components' shutdown policies and procedures were consistent with relevant internal control principles.

We selected four agency components under the jurisdiction of the Senate Committee on Finance that were affected by the fiscal year 2019 shutdown. When more than one component at an agency met these criteria, we selected the component that had the largest budget and planned number of employees performing excepted work during the

shutdown.[1] While the four components we selected are not generalizable to other agency components, they do reflect variation in size, funding type, and justification for excepted work that serve as illustrative examples of a range of experiences. As shown in table 1, these selected agency components are

- U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS);
- Internal Revenue Service (IRS), Department of the Treasury (Treasury);
- International Trade Administration (ITA), Department of Commerce (Commerce); and
- Office of the United States Trade Representative (USTR), Executive Office of the President (EOP).

Table 1: Selected Agency Components' Mission and Operations during the Fiscal Year (FY) 2019 Shutdown

Agency component	Mission	Estimated percent of on-board employees who worked during FY19 shutdown	Notes
U.S. Customs and Border Protection (CBP)	Protect the U.S. border and enhance the country's global economic competitiveness by supporting legitimate trade and travel through management and control of all aspects of the border (e.g., customs, immigration, and agricultural inspections).	91 percent	
Internal Revenue Service (IRS)	Provide U.S. taxpayers with top-quality service by helping them understand and meet their tax responsibilities and enforce the law.	12 – 57 percent	Number of employees working during the shutdown grew as agency transitioned to the tax filing season plan.

[1]Excepted employees are those who perform activities pursuant to a statutory authority that expressly authorizes an agency to enter into obligation in advance of an appropriation, or to address emergencies involving the safety of human life or the protection of property, as described under the Antideficiency Act. We have also recognized other limited exceptions that may, under some circumstances, allow functions to continue during a lapse in appropriations. For example, Congress and the Executive branch may incur obligations to carry out core constitutional powers. Agencies also may incur those limited obligations that are incidental to executing an orderly shutdown of agency activity.

Agency component	Mission	Estimated percent of on-board employees who worked during FY19 shutdown	Notes
International Trade Administration (ITA)	Strengthen the international competitiveness of U.S. industry, promote trade and investment, and ensure fair trade and compliance with trade laws and agreements.	5 percent	Percentage does not include ITA employees working in foreign countries, whose work status was made in coordination with U.S. chiefs-of-mission.
Office of the United States Trade Representative (USTR)	Develop and coordinate U.S. international trade and direct investment policy, and oversee negotiations with other countries, which entails coordinating trade policy, resolving disagreements, and framing issues for presidential decision.	30 – 100 percent	USTR did not furlough employees during the first 3 weeks of the shutdown because it said available funding allowed the component to continue full operations.

Source: GAO analysis of agency contingency plans. | GAO-20-377

To address our first objective, we compared information in selected agencies' government shutdown contingency plans to key information elements described in OMB guidance. Specifically, we identified 14 key information elements in the 2018 OMB *Circular No. A-11 Section 124—Agency Operations in the Absence of Appropriations (Circular A-11)*, which details the information agencies should include in their contingency plans.[2] Three of our four selected agency components—CBP, ITA, and USTR—operated under an agency-wide plan. Therefore, we evaluated the fiscal year 2019 contingency plans for Commerce, DHS, and EOP. Because Treasury's contingency plan did not cover IRS, we evaluated IRS's contingency plans for this objective.[3] We also reviewed written responses from OMB and interviewed officials at selected agencies to understand the reasons for any discrepancies between the contingency plans and OMB guidance.

To address our second objective, we assessed the extent to which selected agency components planned for a potential prolonged shutdown—one longer than 5 days—as outlined in *Circular A-11*, and changed operations during the shutdown. We reviewed shutdown contingency plans and other planning documents at CBP, IRS, ITA, and

[2]Office of Management and Budget, *Circular No. A-11 Preparation, Submission, and Execution of the Budget* (June 2018).

[3]IRS had three contingency plans for the fiscal year 2019 shutdown—a plan for non-filing season (dated December 3, 2018), an amended non-filing season plan (dated December 28, 2018), and a filing season plan (dated January 15, 2019). We compared the December 3, 2018, and January 15, 2019, plans to OMB guidance for the first objective.

USTR to determine agency component processes for proposing, reviewing, and approving operational changes during a government shutdown. We interviewed officials at these agency components to determine what operational changes components made during the fiscal year 2019 shutdown and the key factors that led to these changes.

To address our third objective, we assessed key elements of selected agency components' shutdown processes to determine the extent to which the components followed relevant internal control principles in planning for the fiscal year 2019 government shutdown. We reviewed *Standards for Internal Control in the Federal Government* (Internal Control Standards) and identified key principles related to agency components' shutdown processes.[4] Relevant internal control standards include designing and implementing appropriate policies and procedures and effectively communicating this information to stakeholders. This would include policies and procedures to ensure an orderly shutdown process and compliance with applicable laws such as the Antideficiency Act (ADA) during a potential government shutdown.[5]

We assessed the sufficiency of selected agency components' internal controls based on whether the evidence gathered contained relevant details about a component's shutdown processes that demonstrated the component would have reasonable assurance of achieving its shutdown objectives. While we assessed agency components' shutdown processes, we did not assess the results of those processes, such as whether components correctly or appropriately categorized activities as excepted from the ADA.[6]

We interviewed officials at selected agency components to understand the reasons for any inconsistencies between component planning and decision-making processes and internal control principles. We also interviewed representatives of employee organizations at the agency components we reviewed to determine if communication of shutdown-related policies and procedures was timely, sufficient, and transparent. In

[4]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

[5]31 U.S.C. § 1341.

[6]The ADA prohibits federal agencies from obligating or expending funds in excess or in advance of an appropriation unless otherwise authorized by law, and from accepting voluntary services for the United States except in cases of emergency involving the safety of human life or the protection of property.

addition, we interviewed officials from agency component programs to identify illustrative examples of how components operationalized their shutdown processes, including how they planned for the fiscal year 2019 government shutdown, communicated with employees, and recalled furloughed employees back to work (see appendix I for a more detailed discussion of our objectives, scope, and methodology).

We conducted this performance audit from March 2019 to June 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Generally, Congress provides budget authority to agencies through the passage of appropriations acts each fiscal year. Appropriations allow agencies to incur obligations and make payments for specified purposes.[7] When an appropriation expires, and a new one is not enacted, a lapse in appropriations, also called a funding gap, results and the affected agency or program may lack sufficient budget authority to continue operations. Funding gaps can occur at the beginning of a fiscal year when new appropriations, or a continuing resolution, have not yet been enacted. Funding gaps also can occur any time during the year when a continuing resolution expires and may affect a few agencies or all agencies across the federal government. We have previously reported that funding gaps, actual or threatened, are both disruptive and costly.[8]

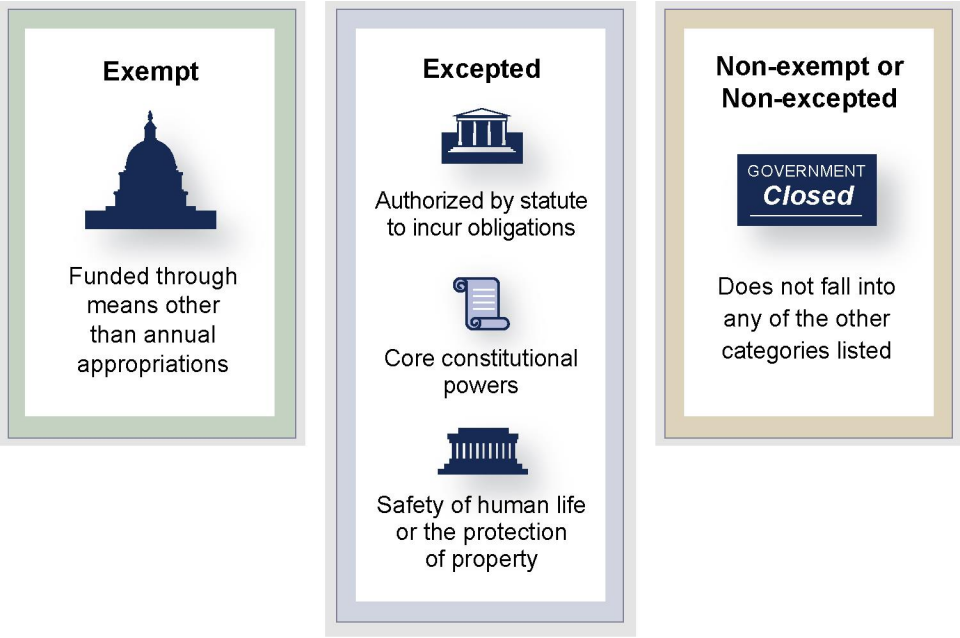
The ADA prohibits agencies from obligating or expending funds in excess or in advance of an available appropriation unless otherwise authorized

[7]Obligation is a definite commitment that creates a legal liability of the government for the payment of goods and services ordered or received. An agency incurs an obligation, for example, when it places an order, signs a contract, awards a grant, purchases a service, or takes other actions that require the government to make payments to the public or from one government account to another.

[8]See, for example, GAO, *Continuing Resolutions: Uncertainty Limited Management Options and Increased Workload in Selected Agencies*, GAO-09-879 (Washington, D.C.: Sept. 24, 2009); and *Government Shutdown: Funding Lapse Furlough Information*, GAO/GGD-96-52R (Washington, D.C.: Dec. 1, 1995).

by law as well as from accepting voluntary services for the United States except in cases of emergency involving the safety of human life or the protection of property.[9] During a lapse in appropriations, employees may continue working if they are exempt from the lapse in appropriations or if an exception to the ADA applies (see figure 1).

Figure 1: Definition of Exempt and Excepted Work



Source: Summary of GAO legal opinions. | GAO-20-377

Note: Excepted work activities are those pursuant to statutory authority that expressly authorizes an agency to enter into obligation in advance of an appropriation, or to address emergencies involving the safety of human life or the protection of property, as described under the Antideficiency Act. We have also recognized, in our prior legal opinions, other limited exceptions that may, under some circumstances, allow functions to continue during a lapse in appropriations. For example, Congress and the Executive branch may incur obligations to carry out core constitutional powers. Exempt and excepted work are determined by the function, rather than which specific employee may perform the function.

Exempt and excepted employees are defined as follows.

- Exempt employees are those who perform activities funded with budget authority that remains available despite the lapse in appropriations, such as multiple-year or no-year carryover balances. Available balances can also come from other authorities such as fee income that Congress made

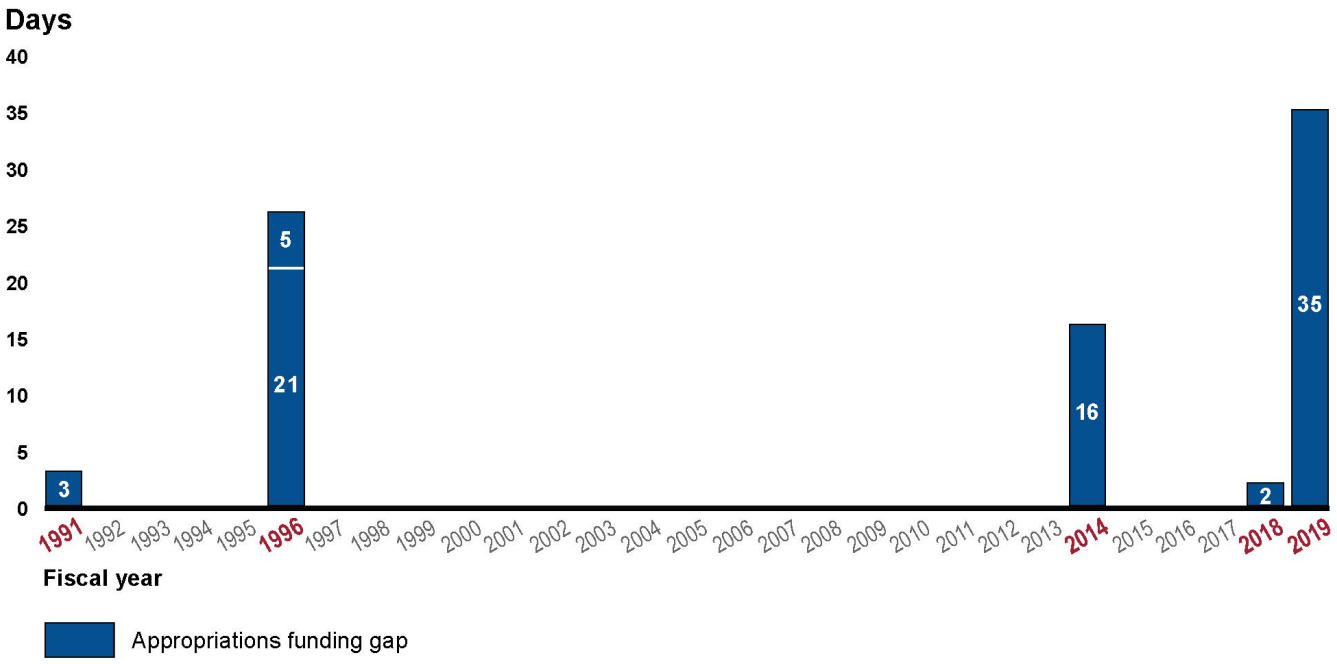
[9] 31 U.S.C. §§ 1341, 1342.

available for obligation. For the purpose of this report, we call employees who perform such functions exempt employees.

- Excepted employees are those who perform activities pursuant to a statutory authority that expressly authorizes an agency to enter into an obligation in advance of an appropriation, or to address emergencies involving the safety of human life or the protection of property, as described under the ADA. We have also recognized, in our prior legal opinions, other limited exceptions that may, under some circumstances, allow functions to continue during a lapse in appropriations. For example, Congress and the Executive branch may incur obligations to carry out core constitutional powers. Agencies also may incur those limited obligations that are incidental to executing an orderly shutdown of agency activity.

Over the past 29 years, there have been six lapses in appropriations that led to government shutdowns, ranging in duration from 2 days to 35 days (see figure 2). Three shutdowns occurred in the past 7 years and two of these shutdowns were prolonged in that they lasted longer than 5 days (in fiscal years 2014 and 2019).

Figure 2: Number and Duration of the Government Shutdowns, Fiscal Years 1991–2019



Source: GAO analysis of Congressional Research Service reports. | GAO-20-377

Note: The effect each shutdown had on agencies and programs depended on which appropriations bills were not enacted.

In the event of a government shutdown, OMB is responsible for ensuring that agencies have addressed the essential actions needed to effectively manage the government shutdown. OMB does so by providing policy guidance and shutdown-related instructions. Specifically, OMB *Circular A-11* directs federal agencies to develop contingency plans for use in the event of a government shutdown and to update these plans on a recurring basis. These plans are key documents that help ensure an orderly shutdown following a lapse in appropriations, as well as continuity of appropriate agency operations. These plans also communicate policies and procedures to employees and external stakeholders that could be affected by the shutdown of operations.

Three of Four Selected Agencies' Contingency Plans Generally Followed OMB Guidance but None Addressed a Potential Prolonged Shutdown

OMB's *Circular A-11* directs agencies to prepare contingency plans in anticipation of a lapse in appropriations. According to the guidance, contingency plans are to include information such as: (1) summaries of activities that will continue and those that will cease; (2) the amount of time needed to complete the shutdown activities; (3) the number of employees on-board prior to the shutdown; and (4) the number of employees to be retained during the shutdown.[10] Agencies are also to explain the legal basis for each of their determinations to retain employees, including a description of the nature of the agency activities in which these employees will be engaged.

Additionally, agencies' contingency plans are to explicitly describe any changes in operations that would be necessary should a lapse in appropriations extend past 5 days. According to OMB officials, OMB reviews agencies' contingency plans, but it does not formally approve plans. Agencies are ultimately responsible for determining which activities

[10]Office of Management and Budget, *Agency Operations in the Absence of Appropriations*, OMB *Circular A-11* (2018), Sec. 124 (Washington, D.C.: June 2018).

will continue during a lapse in appropriations and which activities will cease.

Using OMB *Circular A-11*, we identified 14 key information elements for agencies' contingency plans and used these as criteria to assess the selected agencies' plans. Of the selected agency components, ITA and CBP operated under the contingency plans of their respective agencies. Similarly, USTR officials said that the component operated under EOP's contingency plan. IRS, in contrast, had its own contingency plan for the fiscal year 2019 shutdown because Treasury did not have a department-wide plan.

Agency contingency plans governing the shutdown operations of CBP, IRS, and ITA included most of the key information elements described in OMB *Circular A-11*. EOP did not address a majority of the key information elements in its contingency plan, which governed USTR's shutdown operations. Figure 3 shows how selected agencies' contingency plans aligned with OMB's guidance.

Figure 3: Selected Agencies Addressed Some but Not All OMB Contingency Plan Information Elements

Office of Management and Budget (OMB) key information elements for contingency plans	International Trade Administration	U.S. Customs and Border Protection	Internal Revenue Service	Office of the U.S. Trade Representative
Contingency Plan under which the component operated	Department of Commerce	Department of Homeland Security	Internal Revenue Service	Executive Office of the President
Agency has a shutdown contingency plan, submitted to OMB	●	●	●	●
Summary of significant agency activities that will continue during a lapse	●	●	●	○
Summary of significant agency activities that will stop	●	●	●	○
Estimate of time needed to complete shutdown activities (if longer than half a day, provide details)	●	●	●	●
Total numbers of employees expected to be on board before the shutdown	●	●	●	●
Total numbers of employees retained during the shutdown, for each category	●	◒	●	◒
For each component: total number of employees on-board before implementation of the plan	●	●	●	●
For each component: total number of employees to be retained for each category	●	●	●	◒
For each component: legal basis for each determination to retain employees and description of the activities to be performed	●	●	●	○
Description of anticipated changes to the plan in case of prolonged lapse in appropriations (longer than 5 days)	○	◒	○	○
Designation of personnel responsible for implementing and adjusting the plans given changes in conditions	●	●	●	○
Methods for notifying employees about end of shutdown and when to return to work	●	●	●	○
Flexibilities available to supervisors if employees have problems returning to work after the end of the shutdown, including the use of annual leave, compensatory time off or credit hours	○	○	◒	○
Procedures for resuming program activities, steps to ensure appropriate oversight and disbursement of funds	○	◒	○	○

● Fully addressed ◒ Partially addressed ○ Did not address

Source: GAO analysis of Office of Management and Budget (OMB) guidance and selected agencies' contingency plans. | GAO-20-377

Note: OMB guidance provides for agencies to report the total number of employees to be retained in a shutdown and categorize them based on whether they are exempt or excepted from the Antideficiency Act, 31 U.S.C. § 1341. If the agency claims the employees are excepted from the Act, the guidance states they must provide the basis for such exception. These exceptions are: (1) activities authorized by statute to incur obligations in advance of appropriations; (2) the performance of core constitutional powers; or (3) activities to address the safety of human life or the protection of property. We did not evaluate whether agencies' categorizations were appropriate.

Three of our four selected agencies—Commerce, IRS, and DHS—provided summary information at the beginning of their contingency plans about activities that would and would not continue during a lapse in appropriations. EOP's contingency plan did not include any information

on activities that would and would not continue. The following table shows examples of exempt and excepted work activities from our selected agencies' contingency plans (see table 2).

Table 2: Examples of Exempt and Excepted Work that Continued during the Fiscal Year 2019 Partial Government Shutdown, as Identified in Selected Agency Contingency Plans

Agency	Agencies' examples of exempt activities	Agencies' justification for and examples of excepted activities
Department of Commerce (Commerce)	Activities to administer ongoing privacy shield activities in compliance with European Union—U.S. and Swiss—U.S. Privacy Shield Frameworks, which are funded out of cost recovery funds.	Conducting ongoing overseas pre-licensing and post-shipment checks to ensure compliance with U.S. national security interests. Commerce identified these activities as excepted to protect life and property.
Department of Homeland Security (DHS)	Activities related to the Disaster Relief Fund, which is funded by a no-year appropriation, may have sufficient balances available to continue operations.	Activities related to the conduct of foreign relations essential to national security. DHS determined that these activities are necessary to the discharge of the president's constitutional duties and powers.
Internal Revenue Service (IRS)	Activities involved in implementation of Public Law 115-97, commonly referred to as the Tax Cuts and Jobs Act, could continue because the act's provisions provide funding for fiscal years 2018 and 2019 for these activities.	Continuing computer operations to prevent the loss of data. IRS determined that this activity was necessary to protect life and property.
Executive Office of the President (EOP)	Not provided in plan.	Not provided in plan.

Source: GAO analysis of selected agencies' contingency plans published prior to the fiscal year 2019 partial government shutdown date of December 22, 2018. | GAO-20-377

Note: We did not make a determination of whether the Antideficiency Act exception categories were applied appropriately, nor did we independently verify availability of funding for activities the agencies identified as exempt.

All four agencies provided the total number of employees on-board before the shutdown and how many would continue to work during the government shutdown. However, EOP's contingency plan did not break down these employees by ADA exception categories that may include addressing emergencies involving the safety of human life or the protection of property or carrying out core constitutional powers, as specified in OMB guidance. While the break out of employees by ADA exception category was not in the DHS department-wide plan, CBP's component-level portion of the plan, which is not publically available

because of law enforcement sensitivities, contained these details.[11] This information is important for an agency to ensure it has proper oversight of operations and the right personnel performing excepted work to be in compliance with the ADA.

None of the agencies we reviewed provided a complete description of potential changes to their activities and operations in the case of a prolonged lapse in appropriations—one lasting longer than 5 days—within their contingency plans. Officials at some of the selected agencies told us that the purpose of their contingency plans was only to document operations for the first 5 days of a shutdown, contrary to what is required in OMB's *Circular A-11* for planning and documenting operations in the anticipation of a potential prolonged shutdown.

While three of the four agency contingency plans that we reviewed—Commerce, IRS, and DHS—provided some minimal details on how operational changes would be made in the event of a prolonged shutdown, such as designating personnel responsible, none provided the level of detail called for in OMB guidance. As discussed later, three of four selected agency components—ITA, IRS, and USTR—did have internal discussions on changes to operations in the event of a prolonged shutdown, according to officials. However, these discussions were not documented in the agency contingency plans.

Given that shutdowns longer than 5 days have occurred in the past, it is important for agencies to consider and document the effects that a potential prolonged shutdown would have on operations in their contingency plans. Planning for potential prolonged shutdowns may assist the agencies with effectively managing changes in operations, and documenting these plans in public contingency plans may provide transparency to agency actions as a shutdown continues. OMB's guidance states that if an agency anticipates changes during a potential prolonged shutdown, contingency plans should include information such as points in time when the furlough status of an employee may change,

[11]All contingency plans we reviewed, with the exception of the CBP portion of the DHS department-wide plan, were publically available. DHS officials stated that the department's contingency plan includes a public portion that describes the general procedures and information about activities that need to continue at DHS during the government shutdown. Each component of DHS has a non-public, for official use only, portion of the plan that contains details about the number and type of excepted employees. DHS officials explained that disclosing information about law enforcement officers working during a government shutdown could allow a member of the public to use this information to try to evade authorities.

how many employees would be affected, and the legal basis for the changes. This information element is mentioned in two separate sections of *Circular A-11* rather than in one consolidated location.

Contingency plans for all selected agencies did not include complete information about (1) flexibilities available to supervisors if furloughed employees were unable to return to work on the day specified by the agency, including use of annual leave, compensatory time off, or credit hours; and (2) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown, as specified in OMB's guidance. Officials at selected agencies said that this information was available in internal guidance and fact sheets for employees, but that they did not include it in contingency plans, which are accessible to all employees during a shutdown. Including this information in contingency plans is important because it helps clarify agencies' expectations for returning employees, and its inclusion may help agencies experience a more timely resumption of activities following a shutdown.

As previously mentioned, USTR, as a component of EOP, operated under EOP's contingency plan and did not have a separate plan for the fiscal year 2019 shutdown. While EOP's contingency plan contained some information on USTR such as total number of employees on-board before the shutdown and employees to be retained during the shutdown, the plan did not fully address 10 of the 14 information elements outlined in OMB's *Circular A-11*. Information that was not provided includes: (1) a breakout of exempt and excepted positions by category (e.g., available budget authority, emergencies involving safety of human life or protection of property, etc.); (2) summaries of activities that would or would not continue during a lapse; (3) designation of personnel responsible for implementing and adjusting the contingency plan if conditions change; and (4) methods for notifying employees that the shutdown has ended and when to return to work.

Formal contingency plans that address the information elements specified in OMB guidance help agencies prepare for and oversee shutdown operations, and provide transparency to agency actions during a lapse in appropriations. Without a plan that covers these elements, USTR risks miscommunication with employees and other stakeholders that could negatively impact an orderly shutdown and the effective resumption of activities at the end of a lapse.

Three of Four Selected Agency Components Discussed Potential Changes during a Prolonged Shutdown, and All Made Operational Changes

IRS, ITA, and USTR Planned for Potential Operational Changes Needed in the Event of a Prolonged Shutdown, but CBP Did Not

Officials at IRS, ITA, and USTR discussed anticipated operational changes in the event of a prolonged shutdown internally while planning for the fiscal year 2019 shutdown. In one instance, an agency component documented these discussions in planning documents separate from agency contingency plans under which the component operated. However, as mentioned previously, potential operational changes were not documented in any of the contingency plans of our selected agencies. Potential operational changes generally involved recalling additional employees who had been furloughed at the beginning of the shutdown to carry out activities that the agencies categorized as excepted from the ADA or exempt due to other funding sources.

IRS: IRS officials said that their initial planning was for a shutdown lasting 5 days or less. Within their contingency plan IRS noted that it would amend the plan if the shutdown lasted longer. On December 27, 2018, 6 days into the shutdown, IRS issued an updated contingency plan. According to IRS officials, this updated plan was assembled by contacting each of IRS's 23 organizational offices to find any new activity requirements that would lead to changes in the contingency plan. In its amended plan, IRS added approximately 60 positions as excepted or exempt. Examples of activities that employees in these positions would support included: (1) communications efforts through IRS websites, (2) end-of-month financial operations, and (3) managing on-boarding for employees hired under Public Law 115-97, commonly referred to as the Tax Cuts and Jobs Act.[12]

[12]According to IRS, the Tax Cuts and Jobs Act was the most sweeping tax law change in more than 3 decades.

IRS officials said they knew about these operational changes at the time of initial shutdown planning, but did not document all these operational needs. IRS program officials told us that being informed of anticipated operational changes as early as possible would have helped them prepare for the shift in workload. For its fiscal year 2020 contingency plan, IRS asked plan contributors to identify "as needed" positions that could be activated during a potential prolonged shutdown. Plan contributors also identified positions that would be needed if a shutdown lasting more than 5 days were to occur as IRS approached the tax filing season.

ITA: Prior to the shutdown, ITA officials prepared a list of upcoming activities for the next 30 to 60 days to determine the potential scope of activities affected by a government shutdown. Activities included trade shows, meetings, and other critical operational deadlines. According to officials, ITA worked with their General Counsel to determine if activities could continue as excepted from the ADA or exempted because funding was available from another source. For those activities that could not be deemed excepted or exempt, ITA officials said that they were prepared to notify affected parties of the cancellation or postponement of the activities.

For upcoming activities, ITA established dates when preparation would need to begin. In addition, ITA officials prepared temporary exception requests for employees to be recalled from furlough status in time to conduct needed preparation and carry out scheduled activities. ITA officials told us that they used and updated a tracker daily during the shutdown to ensure that all information remained current.

Prior to the shutdown, ITA officials also said that they collected information on official travel planned for around the anticipated time of the shutdown. They said that it was important to gather this information because once employees were furloughed it becomes more difficult to gather complete and timely information on these travel plans.

USTR: Prior to the shutdown, USTR officials asked offices to provide lists of positions that would need to be excepted during the first 2 weeks of a potential shutdown. This allowed USTR to anticipate operational needs if a shutdown lasted longer than 5 days. USTR officials said that flexibility was important as the potential shutdown approached because it allowed offices to adjust excepted position lists based on additional excepted activities or postponement of activities. USTR officials said that, in their experience, it is difficult to anticipate all the operational changes needed in the event of a shutdown longer

than 2 weeks, especially as the agency component relies on partners at other agencies that may or may not be affected by the shutdown.

CBP: Although the non-public portion of the DHS plan for CBP included sections that describe functions that may resume in the event of a prolonged shutdown, CBP officials said that these sections were not used in anticipation of the fiscal year 2019 shutdown. Specifically, the sections provide the opportunity for officials to indicate how many employees would be recalled to perform functions, but in the fiscal year 2019 plan almost every section indicates zero employees. Despite OMB guidance on prolonged shutdowns, officials said they believe that OMB guidance was exclusively for the first 5 days of a shutdown. Use of these sections of the CBP plan would help provide clearer expectations to the agency component's workforce about who may be recalled to perform work activities during a shutdown.

For the fiscal year 2020 contingency plan, CBP officials said that they asked offices to analyze and communicate what, if any, additional employees would be needed to work if a shutdown were to extend past 5 days. However, our review of the 2020 CBP plan found that, similar to the plan for fiscal year 2019, it largely does not indicate how many employees would be recalled to perform functions in the event of a prolonged shutdown.

All Selected Agency Components Made Operational Changes during the Prolonged Shutdown for Varying Reasons

During the fiscal year 2019 shutdown, each agency component that we reviewed determined that changes needed to occur that affected the number of excepted employees working during the shutdown. According to agency component officials, these changes were due to the length of the shutdown, external events, and changes to the determination of excepted work. The length of the fiscal year 2019 shutdown was the most common reason cited by officials for operational changes.

CBP: During the fiscal year 2019 shutdown, CBP responded to an increase in foreign nationals arriving at the southern U.S. border. In response to this external event, CBP officials told us that they identified a need to train additional law enforcement officers and agents to perform excepted activities. According to the DHS contingency plan, new hire training for law enforcement officers may be an excepted activity if the requesting agency component

establishes a reasonable likelihood that a delay in new hire training would compromise the safety of human life or protection of property.

According to DHS documents, this was a change from previous shutdowns, when new hire training was not an activity excepted from the ADA. CBP officials told us that they discussed this issue internally before the shutdown, but processing the change through DHS's Chief Financial Officer, DHS General Counsel, and OMB occurred after the shutdown began. CBP has incorporated this change into its updated, non-public portion of DHS's contingency plan.

IRS: As the length of the shutdown increased, IRS identified mission requirements that it determined necessitated the recall of additional employees. For example, as it transitioned to its filing season operations, IRS recalled mail center employees to oversee the collection of taxes and protection of statute expiration.[13] IRS's updated fiscal year 2019 filing season contingency plan, published on January 15, 2019, incorporated this activity along with the additional 560 employees recalled for one division to perform the work.

IRS said in the updated plan that the ADA exception for this work was the protection of life and property. According to IRS documents, Treasury officials evaluated plan updates for compliance with the ADA, and then shared the plan with OMB prior to implementing changes.

IRS also made operational changes during the fiscal year 2019 shutdown that were based on changes to the determination of which work activities were excepted from the ADA. During the shutdown IRS announced that it would process tax returns beginning January 28, 2019, and refund taxpayers as scheduled. In 2011, OMB directed IRS not to pay tax refunds in the event of a lapse in appropriations. However, at the request of Treasury and IRS, OMB revisited this position and, on January 7, 2019, OMB informed Treasury that tax refunds may be paid during a lapse in appropriations.

As a result of this determination, IRS added approximately 16,000 additional excepted positions to its filing season contingency plan for the purpose of issuing refunds. This change was documented in its updated contingency plan, published on January 15, 2019. In October 2019, we determined that the agency violated the ADA by processing

[13]IRS has 10 years to collect unpaid taxes after an assessment of tax liability is issued. Once 10 years have passed after the assessment is issued, the government loses the right to collect on the assessment. 26 U.S.C. § 6502.

tax returns and issuing refunds to taxpayers because it lacked available budget authority to support these activities and no exception to the ADA permitted IRS to incur these obligations.[14]

ITA: According to ITA officials, they updated ITA's activity list during the course of the fiscal year 2019 shutdown. They said the update was needed to help determine which preparation activities could continue for future events, such as trade shows that bring international delegations, and which activities or events would have to be cancelled if the shutdown continued. ITA officials said they had to evaluate cancellation clauses in its contracts with these trade shows to decide whether and when to cancel. ITA recalled employees on a temporary basis, as needed, to perform these tasks. ITA officials told us that they followed departmental guidance in requesting employee recalls during the shutdown. ITA submitted proposed changes to Commerce's Office of the Deputy Assistant Secretary for Administration, which coordinated department-level review and approval.

Commerce officials told us that senior leadership discussed changes to the contingency plan with OMB officials over the course of the shutdown. Despite changes to the number of excepted employees, Commerce did not publish an updated contingency plan during the fiscal year 2019 shutdown. Commerce officials told us that, through discussions with OMB, they determined that publishing an updated plan was not necessary due to the relatively small number of changes to the total number of excepted and exempt employees.

USTR: Prior to the beginning of the shutdown, USTR estimated that it could continue full operations for 3 to 4 weeks with available funding. Because the shutdown lasted beyond 3 weeks, USTR furloughed a majority of its employees on January 14, 2019, once those funds were no longer available. In the absence of available funding, USTR officials decided that some functions were excepted from the ADA under the justification that the agency component works to discharge the president's constitutional duty and power to conduct foreign relations. USTR officials stated that component leaders identified the highest priority mission activities to continue during the shutdown, such as trade negotiations with China and work related to the North American Free Trade Agreement. Officials decided not to continue other activities, such as preparations for the 2019 Group of 20 Summit.

[14]See, GAO, *U.S. Department of the Treasury—Tax Return Activities during the Fiscal Year 2019 Lapse in Appropriations,* B-331093 (Washington, D.C.: Oct. 22, 2019).

USTR officials told us that, in consultation with OMB, USTR excepted more than 74 employees, the number listed in the EOP contingency plan published December 21, 2018. According to USTR documents, between 88 and 101 excepted employees were working during the last 2 weeks of the shutdown. Officials told us that these changes were made to carry out critical, excepted activities and that changes were communicated daily to EOP.

Two of Four Selected Agency Components Documented Shutdown Procedures, and None Had Sufficient Controls for Workspace Access during a Shutdown

Agency preparation for a government shutdown can require extensive changes in day-to-day operations. Having established policies and procedures prior to a shutdown can help agencies implement these changes successfully. Establishing these policies and procedures requires timely and transparent planning and communication to ensure that agencies function as effectively as possible during a shutdown. Internal controls related to planning for a government shutdown include designating roles and responsibilities, establishing processes for planning activities that help meet objectives, and documenting said processes.

Internal controls related to communication prior to and during a government shutdown include ensuring that information communicated is timely, sufficient, and delivered to all appropriate individuals.[15] Figure 4 summarizes the extent to which selected agency components incorporated applicable internal controls into their planning and operations prior to and during the fiscal year 2019 shutdown, as discussed in detail in the following sections.

[15]GAO-14-704G.

Figure 4: Selected Agency Components Varied in the Sufficiency of Their Internal Controls for Shutdown-Related Activities

Shutdown-related activities	U.S. Customs and Border Protection	Internal Revenue Service	International Trade Administration	Office of the U.S. Trade Representative
Develop roles and responsibilities	✔	✔	✔	✔
Document roles and responsibilities	✔	✔	☐	☐
Develop shutdown preparation processes	✔	✔	✔	✔
Document shutdown preparation processes	✔	✔	☐	☐
Inform employees of shutdown processes	✔	✔	✔	✔
Develop employee recall processes	✔	✔	✔	✔
Document employee recall processes	✔	✔	☐	☐
Track the number of employees working	☐	✔	✔	✔
Control access to physical workspaces	☐	☐	✔	☐
Control access to virtual workspaces	☐	☐	☐	☐

✔ Component had sufficient internal controls ☐ Component did not have sufficient internal controls

Source: GAO analysis of selected component information. | GAO-20-377

Selected Agency Components' Policies and Procedures Were Generally Consistent with Internal Control Principles for Planning and Communication, Although Level of Documentation Varied

Selected Agency Components Identified Shutdown Planning Roles and Responsibilities

The agency components we reviewed identified staff needed to plan for the fiscal year 2019 shutdown and tasked each with certain responsibilities. According to *Standards for Internal Control in the Federal Government* (Internal Control Standards), agency component management should implement its control activities—processes, procedures, techniques, and mechanisms—through policies. Documenting roles and responsibilities for implementing the policies can help agencies meet their objectives related to managing a government

shutdown. The following examples illustrate the roles and responsibilities of staff who helped determine which activities would continue during the fiscal year 2019 shutdown.

CBP: CBP's non-public portion of the DHS contingency plan described the key responsibilities and accountable parties for shutdown preparation. For instance, heads of offices determined which of their employees would remain at work to perform exempt or excepted functions during the shutdown. The CBP Hiatus Coordinator communicated daily with Hiatus Points of Contact within each CBP office who managed the offices' shutdown processes. For instance, the Hiatus Points of Contact determined what functions would continue during the shutdown to help ensure activities aligned with OMB guidance. Officials said that CBP's Office of Chief Counsel reviewed each excepted function to help ensure they met the legal standard for each ADA exception category.

IRS: IRS internal process documents outlined the steps needed to prepare for a shutdown and the accountable parties for implementation. For example, IRS had a Lapse Program Manager who coordinated shutdown activities and helped develop the contingency plan, including identifying and evaluating excepted roles and aligning them with people, positions, and exception categories. IRS Chief Counsel was then responsible for reviewing the contingency plan for compliance with the ADA, followed by a review from Treasury's General Counsel. According to the process documents, Treasury ultimately approves IRS's contingency plan.

ITA: ITA employed a "bottom-up" shutdown planning process, according to ITA officials. As part of this process, ITA officials said they identified activities to continue during a shutdown, as well as the ADA exceptions to justify the activities, before submitting plans to General Counsel for review. However, ITA did not document its roles and responsibilities because the component relied on the planning processes documented in Commerce's shutdown contingency plan, according to ITA officials. The agency's plan provided instructions for submitting component shutdown plans to Commerce's Office of the General Counsel and Office of Human Resources Management.

Commerce's contingency plan did not, however, contain information about component-specific roles and responsibilities related to planning for a potential government shutdown. Without documenting roles and responsibilities, ITA cannot ensure that the appropriate officials take the necessary steps to effectively prepare and execute plans for any future potential government shutdowns.

USTR: USTR instructed Assistant U.S. Trade Representatives to indicate which employees would perform excepted work based on the highest priority initiatives and activities. Two weeks prior to the shutdown, the Office of Administration and General Counsel used this information to develop a plan for the shutdown, followed by senior leadership approval, according to USTR officials. While USTR described the roles and responsibilities of its officials in planning for the shutdown, USTR did not document these roles and responsibilities because it used this same process in previous shutdowns, and responsible parties were accustomed to the process and knew their roles well, according to USTR officials. Documenting roles and responsibilities would help USTR ensure that the appropriate officials take the necessary steps to effectively prepare and execute plans for future potential government shutdowns, especially when officials currently familiar with the process no longer work for USTR.

CBP and IRS Documented Their Shutdown Preparation Processes, but ITA and USTR Did Not

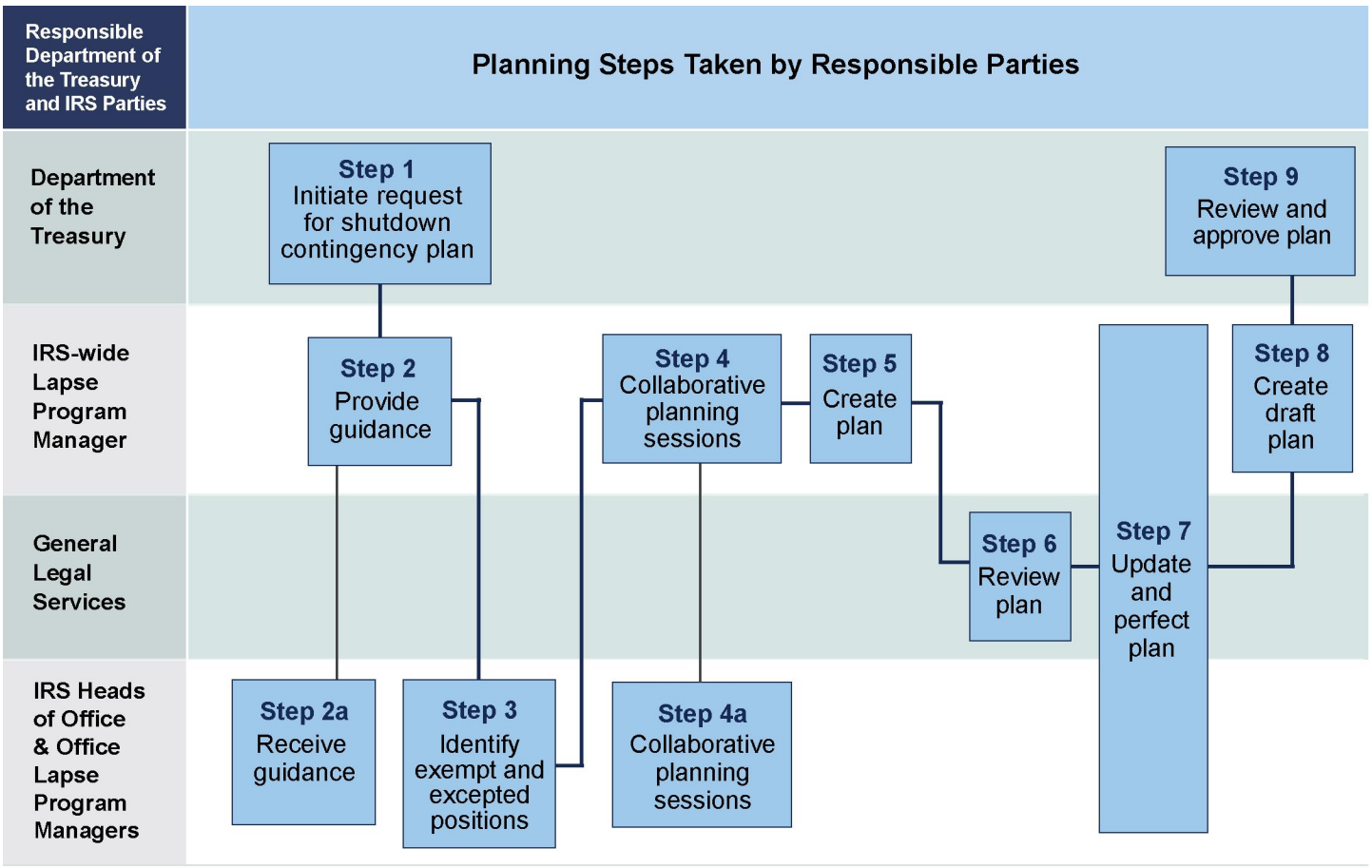
Internal Control Standards states that agency component management should implement its control activities through policies. Agency components can effectively do so, in part, by documenting processes for implementing policies related to government shutdowns. Shutdown preparation process documents at selected agency components included descriptions of activities to complete prior to the shutdown, such as updating and reviewing contingency plans, and preparing guidance and communication for managers and employees, among other steps.

CBP: CBP's non-public portion of the DHS contingency plan contained actions necessary to prepare for an impending shutdown, in addition to the roles and responsibilities discussed above. For example, CBP officials would need to identify executive points of contact who would continue working during the shutdown, prepare employee communications such as furlough notices, and prepare and distribute guidance for employee training during the shutdown, according to CBP's shutdown guidance. This guidance also included descriptions of services, such as facilities maintenance, mail operations, and use of information technology equipment that would remain available and how, if at all, that work would be accomplished during a shutdown.

IRS: IRS developed detailed process maps for its shutdown processes to document its planning and implementation activities and

help improve understanding of the roles and responsibilities of staff at each step, according to IRS officials. IRS's planning process map showed the order in which staff should perform certain tasks, a description of each task, and the responsible party for each task. For instance, the document showed who should draft, review, revise, and approve the shutdown contingency plan, and when each step should occur by each party. Figure 5 shows a streamlined version of IRS's process map for the shutdown planning phase.

Figure 5: Internal Revenue Service Process Map Shows Order of Necessary Planning Steps and Responsible Party



Source: GAO recreation of Internal Revenue Service (IRS) shutdown planning process map. | GAO-20-377

Similarly, IRS's implementation process map detailed steps for communicating with employees prior to a shutdown and updating contingency plans during a shutdown. During the shutdown, IRS distributed tools and guidance with instructions for implementing each step, according to an IRS official.

ITA: ITA prepared a list of activities scheduled for the first 80 days of the fiscal year 2019 shutdown and determined the activities that would continue during the shutdown. While ITA officials described the process of assembling this list to us, they did not provide evidence to show that they had documented the process. According to ITA officials, ITA performed a similar exercise during the fiscal year 2014 government shutdown. Additionally, ITA officials said that they followed Commerce's contingency plan to plan for the fiscal year 2019 shutdown. However, that document provided general information at the agency level. It did not provide information on the shutdown planning processes used by ITA, such as ITA-specific actions to take in the planning process. ITA did not provide documents showing these processes. Documentation of shutdown planning procedures would help ITA ensure that officials take the necessary steps to effectively prepare for future potential government shutdowns.

USTR: USTR officials described the agency component's shutdown processes but did not have the processes fully documented. Instead, USTR relied on the institutional knowledge of its officials to prepare for the fiscal year 2019 government shutdown. USTR officials told us that staff implementing shutdown processes for the fiscal year 2019 government shutdown also did so during the fiscal year 2014 shutdown. These officials told us that they used the same processes for both shutdowns, and that the staff involved were familiar enough with the processes to implement them effectively in fiscal year 2019.

USTR communicated through email the steps for employees to take prior to furloughs, such as providing personal contact information to supervisors. USTR also provided EOP's shutdown guidance to employees, which included additional information for employees, such as limitations to work site access and seeking outside employment while furloughed. However, EOP's guidance did not contain details about USTR's shutdown preparation process.

USTR provided guidance to Assistant U.S. Trade Representatives about identifying excepted employees, but this guidance did not include information about other planning processes. Without documentation of all shutdown planning procedures, USTR cannot ensure that officials take the necessary steps to effectively prepare for future potential government shutdowns.

Selected Agency Components Informed Employees of Shutdown Procedures

Internal Control Standards states that management should communicate sufficient information, such as policies and procedures for implementing shutdown processes, to all appropriate individuals in a timely manner. We found that selected agency components used a variety of methods to communicate shutdown-related plans with employees in a timely manner prior to or at the beginning of the fiscal year 2019 shutdown. Methods included distributing policies through managers, referring employees to internal websites, and component-wide emails. Additionally, all selected agency components communicated individual furlough decisions to employees once the shutdown began. Representatives from employee organizations whose members worked at CBP and IRS said that, despite minor communication challenges between components and employees, they generally found shutdown-related communication to employees to be adequate.

CBP: CBP encouraged supervisors to communicate to employees what could be expected of them should a shutdown occur, according to CBP officials from the Office of Field Operations. DHS directed CBP to email furlough notices to affected employees once the shutdown began, according to CBP officials, and CBP received email read receipts to help ensure the notices reached all employees. Each office confirmed with CBP that notices were sent to all affected employees, according to CBP officials.

CBP held daily meetings with management during the shutdown to answer questions and share information, including information about travel, pay, contract actions, review and approval of employee recalls, and updates to the CBP contingency plan, according to CBP officials. Organizational points of contact then shared this information with managers, who provided appropriate information to employees.

Furloughed employees did not have permission to access internal online resources as CBP had instructed them not to use CBP systems during the shutdown except in limited circumstances. In response, CBP developed a mobile application so that furloughed employees could see such updates on their personal cell phones in the event of a future shutdown, according to CBP officials. Representatives of CBP bargaining unit employees told us that, aside from limited instances of inaccurate or delayed information, CBP effectively communicated shutdown information to employees using multiple communication channels.

IRS: IRS hosted internal training sessions prior to the shutdown to clarify roles and responsibilities for managers and excepted, exempt, and furloughed employees. IRS also made resources available to employees on its website, according to IRS officials, including shutdown checklists and a Frequently Asked Questions document with information on preparing for an orderly shutdown, among other things. Two days prior to the shutdown, OMB authorized IRS to direct managers to verbally inform employees of their furlough or excepted status in the event of a shutdown, according to IRS officials. These officials told us that IRS directed managers to not distribute status letters until December 22, 2018, the first day of the partial government shutdown. IRS's implementation process map also shows that officials were to send status letters at the start of a shutdown.

A representative of IRS bargaining unit employees told us IRS was responsive to employee questions during the shutdown and tried to address all issues raised. The representative noted that IRS had some challenges communicating with recalled employees as the shutdown continued but also said that IRS did the best it could, given its limitations, and did not identify ways to improve employee communication.

ITA: Commerce directed ITA to distribute notices to employees explaining individuals' furlough or excepted status after the shutdown began, according to ITA officials. On December 26, 2018, the first working day of the shutdown, ITA officials said they issued these notices along with a fact sheet about tasks for employees to complete that day. The fact sheet also communicated policies regarding scheduled leave and workspace access during the shutdown, among other things. ITA asked employees to confirm receipt of the notices during the orderly shutdown period, after which ITA certified to Commerce that it had issued all notices, according to ITA officials.

A representative for bargaining unit Foreign Service Officers at ITA suggested that employees might benefit from receiving some information prior to a shutdown, including standard processes that ITA has established in policy and that remain the same between government shutdowns.

USTR: Prior to furloughing employees, USTR instructed employees to visit its public website daily to verify USTR's operating status. The website provided information on transit benefits, unemployment compensation, and an employee assistance program, among other things. USTR also communicated changes in operating status through notifications to employees' personal telephone numbers and email accounts during the shutdown, according to USTR officials. These

officials told us that in-person communication worked well to convey information to staff due to the small size of the agency component, approximately 250 staff. USTR officials said they emailed all employees about furloughs that would begin on January 14, 2019, updated the operating status on its phone line and website, and directed employees to stay apprised of USTR's shutdown status.

Before furloughs began, USTR instructed employees to provide managers with personal contact information, which, according to officials, managers used to recall employees during the shutdown. USTR officials said that managers also communicated with individual employees regarding whether they would continue to work after January 14, 2019. USTR employees were not represented by an employee organization.

Selected Agency Components Recalled Employees during the Shutdown, but ITA and USTR Did Not Document Recall Processes

Internal Control Standards states that agency component management should design and implement control activities, such as shutdown processes, through policy. Agencies can effectively do so, in part, by documenting processes and roles and responsibilities for staff implementing those processes. During the fiscal year 2019 government shutdown, agencies recalled employees who were previously furloughed to return to work as the shutdown continued and circumstances changed. While each agency component had processes to recall employees back to work during the shutdown, not all components documented these processes.

CBP: CBP's non-public portion of the DHS contingency plan for fiscal year 2019 documented the employee recall process for government shutdowns. According to the plan, offices were to send a written request for a recall to the Executive Assistant Commissioner, Enterprise Services, specifying the number of employees to recall and the justification for doing so. DHS's Budget Division and Office of the General Counsel also reviewed these recall requests, according to a DHS official. As with its initial excepted and furloughed employee notices, CBP used email read receipts to determine whether employees received updates to their furlough or excepted statuses and CBP recall processes. Additionally, each office had to verify with the CBP Hiatus Coordinator that updated status notices were sent to employees.

IRS: IRS documented its procedures for recalling newly excepted employees during the shutdown in its implementation process map. IRS communicated these procedures to employees during the shutdown via its emergency web page and hotline, an updated Frequently Asked Questions document, and engagement with the employee organization representing IRS employees in the bargaining unit, according to IRS officials. IRS delegated the process of recalling employees to its 23 organizational offices. During the recall process, IRS managers contacted excepted employees to discuss duties and the date to report to work, according to IRS officials.

IRS had many instances where the component recalled furloughed employees for a period of time and furloughed the employees again when needed, according to an IRS official. This official told us that IRS issued new furlough letters to employees each time this occurred. Similarly, IRS offices used an intermittent furlough letter when excepted employees planned to be away from work. According to the IRS official, doing so provided documentation of whether those excepted employees worked or were furloughed on a given day.

ITA: According to ITA officials, once Commerce approved a temporary exception during the shutdown, ITA's shutdown coordinator issued a recall letter to employees. ITA issued recall notices for temporary exceptions during the shutdown to perform specific work activities. Once employees completed those activities, ITA issued another furlough notice to those employees, according to ITA officials. ITA had a daily employee tracking document that showed exception start and end dates, and whether recall letters and subsequent furlough letters were issued to each employee. However, ITA did not document its recall process.

Similar to its shutdown planning processes, ITA officials said they relied on Commerce's employee recall processes instead of documenting its own specific processes. However, Commerce's guidance did not contain information about how ITA developed temporary exception requests or how ITA processed the recalls. Without documentation of employee recall processes, ITA cannot ensure that officials are effectively implementing their processes during a potential future shutdown. Furthermore, officials who previously implemented shutdown-related processes may not be available during future shutdowns. Documentation ensures that processes that have been deemed to be effective can be replicated by others in the future.

USTR: USTR recalled additional employees to perform excepted work during the shutdown. On each day after furloughs began, USTR

recalled up to 30 employees beyond the 74 excepted employees in the Executive Office of the President's (EOP) shutdown contingency plan. The Chief of Staff and Deputy Chief of Staff reviewed a list of excepted employees each day to identify adjustments to the number of excepted employees needed, according to USTR officials. These officials told us that when USTR offices requested employee recalls, the Chief of Staff and Deputy Chief of Staff consulted with the responsible Deputy U.S. Trade Representatives to make necessary changes.

USTR officials did not have a documented process for recalling these employees. As with its preshutdown contingency planning processes, USTR officials said that they rely on institutional knowledge to carry out its recall procedures. Documentation of employee recall processes would help USTR ensure that officials effectively implement these processes during future shutdowns, especially given that officials who previously implemented shutdown-related processes may not be available during future shutdowns.

Selected Agency Components Reviewed Plans and Operations to Identify Lessons Learned for Future Government Shutdowns

All agency components we reviewed said that they had reviewed or planned to review their shutdown processes and incorporate any identified solutions into their internal planning documents or into agency contingency plans.

CBP: CBP incorporated changes to its policies on employee leave and absences into its non-public portion of the DHS fiscal year 2020 contingency plan for a potential shutdown. For example, CBP's fiscal year 2020 plan now contains examples of when supervisors may approve absences for excepted employees, such as for previously approved and ongoing requests under the Family and Medical Leave Act of 1993.

IRS: Following the fiscal year 2019 shutdown, IRS reviewed its processes, requesting input from offices about ways to improve those processes in the case of future government shutdowns. Some improvements identified by offices included modifying current lapse plans to incorporate a medium- and long-term view, hosting training that focuses on frequently asked questions and managerial and employee responsibilities, and creating user-friendly access to information.

ITA: ITA planned to cooperate with partner agencies on planned excepted activities going forward, according to ITA officials. These officials said they were in contact with their interagency partners at the time of our review and would work with them prior to a potential future shutdown to determine whether to submit requests for excepted work for certain activities.

USTR: USTR reviewed its processes for the fiscal year 2019 shutdown and determined that it operated effectively and would not require changes for future shutdowns, according to USTR officials.

Selected Agency Components Generally Tracked Employees Working but Did Not Have Controls for Workspace Access during the Shutdown

Three Selected Agency Components Tracked the Number of Employees Who Worked during the Shutdown

Internal Control Standards states that agency component management should implement control activities through policies. During a government shutdown, agencies must limit the work performed to only exempt or excepted activities. Establishing limits for the number of employees working during a shutdown can help achieve this goal, and agencies can document these limits in their shutdown contingency plans. Tracking the number of employees working during a shutdown can help agencies ensure that they operate in accordance with their established contingency plans and prevent violations of the ADA.

CBP: According to officials, CBP did not direct program offices to perform daily head counts of employees working and did not track the number of employees who worked during the shutdown. CBP officials told us that it would have been difficult to track employees because it did not have the systems or data to match the number of planned excepted employees with the number of employees who actually worked during the shutdown.

Instead, CBP relied on managers to ensure that individual offices did not exceed their approved number of excepted positions during the shutdown. While individual offices could have opted to track the number of employees working each day for this purpose, CBP officials said that they did not direct all offices to do so. Tracking the number of employees who worked during the shutdown would help CBP ensure that controls to limit who can perform work during a shutdown function

as intended. It would also ensure that its operations are consistent with contingency plans.

IRS: IRS tracked the number of employees who worked each day during the shutdown but faced challenges in doing so. IRS directed managers to ensure that the number of excepted employees in each office did not exceed the number of approved positions in the contingency plan, according to IRS officials. An IRS official told us that each office had discretion for how it complied with this requirement, such as by requiring a daily headcount of employees. For example, during the shutdown, IRS's Wage and Investment Division documented the office or function under which employees worked and the number of employees who worked in each. However, as headcounts proved to be time consuming for offices—Wage and Investment tracked up to 11,000 employees on one day—IRS officials told us they plan to move to an automatic tracking system in the future.

According to IRS officials, IRS hosted daily calls with senior executives and Lapse Program Managers for each office to discuss the daily implementation of the shutdown contingency plan. IRS officials told us that the Heads of Office and Lapse Program Managers oversaw daily operations in each of their offices to help ensure operations were consistent with contingency plans. For example, Wage and Investment officials told us that the Wage and Investment Commissioner met daily with teams to discuss activities performed to help ensure that employees performed only the work in the contingency plan approved prior to the shutdown.

ITA: ITA maintained a daily tracker of excepted employees who were scheduled to work each day. ITA used this tracker to record excepted employee names, projects and tasks, exception start and end dates, exception categories, and travel information as appropriate. Officials used this information to determine whether employees received the appropriate furlough or excepted status notice during the shutdown.

USTR: USTR tracked which employees worked during the shutdown after January 14, 2019, in accordance with EOP guidance. EOP guidance says that "all EOP components are required to compile and report daily the name of each excepted employee and certify the hours worked that week for the duration of a lapse in appropriations to the [Office of Administration] group responsible for payroll." USTR provided to EOP daily lists of excepted staff during the shutdown. These lists helped account for those who were guaranteed pay for work performed during the shutdown, according to USTR officials.

Selected Agency Components Had Insufficient Controls for Physical and Virtual Workspace Access

Internal Control Standards states that agency component management should design and implement control activities through policies to help meet objectives. Effective implementation includes determining the policies necessary to operate a process based on objectives, such as limiting physical and virtual employee access to agency component workspaces and networks.

CBP: In its notices provided to furloughed employees at the start of the fiscal year 2019 government shutdown, CBP advised employees that they must remain away from their workplace unless and until recalled. These furlough notices and CBP's non-public portion of the DHS contingency plan also stated that employees could not use their government-issued devices for any purpose other than receiving updates and emergency notification from their supervisors. However, CBP did not have additional controls to limit employee access to physical or virtual workspaces, according to CBP officials, such as removing furloughed employees' ability to logon to CBP networks or devices. DHS officials indicated that it would be difficult to monitor access for all excepted employees during a shutdown, especially given that most CBP employees continued to work during the fiscal year 2019 shutdown.

IRS: IRS did not have sufficient controls to limit building access or virtual workspace access during the shutdown. While IRS developed lists of excepted and exempt employees who could work during the shutdown, IRS did not use these lists to grant or deny access to facilities, according to IRS officials. They told us IRS primarily used these lists to ensure it could provide sufficient services to each building based on the number of employees expected to work during the shutdown. IRS's guidance to furloughed employees stated that employees should not use government-issued mobile phones or login to their government accounts remotely, and managers discussed this requirement with employees, according to IRS officials. IRS also directed employees not to use other government-furnished equipment such as computers, according to IRS officials.

However, we found no additional controls to limit virtual network access during the shutdown. During the shutdown, IRS frequently substituted which excepted employees performed excepted functions, resulting in a rotating workforce, according to IRS officials. IRS officials believed it would be difficult to control physical or virtual access for all excepted employees in future shutdowns since access

needs changed as frequently as each hour depending on which employees worked.

ITA: ITA followed Commerce procedures to develop building access security lists to help ensure building access for excepted and exempt employees during the shutdown, according to ITA officials. Prior to the shutdown, Commerce directed agency components to prepare and submit building access security lists to the department's Office of Security each day. If an employee tried to enter the headquarters building during the shutdown, the Office of Security would contact an ITA official to verify whether that employee could enter, according to ITA officials.

These officials told us that employees not on the building access security list were not granted access to the headquarters building during the shutdown. While ITA had controls to limit physical workspace access during the shutdown, it did not have sufficient controls in place to limit virtual access. According to ITA officials, all furloughed employees were instructed not to use their government devices or access the ITA network virtually, and furlough notices stated that furloughed employees could not work at an alternative worksite during the shutdown. However, ITA officials believed that implementing additional controls, such as turning off network access for furloughed employees, would complicate its process for granting temporary exceptions for employees during a shutdown.

USTR: USTR provided employees with EOP guidance prior to implementing furloughs on January 14, 2019. This guidance instructs furloughed employees not to access their place of work or use government-issued cell phones or computers. USTR officials told us they did not have controls in place to monitor employee building access or prevent furloughed employees from entering physical USTR workspaces. These officials told us they provided adequate communications, instructions, and guidance to employees about who can access physical and virtual workspaces.

USTR officials also told us that they did not have controls in place to monitor or limit employee access to virtual USTR workspaces. According to these officials, USTR does not maintain or monitor the EOP-provided mobile communications devices and information technology network. Instead, provision and control of telecommunications and information technology, such as the ones identified, is the responsibility of the Presidential Information Technology Community.

While agency components may face challenges implementing workspace access controls, such as limiting network access for a large number of employees, these steps are nevertheless important to take. Having sufficient controls to limit who can perform work during a shutdown would help agency components ensure that they operate consistently with the ADA and with contingency plans that are designed to help them operate effectively and avoid misuse of government resources during a shutdown. Agency component management can tailor controls to meet the component's unique needs. Specific controls used by an agency component may be different than those used by other components based on a number of factors, such as differences in mission, size, or operational environment of the component.

Conclusions

Government shutdowns are disruptive events that have spanned multiple weeks in recent years. Given the length of some shutdowns, it is important for agencies to have robust plans and established internal controls to effectively communicate, plan for potential changes, and manage operations prior to and during a shutdown. In addition, documentation of these plans and controls helps ensure that agencies can replicate their actions in the event of future shutdowns.

According to OMB, agencies should have detailed contingency plans in place prior to a potential lapse in funding to ensure an orderly shutdown of operations. While three of four agencies' contingency plans that we reviewed addressed most elements laid out in OMB's guidance, we identified three elements for which all selected agencies had missing or incomplete information in their contingency plans. When asked about these deficiencies, agency officials often cited internal documents or discussions as addressing these information elements. Internal documentation and guidance can be useful in planning for a potential shutdown, but they do not provide the level of transparency of contingency plans, which are generally available to the public and furloughed employees. Contingency plans that address all information elements specified in OMB guidance ensure that agencies are prepared for potential shutdown scenarios, and provide transparency to agency actions during a lapse in appropriations.

In addition to contingency plans, the agency components we reviewed all had internal processes related to planning for and managing operations during a shutdown. However, not all agency components documented

these processes. Without documentation of shutdown operations, agencies may not be able to cease operations in a timely manner, and agencies' actions may not be transparent to OMB, Congress, and the public during future shutdowns. Additionally, proper documentation of processes can help preserve institutional knowledge that might otherwise be lost.

During a lapse in funding, agencies must ensure that they do not violate the ADA, which prohibits agencies from obligating or expending funds in the absence of appropriations unless otherwise authorized by law, and from accepting voluntary services for the United States except in cases of emergency involving the safety of human life or the protection of property. Contingency plans are one control that agencies use in this effort. Agencies must have assurance that the contingency plan is being followed daily during a shutdown. This assurance can be verified through controls that (1) track and document the number of employees who actually worked daily during the shutdown, and (2) limit physical and virtual workspace access to appropriate employees. Three of four agency components we reviewed tracked employees who worked, one had sufficient controls on physical access to workspaces, and none had sufficient controls to limit virtual access. Without these controls, agencies are at an increased risk that contingency plans will not be followed, thus diminishing their value as a mechanism to ensure ADA compliance.

Recommendations for Executive Action

We are making a total of 14 recommendations, including four to USTR, three each to CBP and IRS, two to ITA, and one each to the Departments of Commerce and Homeland Security.

The Secretary of Commerce should align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown; and (3) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown. (Recommendation 1)

The Secretary of Homeland Security should align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown;

and (3) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown. (Recommendation 2)

The Commissioner of Internal Revenue should align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown; and (3) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown. (Recommendation 3)

The U.S. Trade Representative, in consultation with EOP as appropriate, should align the component's contingency plan with OMB guidance. This could be accomplished through (1) revisions to the EOP contingency plan; or (2) by creating a separate USTR plan. (Recommendation 4)

The Under Secretary for International Trade should document the component's shutdown processes, including roles and responsibilities, planning processes for potential shutdowns, and recall processes for furloughed employees during a shutdown. (Recommendation 5)

The U.S. Trade Representative should document the component's shutdown processes, including roles and responsibilities, planning processes for potential shutdowns, and recall processes for furloughed employees during a shutdown. (Recommendation 6)

The Commissioner of CBP should develop internal controls to track and document which employees worked and what work was performed daily during a government shutdown. (Recommendation 7)

The Commissioner of CBP should develop internal controls to limit access to physical workspaces to appropriate employees during a government shutdown. (Recommendation 8)

The Commissioner of Internal Revenue should develop internal controls to limit access to physical workspaces to appropriate employees during a government shutdown. (Recommendation 9)

The U.S. Trade Representative should develop internal controls to limit access to physical workspaces to appropriate employees during a government shutdown. (Recommendation 10)

The Commissioner of CBP should develop internal controls to limit access to virtual workspaces to appropriate employees during a government shutdown. (Recommendation 11)

The Commissioner of Internal Revenue should develop internal controls to limit access to virtual workspaces to appropriate employees during a government shutdown. (Recommendation 12)

The Under Secretary for International Trade should develop internal controls to limit access to virtual workspaces to appropriate employees during a government shutdown. (Recommendation 13)

The U.S. Trade Representative should, in consultation with EOP, develop internal controls to limit access to virtual workspaces to appropriate employees during a government shutdown. (Recommendation 14)

Agency Comments and Our Evaluation

We provided a draft of this report to Commerce, DHS, EOP, IRS, OMB, and USTR for review and comment. We received written comments from Commerce, DHS, and IRS, summarized below and reproduced in appendixes II, III, and IV. USTR provided comments via email, also summarized below. OMB did not provide comments, citing its focused efforts on addressing the national emergency response to the coronavirus pandemic. DHS, EOP, IRS, and USTR provided technical comments, which we incorporated as appropriate.

Commerce agreed with all three recommendations directed to it and ITA, and stated that ITA has taken steps to address two of the recommendations. Commerce stated that ITA has documented its shutdown planning processes and recall processes for furloughed employees during a shutdown (recommendation 5). According to Commerce, ITA has also established and documented internal controls to limit virtual workspace access to excepted or exempt employees during a government shutdown (recommendation 13). In addition, Commerce stated that it will develop an action plan to address the recommendation to better align its contingency plan with OMB guidance (recommendation 1).

DHS agreed with all four recommendations directed to it and CBP, and stated that it has begun to take steps to better address OMB guidance on contingency plans (recommendation 2). In addition, DHS stated that CBP

plans to analyze existing systems to determine which is best suited to track and document employee work during a government shutdown and will ensure that the chosen system is available should a future shutdown occur (recommendation 7).

For the recommendation on developing controls for physical workspaces (recommendation 8), DHS stated that because CBP does not have systems capable of efficiently restoring physical access for furloughed employees, it would have to reinstate employee access individually and the cost would be substantial. DHS stated that CBP plans to update procedures to ensure more comprehensive workspace access guidance for furloughed employees.

With regard to the recommendation on developing controls for virtual workspace access (recommendation 11), DHS stated that CBP believes that furloughed employees must be able to passively monitor the status of the government shutdown and access important agency communications using DHS-issued electronic devices. Additionally, disabling and reactivating thousands of employee user accounts during a shutdown posed a significant burden.

DHS said that CBP plans to update shutdown procedures to clarify allowed use of DHS-issued electronic devices by furloughed employees. We agree that CBP should update procedures on workspace access as suggested, and continue to believe that physical and virtual access controls are important during shutdowns in order to prevent misuse of government resources. We encourage CBP to improve their systems to be able to efficiently implement such controls.

IRS partially agreed with one recommendation addressed to it and disagreed with two others. IRS agreed with one element of our recommendation to include additional detail in its agency contingency plan (recommendation 3) and stated that it is in the process of adding procedures for resuming program activities following a government shutdown into its contingency plan.

IRS did not agree with the other elements of the recommendation because it believes it has already addressed plans for a potential prolonged shutdown and flexibilities for supervisors if employees are unable to return to work at the end of a shutdown in its contingency plans. We agree that while IRS has included some details on these elements in its plans, we continue to believe that it should provide more detail, such as points in time when the furlough status of an employee may change,

how many employees would be affected, and the legal basis for the changes, within its publically available contingency plan to fully address these elements.

IRS disagreed with our recommendations on developing controls for physical and virtual workspace access during a shutdown (recommendations 9 and 12). For both recommendations, IRS stated that it believes that it has effective controls in place to manage physical and virtual workspace access during a shutdown. In addition, IRS said that it believes that implementing additional access controls do not justify the corresponding resource investments.

We continue to believe that IRS should improve its access controls, which currently rely on managers and furlough letters to communicate limits on workspace access. While we recognize the costs of increased access controls, government shutdowns are unique events that require additional access controls in order to prevent potential misuse of government resources.

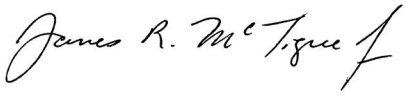
In USTR's emailed comments, its Assistant U.S. Trade Representative for Administration neither agreed nor disagreed with the four recommendations addressed to it. The official, however, stated that USTR has already begun addressing our recommendations on aligning its contingency plan with OMB guidance (recommendation 4) and documenting its shutdown processes (recommendation 6), and has made EOP aware of the recommendations on developing controls for physical and virtual workspace access during a shutdown (recommendations 10 and 14).

As agreed with your office, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the appropriate congressional committees, the Secretary of Commerce, the Acting Commissioner of U.S. Customs and Border Protection, the Acting Secretary of Homeland Security, the Commissioner of the Internal Revenue Service, the Acting Under Secretary for International Trade, the Director of the Office of Management and Budget, the U.S. Trade Representative, and other interested parties. In addition, the report will be available at no charge on the GAO website at http://www.gao.gov.

If you or your staff have any questions about this report, please contact me at (202) 512-9110 or mctiguej@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on

the last page of this report. GAO staff who made key contributions to this report are listed in appendix V.

Sincerely yours,



James R. McTigue, Jr.
Director, Strategic Issues.

Appendix I: Objectives, Scope, and Methodology

This report assesses the extent to which (1) selected agencies' contingency plans were consistent with applicable Office of Management and Budget (OMB) guidance, (2) selected agency components planned for a potential prolonged shutdown and changed operations during the shutdown, and (3) selected agency components' shutdown policies and procedures were consistent with relevant internal control principles.

We selected four agency components under the jurisdiction of the Senate Committee on Finance that were affected by the fiscal year 2019 shutdown. When more than one agency component at an agency met these criteria, we selected the component that had the largest budget and the greatest planned number of employees performing excepted work during the shutdown. While the four components we selected are not generalizable to other agency components, they do reflect variation in size, funding type, and justification for excepted work that serve as illustrative examples of a range of experiences. These selected agency components are

- U.S. Customs and Border Protection (CBP), Department of Homeland Security (DHS);
- Internal Revenue Service (IRS), Department of the Treasury (Treasury);
- International Trade Administration (ITA), Department of Commerce (Commerce); and
- Office of the United States Trade Representative (USTR), Executive Office of the President (EOP).

To address our first objective, we compared information in selected agencies' government shutdown contingency plans to key information elements described in OMB guidance. Specifically, we identified 14 key information elements in the 2018 *OMB Circular No. A-11 Section 124—Agency Operations in the Absence of Appropriations (Circular A-11)*, the applicable guidance, at the beginning of the partial government shutdown

that began on December 22, 2018.[1] This document details the information agencies should include in their contingency plans, such as significant agency activities that will continue or cease during a shutdown, the number of employees who will continue to work during a shutdown, and necessary actions for resuming orderly operations after a shutdown. Three of our four selected agency components—CBP, ITA, and USTR—operated under an agency-wide plan. Therefore, we evaluated the fiscal year 2019 contingency plans for Commerce, DHS, and EOP. Each component of DHS has a non-public, for official use only, portion of the agency-wide plan, and we included CBP's non-public portion in our evaluation. Because Treasury's contingency plan did not cover IRS, we evaluated IRS's contingency plans for this objective.[2] We also reviewed written responses from OMB and interviewed officials at selected agencies to understand the reasons for any discrepancies between the contingency plans and OMB guidance.

To address our second objective, we assessed the extent to which selected agency components planned for a potential prolonged shutdown—one longer than 5 days—as outlined by *Circular A-11*, and changed operations during the shutdown. We reviewed shutdown contingency plans and other planning documents at CBP, IRS, ITA, and USTR to determine agency component processes for proposing, reviewing, and approving operational changes during a government shutdown. We interviewed officials at these agency components to determine what operational changes components made during the fiscal year 2019 shutdown and the key factors that led to these changes.

To address our third objective, we assessed selected agency components' shutdown processes to determine the extent to which the components followed relevant internal control principles in planning for the fiscal year 2019 government shutdown. We reviewed our *Standards for Internal Control in the Federal Government* (Internal Control Standards) and identified key principles related to agency components' shutdown processes.[3] Relevant internal control standards include

[1]Office of Management and Budget, *Circular No. A-11 Preparation, Submission, and Execution of the Budget* (June 2018).

[2]IRS had three contingency plans for the fiscal year 2019 shutdown—a plan for non-filing season (dated December 3, 2018), an amended non-filing season plan (dated December 27, 2018), and a filing season plan (dated January 15, 2019). We compared the December 3, 2018, and January 15, 2019, plans to OMB guidance for the first objective.

[3]GAO, *Standards for Internal Control in the Federal Government*, GAO-14-704G (Washington, D.C.: September 2014).

designing and implementing appropriate policies and procedures and effectively communicating this information to stakeholders. This would include policies and procedures to ensure an orderly shutdown process and compliance with applicable laws such as the Antideficiency Act (ADA).

We developed a questionnaire for selected agency components based on these internal control principles that reflected practices we determined to be associated with effectively implementing the controls in the context of a government shutdown, such as documentation of shutdown processes or employee communication. We reviewed the results of this questionnaire, reviewed agency component contingency plans and other internal planning documents, and interviewed component officials to determine the extent to which components followed these internal control principles. We assessed the sufficiency of selected agency components' internal controls based on whether the evidence gathered contained relevant details about a component's shutdown processes that demonstrated the component would have reasonable assurance of achieving its shutdown objectives. While we assessed agency components' shutdown processes, we did not assess the results of those processes, such as whether components correctly or appropriately categorized activities as excepted from the ADA.[4]

We interviewed officials at selected agency components to understand the reasons for any inconsistencies between component planning and decision-making processes and internal control principles. We also interviewed representatives of employee organizations at the agency components we reviewed to determine if communication of shutdown-related policies and procedures was timely, sufficient, and transparent.

In addition, we selected one program office within each reviewed agency component to identify illustrative examples of how components operationalized their shutdown processes. For CBP, IRS, and ITA, we selected the program offices with the largest budget based on available budget data. Based on this criterion, we selected CBP's Office of Field Operations, IRS's Wage and Investment division, and ITA's Global Markets office. Selection of these program offices provided for a variety of justifications for excepted work and number of planned excepted

[4]The ADA prohibits federal agencies from obligating or expending funds in excess or in advance of an appropriation unless otherwise authorized by law, and from accepting voluntary services for the United States except in cases of emergency involving the safety of human life or the protection of property.

employees. Due to the size of USTR, the agency component does not manage based on program offices, according to USTR officials. Because of this, we did not select a program office within USTR. We reviewed documents and interviewed officials in these program offices to determine how they planned for the fiscal year 2019 government shutdown, communicated with employees, and recalled furloughed employees back to work, among other things.

We conducted this performance audit from March 2019 to June 2020 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Appendix II: Comments from the Department of Commerce

UNITED STATES DEPARTMENT OF COMMERCE
The Secretary of Commerce
Washington, D.C. 20230

May 19, 2020

Ms. Danielle Novak
Assistant Director
Tax Issues Strategic Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Ms. Novak:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report titled *FY2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls* (GAO-20-377).

On behalf of the Department of Commerce, I have enclosed our comments on the draft report. The Department agrees with the three recommendations for the Department and our International Trade Administration (ITA). ITA has taken steps to implement two of the recommendations. We will provide an action plan for the third recommendation after publication of the final report.

If you have any questions, please contact MaryAnn Mausser, Commerce GAO/OIG Audit Liaison, at (202) 482-8120.

Sincerely,

Wilbur Ross

Wilbur Ross

Enclosure

Department of Commerce's Comments on
GAO Draft Report titled *FY2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls*
(GAO-20-377)

The Department has reviewed the draft report, and we offer the following comments for GAO's consideration.

Comments on Recommendations

The Government Accountability Office (GAO) made three recommendation(s) for the Department of Commerce, including two for the International Trade Administration, in the draft report.

- **Recommendation 1:** The Secretary of Commerce should align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown; and (3) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown.

  Commerce Response: The Department of Commerce agrees with this recommendation and will develop an action plan to implement it.

- **Recommendation 5:** The Under Secretary for International Trade should document the component's shutdown processes, including roles and responsibilities, planning processes for potential shutdowns, and recall processes for furloughed employees during a shutdown.

  Commerce Response: The Department of Commerce agrees with this recommendation and has taken the following steps to implement it.
  - The International Trade Administration (ITA) has documented its shutdown planning processes through an operational plan that identifies roles and responsibilities and timeframes. In addition, ITA has also documented its recall processes for furloughed employees during a shutdown.

- **Recommendation 13:** The Under Secretary for International Trade should develop internal controls to limit access to virtual workspaces to appropriate employees during a government shutdown.

  Commerce Response: The Department of Commerce agrees with this recommendation and has taken the following steps to implement it.
  - The International Trade Administration (ITA) has established and documented internal controls that will limit access to virtual workspaces to only those employees who are exempted or excepted during a government shutdown, in accordance with the Department of Commerce's Contingency Plan.

Appendix III: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528

May 4, 2020

James R. McTigue, Jr.
Director, Strategic Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Re: Management Response to Draft Report GAO-20-377, "FY 2019 GOVERNMENT SHUTDOWN: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls"

Dear Mr. McTigue:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's recognition that the U.S. Customs and Border Protection's (CBP) contingency plan used during Fiscal Year (FY) 2019 partial federal government shutdown, which occurred due to a lapse in appropriations, (1) fully addressed 10 of 14, and partially addressed three other key information requirements set forth by the Office of Management and Budget (OMB), and (2) had sufficient internal controls for 7 of 10 shutdown-related activities reviewed.

It is also important to note that an estimated 91 percent of CBP employees continued to work during this 35 day period (the longest government shutdown in history) protecting the U.S. border and enhancing the country's global economic competitiveness by supporting legitimate trade and travel through management and control of all aspects of the border (e.g., customs, immigration, and agriculture inspections).

Prudent management requires that departments and agencies be prepared for the possibility of a lapse in appropriations. DHS and its Components remain mindful of their responsibilities to plan for operations under such a contingency and will continue to improve planning and preparations in this regard, pursuant to applicable legal requirements.

The draft report contained 14 recommendations, including four for DHS, with which the Department concurs. Attached find our detailed response to each recommendation. DHS previously submitted technical comments under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H CRUMPACKER Digitally signed by JIM H CRUMPACKER Date: 2020.05.04 13:43:38 -04'00'

JIM H. CRUMPACKER, CIA, CFE
Director
Departmental GAO-OIG Liaison Office

Attachment

2

Attachment: Management Response to Recommendations Contained in GAO-20-377

GAO recommended that the Secretary of Homeland Security:

Recommendation 2: Align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown; and (3) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of the shutdown.

Response: Concur. The DHS Office of the Chief Financial Officer (OCFO) will take steps to better address ways to incorporate OMB guidance for a potential prolonged shutdown and resuming program activities. DHS OCFO previously addressed the flexibilities of supervisors regarding the return of employees to work in the latest version of the OCFO memorandum "DHS Procedures Related to a Lapse in Appropriation," dated December 16, 2019. Estimated Completion Date (ECD): September 30, 2020.

GAO recommended that the Commissioner of CBP:

Recommendation 7: Develop internal controls to track and document which employees worked and what work was performed on a daily basis during a government shutdown.

Response: Concur. CBP intends to leverage and expand current workforce accountability and tracking systems to track and document CBP employees that work, and the work performed, on a daily basis during a government shutdown. This will be a complex endeavor, however, due to the size and scope of the CBP workforce.

Currently CBP uses two accountability tracking systems: (1) the Border Enforcement Tracking System, used by the U.S. Border Patrol; and (2) a daily personnel accountability survey developed by Enterprise Services personnel during the COVID-19 pandemic. The CBP Enterprise Services Administrative Services Division (ASD) will analyze both systems to determine which is best suited to track and document employee work during a government shutdown. Following that assessment, ASD will ensure that this system is available for use should another government shutdown occur. Existing funding hiatus procedures will be updated to include use of the accountability tracking system. ECD: December 31, 2020.

Recommendation 8: Develop internal controls to limit access to physical workspaces to appropriate employees during a government shutdown.

3

Response: Concur. CBP agrees that notifications to non-exempt employees should continue to ensure that these employees are aware that they cannot access workspaces during a funding hiatus. The process of removing and reinstating physical access to CBP workspaces for more than 10,000 non-exempt employees, however, would be very costly. Specifically, CBP's Office of Professional Responsibility does not have systems capable of conducting batch reinstatement of CBP physical accesses. The substantial labor, time, and productivity costs associated with individual reinstatement of physical access regardless of the duration of the government shutdown must also be considered. CBP Enterprise Services ASD will update existing funding hiatus procedures to ensure that more comprehensive non-exempt employee notifications and workspace access guidance is included, as appropriate. ECD: December 31, 2020.

Recommendation 11: Develop internal controls to limit access to virtual workspaces to appropriate employees during a government shutdown.

Response: Concur. While CBP agrees that virtual workspace access should be limited, employees must be allowed to passively monitor the status of the government shutdown using DHS electronic devices, as noted in a previous version of the DHS OCFO guidance memorandum, "U.S. Department of Homeland Security: Procedures Relating to a Lapse in Appropriations," dated December 17, 2018.

This guidance provides that once OMB notifies DHS that a lapse in appropriations has commenced, non-exempt employees may use their DHS-issued electronic devices, to receive furlough notices, acknowledge delivery receipt and read receipt of furlough notices, and acknowledge receipt of notices via return email. In addition, information related to outside employment, unemployment insurance claims, media engagement, financial and lending resources, Thrift Savings Plan and leave guidance, as well as CBP resiliency program information may be made available on CBP Net, for which a DHS-issued electronic device is required to access.

It is important to note that disabling and reactivating thousands of user accounts within a few hours or days presents a significant administrative and cost burden, in addition to possibly creating delays in achieving return to work capability goals. CBP Enterprise Services ASD will update existing funding hiatus procedures to ensure that non-exempt employee notifications more specifically clarify (1) employees may passively monitor their DHS-issued electronic devices for status updates and emergency notifications from their supervisors or other management officials, but they are prohibited from using this equipment for any other purposes, and (2) non-exempt employees are considered to be on standby duty during government shutdowns. ECD: December 31, 2020.

4

Appendix IV: Comments from the Internal Revenue Service

DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

April 28, 2020

Mr. James R. McTigue, Jr.
Director, Tax Policy and Administration
Strategic Issues Team
U.S. Government Accountability Office
441 G Street, N.W.
Washington, D.C. 20548

Dear Mr. McTigue:

Thank you for providing the draft report entitled, FY 2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls (GAO-20-377, JC #103449). We appreciate the opportunity to review and respond to the draft.

We are pleased that the Government Accountability Office recognizes the IRS contingency plans addressed most of the key elements of Office of Management and Budget Circular No. A-11 Section 124, Agency Operations in the Absence of Appropriations. As you stated, government shutdowns are disruptive events, and the IRS detailed process maps acknowledged in the report, provided clear direction for leaders and managers during the shutdown. After the fiscal year 2019 shutdown, we conducted a lessons-learned exercise and have already improved our robust contingency plan. We agree that our contingency plan was missing language for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown, and we are taking steps to add it to our plan.

We have confidence that sufficient physical and virtual access controls were in place during the shutdown. The IRS implements access controls to furloughed employees directly through IRS managers. Managers are directed to discuss with each employee their status as furloughed, excepted or exempt prior to a shutdown and ensure that employees understand that they are prohibited from working or using government furnished equipment during the shutdown.

2

Our responses to your specific recommendations are enclosed. We provided technical comments on the draft report separately. If you have questions, please contact me, or a member of your staff may contact Robin D. Bailey, Jr., IRS Human Capital Officer, at 202-317-3174.

Sincerely,

Jeffrey J. Tribiano

Digitally signed by Jeffrey J. Tribiano
Date: 2020.04.28 10:27:50 -04'00'

Jeffrey J. Tribiano
Deputy Commissioner for
Operations Support

Enclosure

Enclosure

GAO Recommendations and the IRS Responses to Draft Report GAO-20-377 FY 2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls (Job Code 103449)

Recommendation 3:
The Commissioner of IRS should align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown; and (3) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown. (Recommendation 3)

Comment:
The IRS partially agrees with Recommendation 3 element (3). The IRS has added language to the FY 2020 IRS contingency plan to document procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown. We are in the process of gaining approval from the Department of the Treasury and the Office of Management and Budget for the new language in the plan.

The IRS disagrees with Recommendation 3 elements (1) and (2). All three FY 2019 IRS contingency plans and our detailed process maps used during the shutdown were aligned with OMB guidance and include language that address (1) plans for a potential prolonged shutdown and (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown.

Recommendation 9:
The Commissioner of IRS should develop internal controls to limit access to physical workspace to appropriate employees during a government shutdown. (Recommendation 9)

Comment:
The IRS disagrees with Recommendation 9. IRS managers issue physical access controls to furloughed employees as part of their shutdown duties, which is an effective control. Managers are directed to discuss with each employee their status as furloughed, excepted or exempt prior to a shutdown and to ensure that employees understand they are prohibited from using government furnished equipment during the shutdown. The Furlough Decision letter sent to all IRS employees states that "during the furlough, you must remain away from your workplace and you are prohibited by law from working, even on a voluntary basis." This concept was reinforced through training

2

provided to all IRS managers, "Government Shutdowns – What Managers Need to Know" and tools such as the shutdown checklists.

The benefits of implementing additional controls do not justify the corresponding resource investment. The list of excepted employees changes daily and sometimes hourly, based upon availability, expertise and amount of time to carry out excepted duties. Managers make decisions to substitute different employees into excepted positions and are directed to send the working employee an excepted letter and the non-working employee a furlough letter. If the excepted task is intermittent, employees are to be furloughed until they must perform the task again. If the excepted task did not require the entire working day, the employee is furloughed until they must perform the task again. .

Recommendation 12:
The Commissioner of IRS should develop internal controls to limit access to virtual workspace to appropriate employees during a government shutdown. (Recommendation 12)

Comment:
The IRS disagrees with Recommendation 12. IRS managers issue virtual access controls to furloughed employees as part of their shutdown duties, which is an effective control. Managers are directed to discuss with each employee their status as furloughed, excepted or exempt prior to a shutdown and to ensure that employees understand they are prohibited from using government furnished equipment during the shutdown. The Furlough Decision letter sent to all IRS employees states that "during the furlough, you must remain away from your workplace and you are prohibited by law from working, even on a voluntary basis." The challenges for managing additional virtual access controls are the same as those highlighted for physical access controls. Moreover, we question the benefit of exempting additional IT staff to update virtual network access controls constantly throughout the shutdown.

Appendix V: GAO Contact and Staff Acknowledgments

GAO Contact

James R. McTigue, Jr. at (202) 512-9110 or mctiguej@gao.gov.

Staff Acknowledgments

In addition to the individual named above, Danielle Novak, Assistant Director; Shelby Kain, Analyst-in-Charge; Alyssia Borsella; Kendall Chan; Jacqueline Chapin; Ann Czapiewski; Kristine Hassinger; J. Andrew Howard; Ulyana Panchishin; Steven Putansu; and Melissa Wolf made major contributions to this report. Ted Hu and Triana McNeil also contributed to the report.

Appendix VI: Accessible Data

Data Table

Accessible Data for Figure 2: Number and Duration of the Government Shutdowns, Fiscal Years 1991–2019

Fiscal year	Days of Gap	Final day of budget authority	Date gap terminated
1991	3	10/05/90	10/9/90
1996	5	11/13/195	11/19/95
1996	21	12/15/95	1/6/96
2014	16	9/30/13	10/17/13
2018	2	1/19/18	1/22/18
2019	35	12/21/18	1/25/19

Agency Comment Letters

Accessible Text for Appendix II Comments from the Department of Commerce

Page 1

May 19, 2020

UNITED STATES DEPARTMENT OF COMMERCE

The Secretary of Commerce

Washington, D.C. 20230

Ms. Danielle Novak

Assistant Director

Tax Issues Strategic Issues

U.S. Government Accountability Office

441 G Street, NW

Washington, DC 20548

Dear Ms. Novak:

Thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report titled FY2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls (GAO-20-377).

On behalf of the Department of Commerce, I have enclosed our comments on the draft report. The Department agrees with the three recommendations for the Department and our International Trade Administration (ITA). ITA has taken steps to implement two of the recommendations. We will provide an action plan for the third recommendation after publication of the final report.

If you have any questions, please contact MaryAnn Mausser, Commerce GAO/OIG Audit Liaison, at (202) 482-8120.

Sincerely,

Wilbur Ross

Enclosure

Page 2

Department of Commerce's Comments on

GAO Draft Report titled FY2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for

Potential Shutdown Scenarios and Strengthen Some Internal Controls

(GAO-20-377)

The Department has reviewed the draft report, and we offer the following comments for GAO's consideration.

Comments on Recommendations

The Government Accountability Office (GAO) made three recommendation(s) for the Department of Commerce, including two for the International Trade Administration, in the draft report.

- Recommendation 1: The Secretary of Commerce should align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown; and (3) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown.

Commerce Response: The Department of Commerce agrees with this recommendation and will develop an action plan to implement it.

- Recommendation 5: The Under Secretary for International Trade should document the component's shutdown processes, including roles and responsibilities, planning processes for potential shutdowns, and recall processes for furloughed employees during a shutdown.

Commerce Response: The Department of Commerce agrees with this recommendation and has taken the following steps to implement it.

  - The International Trade Administration (ITA) has documented its shutdown planning processes through an operational plan that identifies roles and responsibilities and timeframes. In addition, ITA has also documented its recall processes for furloughed employees during a shutdown.

Recommendation 13: The Under Secretary for International Trade should develop internal controls to limit access to virtual workspaces to appropriate employees during a government shutdown.

Commerce Response: The Department of Commerce agrees with this recommendation and has taken the following steps to implement it.

  - The International Trade Administration (ITA) has established and documented internal controls that will limit access to virtual workspaces to only those employees who are exempted or

excepted during a government shutdown, in accordance with the Department of Commerce's Contingency Plan.

Accessible Text for Appendix III Comments from the Department of Homeland Security

Page 1

May 4, 2020

James R. McTigue, Jr.

Director, Strategic Issues

U.S. Government Accountability Office

441 G Street, NW

Washington, DC 20548

U.S. Department of Homeland Security

Washington, DC 20528

Re: Management Response to Draft Report GAO-20-377, "FY 2019 GOVERNMENT SHUTDOWN: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls"

Dear Mr. McTigue:

Thank you for the opportunity to comment on this draft report. The U.S. Department of Homeland Security (DHS or the Department) appreciates the U.S. Government Accountability Office's (GAO) work in planning and conducting its review and issuing this report.

The Department is pleased to note GAO's recognition that the U.S. Customs and Border Protection's (CBP) contingency plan used during Fiscal Year (FY) 2019 partial federal government shutdown, which occurred due to a lapse in appropriations, (1) fully addressed 10 of 14, and partially addressed three other key information requirements set forth

by the Office of Management and Budget (OMB), and (2) had sufficient internal controls for 7 of 10 shutdown-related activities reviewed.

It is also important to note that an estimated 91 percent of CBP employees continued to work during this 35 day period (the longest government shutdown in history) protecting the U.S. border and enhancing the country's global economic competitiveness by supporting legitimate trade and travel through management and control of all aspects of the border (e.g., customs, immigration, and agriculture inspections).

Prudent management requires that departments and agencies be prepared for the possibility of a lapse in appropriations. DHS and its Components remain mindful of their responsibilities to plan for operations under such a contingency and will continue to improve planning and preparations in this regard, pursuant to applicable legal requirements.

Page 2

The draft report contained 14 recommendations, including four for DHS, with which the Department concurs. Attached find our detailed response to each recommendation. DHS previously submitted technical comments under a separate cover for GAO's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Sincerely,

JIM H. CRUMPACKER, CIA, CFE

Director

Departmental GAO-OIG Liaison Office

Attachment

Page 3

Attachment: Management Response to Recommendations Contained in GAO-20-377

GAO recommended that the Secretary of Homeland Security:

Recommendation 2: Align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown; and (3) procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of the shutdown.

Response: Concur. The DHS Office of the Chief Financial Officer (OCFO) will take steps to better address ways to incorporate OMB guidance for a potential prolonged shutdown and resuming program activities. DHS OCFO previously addressed the flexibilities of supervisors regarding the return of employees to work in the latest version of the OCFO memorandum "DHS Procedures Related to a Lapse in Appropriation," dated December 16, 2019. Estimated Completion Date (ECD): September 30, 2020.

GAO recommended that the Commissioner of CBP:

Recommendation 7: Develop internal controls to track and document which employees worked and what work was performed on a daily basis during a government shutdown.

Response: Concur. CBP intends to leverage and expand current workforce accountability and tracking systems to track and document CBP employees that work, and the work performed, on a daily basis during a government shutdown. This will be a complex endeavor, however, due to the size and scope of the CBP workforce.

Currently CBP uses two accountability tracking systems: (1) the Border Enforcement Tracking System, used by the U.S. Border Patrol; and (2) a daily personnel accountability survey developed by Enterprise Services personnel during the COVID-19 pandemic. The CBP Enterprise Services Administrative Services Division (ASD) will analyze both systems to determine which is best suited to track and document employee work during a government shutdown. Following that assessment, ASD will ensure that this system is available for use should another government shutdown occur. Existing funding hiatus procedures will be updated to include use of the accountability tracking system. ECD: December 31, 2020.

Recommendation 8: Develop internal controls to limit access to physical workspaces to appropriate employees during a government shutdown.

Page 4

Response: Concur. CBP agrees that notifications to non-exempt employees should continue to ensure that these employees are aware that they cannot access workspaces during a funding hiatus. The process of removing and reinstating physical access to CBP workspaces for more than 10,000 non-exempt employees, however, would be very costly. Specifically, CBP's Office of Professional Responsibility does not have systems capable of conducting batch reinstatement of CBP physical accesses. The substantial labor, time, and productivity costs associated with individual reinstatement of physical access regardless of the duration of the government shutdown must also be considered. CBP Enterprise Services ASD will update existing funding hiatus procedures to ensure that more comprehensive non-exempt employee notifications and workspace access guidance is included, as appropriate. ECD: December 31, 2020.

Recommendation 11: Develop internal controls to limit access to virtual workspaces to appropriate employees during a government shutdown.

Response: Concur. While CBP agrees that virtual workspace access should be limited, employees must be allowed to passively monitor the status of the government shutdown using DHS electronic devices, as noted in a previous version of the DHS OCFO guidance memorandum, "U.S. Department of Homeland Security: Procedures Relating to a Lapse in Appropriations," dated December 17, 2018.

This guidance provides that once OMB notifies DHS that a lapse in appropriations has commenced, non-exempt employees may use their DHS-issued electronic devices, to receive furlough notices, acknowledge delivery receipt and read receipt of furlough notices, and acknowledge receipt of notices via return email. In addition, information related to outside employment, unemployment insurance claims, media engagement, financial and lending resources, Thrift Savings Plan and leave guidance, as well as CBP resiliency program information may be made available on CBP Net, for which a DHS- issued electronic device is required to access.

It is important to note that disabling and reactivating thousands of user accounts within a few hours or days presents a significant administrative and cost burden, in addition to possibly creating delays in achieving return to work capability goals. CBP Enterprise Services ASD will update existing funding hiatus procedures to ensure that non-exempt employee

notifications more specifically clarify (1) employees may passively monitor their DHS-issued electronic devices for status updates and emergency notifications from their supervisors or other management officials, but they are prohibited from using this equipment for any other purposes, and (2) non-exempt employees are considered to be on standby duty during government shutdowns. ECD: December 31, 2020.

Accessible Text for Appendix IV Comments from the Internal Revenue Service

Page 1

April 28, 2020

Mr. James R. McTigue, Jr.

Director, Tax Policy and Administration

Strategic Issues Team

U.S. Government Accountability Office

441 G Street, N.W.

Washington, D.C. 20548

Dear Mr. McTigue:

Thank you for providing the draft report entitled, FY 2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls (GAO-20-377, JC #103449). We appreciate the opportunity to review and respond to the draft.

We are pleased that the Government Accountability Office recognizes the IRS contingency plans addressed most of the key elements of Office of Management and Budget Circular No. A-11 Section 124, Agency Operations in the Absence of Appropriations. As you stated, government shutdowns are disruptive events, and the IRS detailed process maps acknowledged in the report, provided clear direction for leaders and managers during the shutdown. After the fiscal year 2019 shutdown, we conducted a lessons-learned exercise and have already improved our

robust contingency plan. We agree that our contingency plan was missing language for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown, and we are taking steps to add it to our plan.

We have confidence that sufficient physical and virtual access controls were in place during the shutdown. The IRS implements access controls to furloughed employees directly through IRS managers. Managers are directed to discuss with each employee their status as furloughed, excepted or exempt prior to a shutdown and ensure that employees understand that they are prohibited from working or using government furnished equipment during the shutdown.

Page 2

Our responses to your specific recommendations are enclosed. We provided technical comments on the draft report separately. If you have questions, please contact me, or a member of your staff may contact Robin D. Bailey, Jr., IRS Human Capital Officer, at 202-317-3174.

Sincerely,

Jeffrey J. Tribiano

Deputy Commissioner for Operations Support

Enclosure

Page 3

GAO Recommendations and the IRS Responses to Draft Report GAO-20-377 FY 2019 Government Shutdown: Selected Agencies Could Improve Contingency Planning for Potential Shutdown Scenarios and Strengthen Some Internal Controls (Job Code 103449)

Recommendation 3:

The Commissioner of IRS should align the agency's contingency plan with OMB guidance by including (1) plans for a potential prolonged shutdown; (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown; and (3) procedures for resuming program activities, including steps to ensure

appropriate oversight and disbursement of funds upon the end of a shutdown. (Recommendation 3)

Comment:

The IRS partially agrees with Recommendation 3 element (3). The IRS has added language to the FY 2020 IRS contingency plan to document procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown. We are in the process of gaining approval from the Department of the Treasury and the Office of Management and Budget for the new language in the plan.

The IRS disagrees with Recommendation 3 elements (1) and (2). All three FY 2019 IRS contingency plans and our detailed process maps used during the shutdown were aligned with OMB guidance and include language that address (1) plans for a potential prolonged shutdown and (2) flexibilities available to supervisors if furloughed employees were unable to return to work after the end of the shutdown.

Recommendation 9:

The Commissioner of IRS should develop internal controls to limit access to physical workspace to appropriate employees during a government shutdown. (Recommendation 9)

Comment:

The IRS disagrees with Recommendation 9. IRS managers issue physical access controls to furloughed employees as part of their shutdown duties, which is an effective control. Managers are directed to discuss with each employee their status as furloughed, excepted or exempt prior to a shutdown and to ensure that employees understand they are prohibited from using government furnished equipment during the shutdown. The Furlough Decision letter sent to all IRS employees states that “during the furlough, you must remain away from your workplace and you are prohibited by law from working, even on a voluntary basis.” This concept was reinforced through training

Page 4

provided to all IRS managers, “Government Shutdowns – What Managers Need to Know” and tools such as the shutdown checklists.

The benefits of implementing additional controls do not justify the corresponding resource investment. The list of excepted employees changes daily and sometimes hourly, based upon availability, expertise and amount of time to carry out excepted duties. Managers make decisions to substitute different employees into excepted positions and are directed to send the working employee an excepted letter and the non-working employee a furlough letter. If the excepted task is intermittent, employees are to be furloughed until they must perform the task again. If the excepted task did not require the entire working day, the employee is furloughed until they must perform the task again. .

Recommendation 12:

The Commissioner of IRS should develop internal controls to limit access to virtual workspace to appropriate employees during a government shutdown. (Recommendation 12)

Comment:

The IRS disagrees with Recommendation 12. IRS managers issue virtual access controls to furloughed employees as part of their shutdown duties, which is an effective control. Managers are directed to discuss with each employee their status as furloughed, excepted or exempt prior to a shutdown and to ensure that employees understand they are prohibited from using government furnished equipment during the shutdown. The Furlough Decision letter sent to all IRS employees states that “during the furlough, you must remain away from your workplace and you are prohibited by law from working, even on a voluntary basis.” The challenges for managing additional virtual access controls are the same as those highlighted for physical access controls.

Moreover, we question the benefit of exempting additional IT staff to update virtual network access controls constantly throughout the shutdown.

GAO's Mission

The Government Accountability Office, the audit, evaluation, and investigative arm of Congress, exists to support Congress in meeting its constitutional responsibilities and to help improve the performance and accountability of the federal government for the American people. GAO examines the use of public funds; evaluates federal programs and policies; and provides analyses, recommendations, and other assistance to help Congress make informed oversight, policy, and funding decisions. GAO's commitment to good government is reflected in its core values of accountability, integrity, and reliability.

Obtaining Copies of GAO Reports and Testimony

The fastest and easiest way to obtain copies of GAO documents at no cost is through our website. Each weekday afternoon, GAO posts on its website newly released reports, testimony, and correspondence. You can also subscribe to GAO's email updates to receive notification of newly posted products.

Order by Phone

The price of each GAO publication reflects GAO's actual cost of production and distribution and depends on the number of pages in the publication and whether the publication is printed in color or black and white. Pricing and ordering information is posted on GAO's website, https://www.gao.gov/ordering.htm.

Place orders by calling (202) 512-6000, toll free (866) 801-7077, or TDD (202) 512-2537.

Orders may be paid for using American Express, Discover Card, MasterCard, Visa, check, or money order. Call for additional information.

Connect with GAO

Connect with GAO on Facebook, Flickr, Twitter, and YouTube.
Subscribe to our RSS Feeds or Email Updates. Listen to our Podcasts.
Visit GAO on the web at https://www.gao.gov.

To Report Fraud, Waste, and Abuse in Federal Programs

Contact FraudNet:

Website: https://www.gao.gov/fraudnet/fraudnet.htm

Automated answering system: (800) 424-5454 or (202) 512-7700

Congressional Relations

Orice Williams Brown, Managing Director, WilliamsO@gao.gov, (202) 512-4400,
U.S. Government Accountability Office, 441 G Street NW, Room 7125,
Washington, DC 20548

Public Affairs

Chuck Young, Managing Director, youngc1@gao.gov, (202) 512-4800
U.S. Government Accountability Office, 441 G Street NW, Room 7149
Washington, DC 20548

Strategic Planning and External Liaison

James-Christian Blockwood, Managing Director, spel@gao.gov, (202) 512-4707
U.S. Government Accountability Office, 441 G Street NW, Room 7814,
Washington, DC 20548

Please Print on Recycled Paper.