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Description of document: Securities and Exchange Commission (SEC) Continuity of Operations Plan (COOP), 2021

Requested date: 04-October-2021

Denied date: 16-December-2021

Released on appeal date: 06-January-2022

Posted date: 27-June-2022

Source of document: FOIA Request  
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OFFICE OF THE  
GENERAL COUNSEL

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

Stop 9613

January 6, 2022

*Via electronic mail*

Re: Appeal, Freedom of Information Act Request No. 22-00015-FOIA, designated on appeal as No. 22-00156-APPS

This responds to your Freedom of Information Act (FOIA) appeal of the FOIA Office's response to your October 4, 2021 FOIA request for a "copy of the releasable portions of the most recent Continuity of Operations Plan (COOP) maintained by the SEC Business Management Office." By letter dated December 16, 2021, the FOIA Officer denied your request pursuant to FOIA Exemption 7(E).

On December 16, 2021, you filed this appeal challenging the FOIA Office's decision. You state that "not all segregable releasable portions were released; for example, the title page is not properly exempt under b(7)(E) because it does not contain exempt information and thus it should have been released [and] there might be other portions also such as the table of contents." I have considered your appeal, and it is granted in part.

Exemption 7(E) authorizes agencies to withhold "records or information compiled for law enforcement purposes . . . to the extent that production of such law enforcement records or information . . . would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law."<sup>1</sup> The threshold requirement for Exemption 7 protection rests on whether the records or information were compiled for a law enforcement purpose.

Records need not be compiled for "investigatory" purposes to meet Exemption 7's threshold requirement.<sup>2</sup> Non-investigatory records can meet the threshold requirement if they

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<sup>1</sup> 5 U.S.C. § 552(b)(7)(E).

<sup>2</sup> See, e.g., *Jordan v. Dep't of Justice*, 668 F.3d 1188, 1196-97 (D.C. Cir. 2011) ("Congress modified Exemption 7" to broaden its scope by replacing word "files" with word "records" and deleting word "investigatory"); *Tax Analysts*

involve a law enforcement purpose.<sup>3</sup> “Moreover, ‘law enforcement purposes’ include ‘proactive steps’ designed to prevent criminal activity and to maintain security,”<sup>4</sup> and a “growing chorus of courts have agreed that ‘proactive steps’ can satisfy Exemption 7’s threshold requirement.”<sup>5</sup>

The SEC’s COOP involves a law enforcement purpose because it contains the agency’s plans and procedures for how the SEC will maintain its operations to continue essential functions in the event of a disruption or threat to normal operations occurs. The COOP is a “proactive” policy document necessary to prevent violations of both criminal and civil statutes and to maintain security of the SEC’s mission-critical functions.<sup>6</sup>

Having satisfied the threshold requirement for Exemption 7 protection, we must determine whether the public release of the SEC’s COOP would reveal techniques, procedures, or guidelines for law enforcement investigations or prosecutions that could reasonably be expected to risk the circumvention of the law. The requirement that the information at issue “could reasonably be expected to risk the circumvention of law” “sets a relatively low bar for the

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*v. IRS*, 294 F.3d 71, 79 (D.C. Cir. 2002) (explaining that “legislative history makes it clear that Congress intended the amended exemption to protect both investigatory and non-investigatory materials, including law enforcement manuals and the like”); *Stanko v. Bureau of Prisons*, 842 F. Supp. 2d 132, 138 (D.D.C. 2012) (stating that “protection” afforded to records compiled for law enforcement purpose “extends to both investigatory and non-investigatory records”).

<sup>3</sup> See, e.g., *Griffin v. EOUSA*, 774 F. Supp. 2d 322, 326 (D.D.C. 2011) (finding “Individual Custody/Detention Report” satisfies threshold because it was compiled to assist Marshals Service in carrying out its responsibilities for execution of federal arrest warrants, housing, transportation, and safekeeping of federal prisoners); *PHE, Inc. v. Dep’t of Justice*, 983 F.2d 248, 249, 251 (D.C. Cir. 1993) (holding portions of FBI’s Manual of Investigative Operations and Guidelines properly withheld pursuant to Exemption 7(E)); *Sussman v. U.S. Marshals Serv.*, No. 03-610, 2005 WL 3213912, at \*9 (D.D.C. Oct. 13, 2005) (finding that “administrative and operational guidelines and procedures” that are used to investigate threats against federal court employees satisfy law enforcement requirement); *Church of Scientology Int’l v. IRS*, 845 F. Supp. 714, 723 (C.D. Cal. 1993) (concluding that parts of IRS Law Enforcement Manual were exempt from disclosure pursuant to Exemption 7(E)).

<sup>4</sup> *Xanthopoulos v. IRS*, No. 19-3006, 2021 WL 1893987, at \*5 (D. Minn. May 21, 2021) (quoting *Milner v. Dep’t of the Navy*, 562 U.S. 562, 582 (2011) (Alito, J. concurring)); see also *Pratt v. Webster*, 673 F.2d 408, 421 (D.C. Cir. 1982) (explaining that “to pass the FOIA Exemption 7 threshold,” agencies must establish that their activities are based on a concern that “federal laws have been or may be violated or that national security may be breached”).

<sup>5</sup> *Xanthopoulos*, 2021 WL 1893987, at \*5 (citing *Sack v. Dep’t of Defense*, 823 F.3d 687, 694 (D.C. Cir. 2016); *Jordan v. Dep’t of Justice*, 668 F.3d 1188, 1193 (10th Cir. 2011); *Knight First Amendment Inst. v. DHS*, 407 F. Supp. 3d 334, 350 (S.D.N.Y. 2019); *Brennan Ctr. for Justice at N.Y. Univ. Sch. of Law v. DHS*, 331 F. Supp. 3d 74, 97 (S.D.N.Y. 2018)).

<sup>6</sup> “Law enforcement purposes” covers both civil and criminal statutes, as well as those statutes authorizing administrative proceedings (i.e., regulatory proceedings). See, e.g., *Tax Analysts*, 294 F. 3d at 77; *Vento v. IRS*, 714 F. Supp. 2d 137, 148 (D.D.C. 2010) (holding that distinguishing between civil and criminal enforcement is incorrect because there “is no warrant in the law for that distinction and the federal courts have rejected it”); *Morley v. CIA*, No. 03-2545, 2006 WL 2806561, at \*14 (D.D.C. Sept. 29, 2006) (law enforcement “extends to civil investigations and proceeding”); *Jefferson v. U.S. Dept. of Justice*, 284 F.3d 172, 178 (D.C. Cir. 2002) (Exemption 7 “‘covers investigatory files related to enforcement of all kinds of laws,’ including those involving ‘adjudicative proceedings’”).

agency to justify withholding.”<sup>7</sup> “To clear that relatively low bar, an agency must demonstrate only that release of a document might increase risk ‘that a law will be violated or that past violators will escape legal consequences.’”<sup>8</sup>

We have determined that the COOP contains guidelines for how the SEC will operate in the event there is a disruption (or threat) to normal operations. Those guidelines describe the procedures and policies that SEC personnel will implement in emergency situations or when conditions cause a disruption to normal operations. Disclosure of certain information in the COOP could reasonably be expected to risk the circumvention of law because the COOP explains how the SEC intends to maintain its operations under emergency conditions (e.g., a terrorist attack, natural disasters, etc.) and the release of that information could help persons impede the SEC’s ability to maintain a continuity of its operations, including the ability to safeguard the capital markets and protect investors.

Accordingly, I find that FOIA Exemption 7(E) protects certain information contained within the SEC’s COOP.<sup>9</sup> Portions of the COOP that are not protected under Exemption 7(E) are released to you. I further find that it is reasonably foreseeable that disclosure of the exempt information would harm interests protected by Exemption 7(E) because such a disclosure would risk the circumvention of laws and increase the ability of individuals to disrupt the SEC’s operations during emergency conditions.

You have the right to seek judicial review of my determination by instituting an action in the United States District Court for the District of Columbia or in the district where you reside or have your principal place of business.<sup>10</sup> Voluntary mediation services as a non-exclusive alternative to litigation are also available through the National Archives and Records Administration’s Office of Government Information Services (OGIS). For more information, please visit [www.archives.gov/ogis](http://www.archives.gov/ogis) or contact OGIS at [ogis@nara.gov](mailto:ogis@nara.gov) or 1-877-684-6448.

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<sup>7</sup> *Pub. Employees for Environmental Responsibility v. U.S. Section, Int’l Boundary and Water Com’n.*, 740 F.3d 195, 204-05 (D.C. Cir. 2014) (quoting *Blackwell v. FBI*, 646 F.3d 37, 42 (D.C. Cir. 2011)).

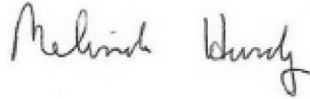
<sup>8</sup> *Pub. Employees for Environmental Responsibility*, 740 F.3d at 205 (quoting *Mayer Brown LLP v. IRS*, 562 F.3s 1190, 1193 (D.C. Cir. 2009)).

<sup>9</sup> *See, e.g., Pub. Employees for Environmental Responsibility*, 740 F.3d at 205 (finding Exemption 7(E) protects emergency actions plans for two dams); *Tax Analysts v. IRS*, 152 F. Supp. 2d 1, 17 (D.D.C. 2001) (finding Technical Assistance documents are law enforcement guidelines and determining that disclosure of agency summary of tax-avoidance scheme, “including identification of vulnerabilities” in IRS operations, could risk circumvention of law), *rev’d & remanded on other grounds*, 294 F.3d 71 (D.C. Cir. 2002); *Ctr. for Nat’l Sec. Studies v. INS*, No. 87-2068, 1990 WL 236133, at \*5-6 (D.D.C. Dec. 19, 1990) (recognizing that release of INS plans to be deployed in event of attack on U.S. could assist terrorists in circumventing border).

<sup>10</sup> 5 U.S.C. § 552(a)(4)(B).

If you have any questions concerning my determination, please contact Mark Tallarico, Senior Counsel, at 202-551-5132.

For the Commission  
by delegated authority,

A handwritten signature in dark ink, appearing to read "Melinda Hardy". The signature is written in a cursive, flowing style.

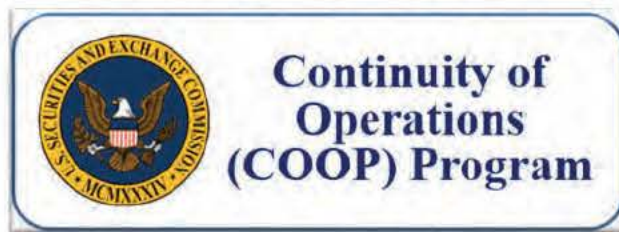
Melinda Hardy  
Assistant General Counsel for  
Litigation and Administrative Practice

Enclosure

## Controlled Unclassified Information (CUI)



# U.S. Securities and Exchange Commission



## *Continuity of Operations (COOP) Plan* **June 2021**

This document contains Controlled Unclassified Information (CUI) as referenced in Executive Order 13556 and subject to SECR 23-2.

“Holders of Nonpublic Information should take reasonable precautions to avoid inadvertent disclosure of the information. Wherever practical, Nonpublic Information that remains inside the SEC should be marked or labeled as “Nonpublic Information.” Nonpublic Information should be safeguarded using common-sense techniques such as maintaining physical control and storing appropriately when not in use. For example, Nonpublic Information should be kept out of the view of those without a need to know the information.” SECR 23-2, § 7.2.

## SECURITY AND PRIVACY STATEMENT

This document contains Controlled Unclassified Information (CUI) as referenced in Executive Order 13556 and subject to SECR 23-2.

“Holders of Nonpublic Information should take reasonable precautions to avoid inadvertent disclosure of the information. Wherever practical, Nonpublic Information that remains inside the SEC should be marked or labeled as “Nonpublic Information.” Nonpublic Information should be safeguarded using common-sense techniques such as maintaining physical control and storing appropriately when not in use. For example, Nonpublic Information should be kept out of the view of those without a need to know the information.” SECR 23-2, § 7.2.

This document is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with sensitive materials and is not to be released to the public or other personnel who do not have a valid “need to know” without prior approval of the SEC Continuity Coordinator, Office of the Chief Operating Officer (OCCO).

Disclosure of information in this plan could compromise the security of essential equipment, services, and systems of the SEC or otherwise impair its ability to carry out the SEC mission. Distribution of the SEC Headquarters Continuity of Operations (COOP) Plan in whole or in part is limited to those personnel who need to know the information to successfully implement the plan.

## PLAN DEVELOPMENT AND MAINTENANCE

The SEC’s Continuity of Operations (COOP) and Policy Branch resides in the Business Management Office (BMO) within the Office of Support Operations (OSO) and is responsible for maintaining and updating the SEC Headquarters Continuity of Operations Plan.

The COOP and Policy Branch reviews and updates this plan annually. Provide comments or suggestions for improvements at any time by emailing the COOP Support Mailbox at (b)(7)(E)@sec.gov.

The table below reflects changes from the most recently approved version. For older versions, please contact the COOP and Policy Branch.

Date	Updated By	Section	Brief Description of Change
June 2019	COOP and Policy Branch	All	Reviewed, edited, and reformatted. Included (b)(7)(E)
April 2021	COOP and Policy Branch	All	Complete rewrite and reformat of plan.

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# INTRODUCTION

This Continuity of Operations (COOP) plan ensures that the U.S. Securities and Exchange Commission (SEC) has the capability to continue its mission under all conditions. Because this COOP Plan is a (b)(7)(E), the main objective is to enable specific divisions and offices (D/O) to continue to perform their essential functions, albeit with reduced resources. Depending on the type of threat and the geographic area impacted, continuity personnel may be able to report to normal duty locations, telework, or relocate to an alternate location.

This plan contains two parts: Part I – Operations (base plan and functional annexes); and Part II: Administrative (informational annexes). The base plan provides operational procedures for COOP activations, and the annexes address the elements of a viable continuity capability:

Part I: Operations	Part II: Administrative		
Annex A: Base Plan – HQ Activation Procedures	Annex E: Essential Functions	Annex I: Alternate Locations	Annex M: Acronyms
Annex B: Devolution	Annex F: Orders of Succession and Delegations of Authority	Annex J: Human Capital	Annex N: Glossary
Annex C: Reconstitution	Annex G: Communications and Information Systems	Annex K: Test, Training, and Exercise	Annex O: Authorities and References
Annex D: Part I Signature Page	Annex H: Essential Records Management	Annex L: Continuity of Government Readiness Condition Matrix	

## 1. SCOPE

This plan applies to the functions, operations, and resources necessary to continue essential functions if a disruption or threat to normal operations occurs at SEC Headquarters (HQ). It applies to SEC personnel in all D/Os, including all employees and contractors. This plan ensures the SEC is capable of conducting its essential functions under all threats and conditions, with or without warning.

(b)(7)(E)

(b)(7)(E)



The four phases of continuity (readiness and preparedness, activation, continuity operations, and reconstitution) are incorporated throughout both Parts I and II.

This plan is not an instructional manual on continuity of operations; but instead documents how the SEC implements existing federal COOP requirements. For technical information on any element of the COOP Plan, refer to the SEC's COOP Workforce Awareness Training or contact the COOP and Policy Branch at (b)(7)(E) [@sec.gov](mailto:(b)(7)(E)@sec.gov).

This plan does not include:

- Specific operational planning for pandemic influenza, which falls under the Office of Security Services.
- Multi-Year Strategy and Program Management Planning (MYSPMP) or budgeting for SEC's continuity program. The COOP and Policy Branch, OSO, maintains these documents.
- Risk management principals and regulations, already incorporated throughout all aspects of continuity of operations.

## 2. PLANNING ASSUMPTIONS

This plan reflects the following assumptions.

(b)(7)(E)



## 3. PLANNING OBJECTIVES

The SEC's continuity objectives are to:

1. Ensure the SEC can continue its essential functions under all conditions.
2. Reduce or mitigate disruptions to the SEC's essential operations.
3. Achieve the timely and orderly recovery from a COOP activation.
4. Validate continuity readiness through a test, training, and exercise program.

# PART I – OPERATIONS

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## *ANNEX A: BASE PLAN – HQ ACTIVATION PROCEDURES*

### **1. PERSONNEL**

Continuity personnel are a pre-identified cadre of personnel who have responsibilities for supporting the activation and implementation of the HQ COOP Plan. Continuity personnel are included in five teams.

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(b)(7)(E)

[REDACTED]

## 2. ALTERNATE LOCATION DETERMINATION

The SEC designates the following as “Alternate Locations.”

(b)(7)(E)



Exceptions to this are:

(b)(7)(E)



## 3. ACTIVATION CONCEPT

“Activation” refers to moving to an Alternate Location (as described above) and being fully prepared to conduct Mission Essential Functions or Essential Supporting Activities. Activation triggers include:

(b)(7)(E)



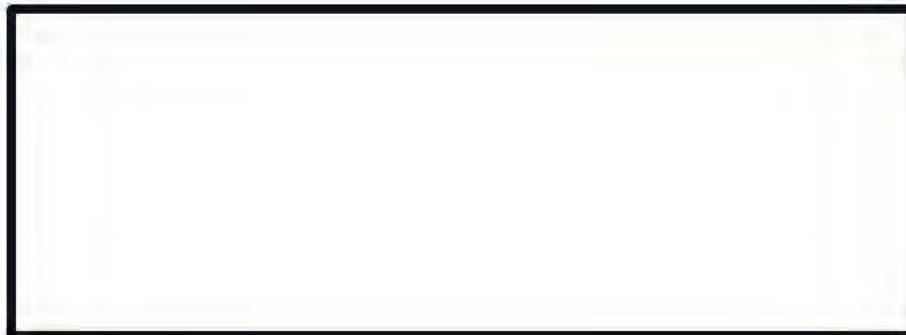
#### 4. PROCEDURES FOR ACTIVATING THE COOP PLAN

COOP activations are either “notice” or “no-notice” activations. Additionally, where the President has the authority to activate COOP on a federal level via a Continuity of Government Readiness Condition change, the SEC can also activate its own COOP Plan independently without presidential authority or permission.

##### A. CONTINUITY OF GOVERNMENT READINESS CONDITION (COGCON) ACTIVATION

When the SEC Continuity Coordinator receives notification of a COGCON change that directs implementation of the COOP Plan:

(b)(7)(E)



(b)(7)(E)



(b)(7)(E)



## B. OTHER INCIDENTS OR EVENTS ACTIVATIONS

### With Warning/Advance Notice

The SEC may activate COOP, irrespective of a COGCON change. If it appears that circumstances warrant a proactive COOP activation, then:

(b)(7)(E)



(b)(7)(E)




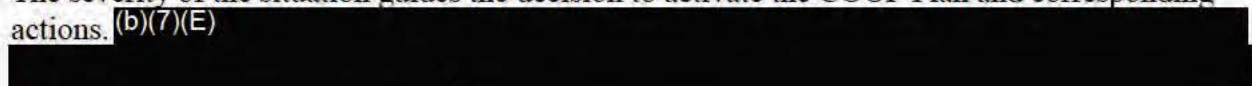


<sup>2</sup> See the SEC COGCON Reference Matrix in PART II: ANNEX L.

(b)(7)(E)

**Without Warning/No-Notice**

The severity of the situation guides the decision to activate the COOP Plan and corresponding actions. (b)(7)(E)





(b)(7)(E) [Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

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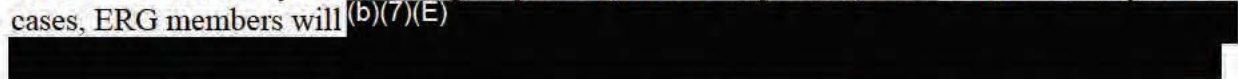


## 5. ERG MEMBER ACTIVATION STEPS

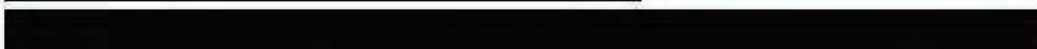
(b)(7)(E)



COOP activation may occur during duty hours, or non-duty hours, weekends, or holidays. In all cases, ERG members will (b)(7)(E)



Upon receipt of notification of a COOP activation, all ERG members will take the following actions, (b)(7)(E)



(b)(7)(E)

[REDACTED]

**Steps When** (b)(7)(E)

Unless indicated or otherwise directed, (b)(7)(E)

[REDACTED]

As soon as possible after receiving a COOP activation notification, all ERG members will:

(b)(7)(E)

[REDACTED]



\_\_\_\_\_

\_\_\_\_\_

[REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]  
 [REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

CHIEF OF POLICE [REDACTED] AND [REDACTED] ARE ALSO LISTED BELOW:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_







(b)(7)(E)

- [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## ***ANNEX B: DEVOLUTION***

### **1. PURPOSE**

Outline in detail how the SEC will execute the transfer of essential functions from the SEC's Headquarters (HQ) to the Devolution Emergency Response Group (DERG) (b)(7)(E)

### **2. ASSUMPTIONS**

The following assumptions underlie SEC devolution planning:

- A catastrophic event will occur necessitating the transfer of authorities and essential functions from HQ leadership and staff to the DERG.
- The designated DERG is unaffected and can assume identified Mission Essential Functions (MEF) and Essential Supporting Activities (ESA).
- Appropriate delegations of authorities are in place to ensure the rapid and efficient execution of essential functions.
- Designated devolution sites have the capabilities and resources required to conduct devolution operations.
- DERG members have access to and an understanding of (b)(7)(E) to facilitate execution of essential functions.

### **3. ACTIVATION AUTHORITIES AND SCOPE**

The SEC Chair or (b)(7)(E), and any personnel assigned to positions listed in the SEC Orders of Succession have authority to activate devolution pursuant to 17 CFR 200.203 and the designations under Emergency Succession Rules. See Section 9 below.

This plan does not address (b)(7)(E)

### **4. DEVOLUTION ACTIVATIONS**

This section covers both active and passive triggers for devolution, and how SEC leadership communicates and decide on how and when to activate based on the type of trigger.

### **5. ACTIVE TRIGGER – DEVOLUTION ACTIVATION FROM HQ**

If circumstances warrant a proactive Devolution activation, then:

(b)(7)(E)

o (b)(7)(E)

[REDACTED]

[REDACTED]

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Provide the following information:

(b)(7)(E)

[REDACTED]

## 6. PASSIVE TRIGGER – DEVOLUTION ACTIVATION (b)(7)(E)

[REDACTED]<sup>3</sup>

If the designated DERG successor to the (b)(7)(E) receives information of a catastrophic event in the NCR and is unable to establish contact with (b)(7)(E) then he/she will:

<sup>3</sup> These steps are also viewable in (b)(7)(E)



(b)(7)(E)



7. (b)(7)(E)


#### **DURING ACTIVATION**

(b)(7)(E)




#### **8. DEVOLUTION LOCATION**

(b)(7)(E)



(b)(7)(E)



## **9. ORDERS OF SUCCESSION DURING A DEVOLUTION ACTIVATION**

Per 17 CFR 200.203 (c)(1)(iv), the Chair has signed “Designation of the Sequence of Division Directors Under Emergency Succession Rules” which states:

(b)(7)(E)



## **10. DOCUMENTING ACTIVITIES/RETURN OF FUNCTIONS**

(b)(7)(E)



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(b)(7)(E)



(b)(7)(E)

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## **11. TERMINATION OF DEVOLUTION/RETURN OF AUTHORITIES TO HQ**

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**ERG Responsibilities.** (b)(7)(E)

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## ***ANNEX C: RECONSTITUTION***

### **1. PURPOSE AND OBJECTIVE**

The purpose of the Reconstitution Annex is to describe how the Reconstitution Team will lead the effort to resume normal operations at the SEC Headquarters (HQ) building, or any replacement facility if necessary, as quickly as possible after a COOP or devolution activation.

The primary objective is to reconstitute *Commission operations and functions* during COOP or devolution activations and return to a normal work environment.

### **2. PLANNING ASSUMPTIONS**

The Reconstitution Annex incorporates the following assumptions:

- The emergency situation that caused an activation has ended and is unlikely to reoccur;
- The Emergency Relocation Group (ERG) has relocated to an alternate site in response to the emergency, or the Devolution Emergency Response Group (DERG) has assumed essential functions;
- A Reconstitution Team, identified and led by a Reconstitution Manager, is available to conduct assigned operations.

### **3. SCOPE**

The Reconstitution Annex focuses on reconstituting essential functions as they relate to continuity (HQ COOP or Devolution) activations; however, (b)(7)(E)

[REDACTED]

For the remainder of this document, the term “continuity activations” or “continuity operations” refers to either or both devolution or HQ COOP activations and operations as defined in Federal Continuity Directive 1 (FCD-1).

### **4. CONCEPT OF OPERATIONS**

Reconstitution efforts will begin as soon as possible following a continuity activation, and take place concurrently for the duration of continuity operations.

(b)(7)(E)

[REDACTED]

(b)(7)(E)

**Reconstitution Planning Levels**

Reconstitution planning levels support the reconstitution planning process.

Planning Level	Extent of Damage	Planning Focus	Duration
Level 1	None or Minimal	Resuming normal operations at the primary operating facility to include SEC personnel, essential records, and equipment once the threat or disruption has ended.	Generally lasts less than 30 days.
Level 2	Moderate	Moving operations to and from the continuity facility to a temporary operating facility, where normal operations will be resumed.	Generally lasts 1 to 6 months.
Level 3	Severe or Damage Beyond Repair	Moving operations to a new or temporary primary operating facility, which includes restoring normal operations with personnel, essential records, and equipment.	Generally lasts more than 6 months.

The planning levels provide the framework for determining activities and actions during each reconstitution phase, described below.

**Reconstitution Team (RT)**



(b)(7)(E)

(b)(7)(E)



**Activation Steps**

(b)(7)(E)









(b)(7)(E)

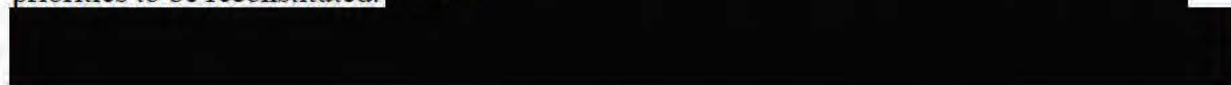


#### **Transitioning to Normal Operations**

(b)(7)(E)



When reconstituting operations back to a facility, health, safety, and infrastructure are the first priorities to be reconstituted. (b)(7)(E)



(b)(7)(E)

**Post-Reconstitution – Conducting an After Action Review**

(b)(7)(E)

During the entire duration of Reconstitution – from activation through return to normal operations – all RT members will take notes for consolidation into the final AAR. Additionally, as stated above,

(b)(7)(E)

Post Reconstitution Activities and AAR development will generally follow the below format:

Activity/Action	Description
Conduct hot wash	The Reconstitution Manager and Team, in coordination with the Continuity of Operations and Policy Branch Chief, conducts a hot wash within (b) days, or as soon as practicable, after the SEC has returned to normal operations. The hot wash identifies lessons learned and pinpoints actions for improving future reconstitution activities.
Conduct after action conference	Within (b) days after resuming normal operations, or as soon as practicable, the Reconstitution Manager and Team conducts an after action conference. The after action conference serves as a follow-up to the hot wash and is intended to identify any additional items for improvement.  The conference would discuss the effectiveness of the (b)(7)(E), the Reconstitution Plan, processes, procedures, actions, and activities. The conference would also identify lessons learned, best practices, issues, concerns, and areas for improvement.
Develop AAR/IP (Improvement Plan); update Reconstitution Annex.	With input from the RT, the Reconstitution Manager develops the AAR and IP. The final AAR/IP is to be completed (b) days after resuming normal operations, or as soon as practicable.  The AAR and IP provides guidance for updating the Reconstitution Annex.

**ANNEX D: PART I – SIGNATURE PAGE**

The mission of the U.S. Securities and Exchange Commission (SEC) is to protect investors; to maintain fair, orderly, and efficient markets; and to facilitate capital formation. These services play a vital role in protecting and promoting the economic stability of the United States.

The Continuity of Operations (COOP) Program serves the American public by ensuring the performance of SEC essential functions following an incident or event. This plan applies to our most critical functions, operations, and resources necessary to continue essential functions. If SEC Headquarters experiences a disruption or threat of disruption of normal operations, this plan ensures the SEC is capable of conducting its essential functions under all conditions, with or without warning.

This plan has been developed in accordance with guidance in Presidential Policy Directive 40 (PPD-40), *National Continuity Policy*; Federal Continuity Directive 1, *Federal Executive Branch National Continuity Program and Requirements*, January 17, 2017; Federal Continuity Directive 2, *Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process*, and SECR 30-3, *SEC Administrative Regulation for the Continuity of Operations Program*.

**KENNETH  
JOHNSON** Digitally signed by  
KENNETH JOHNSON  
Date: 2021.06.04  
08:37:00 -04'00'

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Kenneth Johnson  
Chief Operating Officer  
Continuity Coordinator  
U.S. Securities and Exchange Commission

# PART II: ADMINISTRATIVE

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## *ANNEX E: ESSENTIAL FUNCTIONS*

### **1. PURPOSE**

The purpose of this annex is to describe SEC's essential functions and activities.

### **2. SCOPE**

This Annex only covers function identified as Primary Mission Essential Functions (PMEF), Mission Essential Functions (MEF), or Essential Supporting Activities (ESA) in accordance with Federal Continuity Directives (FCD) 1 and 2 and the SEC's Business Process Analysis/Business Impact Analysis (BPA/BIA). All other functions conducted by SEC staff are outside the scope of this Annex.

See the SEC's BPA/BIA for more detailed information on SEC's essential functions.

For additional information on essential functions as they refer to COOP, refer to the SEC's "COOP Workforce Awareness Training" on LEAP.

The SEC completed the review and revalidation of our PMEF, MEFs, ESAs, and corresponding BPA on December 2020.

### **3. NATIONAL ESSENTIAL FUNCTIONS (NEF)**

As the primary overseer and regulator of the U.S. securities market, the SEC directly supports NEF 7, "Protecting and stabilizing the Nation's economy and ensuring public confidence in its financial systems."

### **4. SEC's PRIMARY MISSION ESSENTIAL FUNCTION (PMEF)**

(b)(7)(E)



### **5. COLLABORATION WITH** (b)(7)(E)















## **7. ESSENTIAL SUPPORTING ACTIVITIES (ESA)**

Below are SEC's fourteen ESAs.

(b)(7)(E)





(b)(7)(E)



## *ANNEX F: ORDERS OF SUCCESSION AND DELEGATIONS OF AUTHORITY*

### **1. INTRODUCTION**

Throughout this Annex, a person is “unavailable” or “incapacitated” in any situation and from any cause that prevents the person from assuming or performing on a timely basis his or her authorized duties, roles, or responsibilities of office, whether from a primary or alternate facility, or any other location. Additionally, the terms “emergency conditions” and “COOP activation.” are interchangeable.

Rules regarding the functioning of the Commission, and succession to the Chair in the event of his or her unavailability or incapacity, during emergency conditions are set forth in 17 CFR 200.203<sup>5</sup> *Organization, and delegations of authority*<sup>6</sup> as follows:

- (a) During emergency conditions, the respective functions and responsibilities of the Commissioners, the Chair of the Commission, and the staff members shall be, to the extent possible, as set forth in Subpart A of this part (§ 200.1 *et seq.*).
- (b) Action for and in the name of the Commission taken pursuant to this subpart by one or more Commissioners or by a successor as designated in this section shall mean and include the delegated authority to act for the unavailable or incapacitated Commissioners.
- (c) Pursuant to the statutes governing the Commission, to Reorganization Plan No. 10 of 1950, and to Pub. L. 100-181, section 308(b), 101 Stat. 1249 (1987), the following automatic delegation of authority is made to provide continuity in the event of an emergency:
  - (1) In the event of the unavailability or incapacity of the Chair of the Commission during emergency conditions, the authority of the Chair to govern the affairs of the Commission and to act for the Commission, as provided for by law and by delegation from the Commission, will pass to the available person highest on the following list, until such time as the Chair is no longer unavailable or incapacitated, or a successor Chair has assumed office pursuant to Section 4 of the Securities Exchange Act of 1934 (15 U.S.C. 78d) and Reorganization Plan No. 10 of 1950 (15 FR 3175, 64 Stat. 1265):
    - (i) The Commissioners in order of seniority.
    - (ii) The General Counsel.
    - (iii) The Division Directors in the order designated by the Chair in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority.

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<sup>5</sup> [https://www.ecfr.gov/cgi-bin/text-idx?SID=921880554a19b38d146980197bc2e149&mc=true&node=pt17.3.200&rgn=div5#se17.3.200\\_1203](https://www.ecfr.gov/cgi-bin/text-idx?SID=921880554a19b38d146980197bc2e149&mc=true&node=pt17.3.200&rgn=div5#se17.3.200_1203)

<sup>6</sup> Federal Continuity Directive-1 states, “...it is critical that organizations comply with the Vacancies Reform Act (VRA) of 1998 5 U.S.C. §§ 3345-3349d”; however, the SEC is not subject to the VRA.

(iv) The Regional Directors in the order designated by the Chair in the most recent designation prior to the commencement of emergency conditions, or if no such designation has occurred, in order of seniority.

(2) If and when a commissioner previously incapacitated or otherwise unavailable, again becomes available, he shall thereupon have all the powers and functions he would have had if he had not been incapacitated or otherwise unavailable.

(d) Actions taken for and in the name of the Commission as described above shall be effective immediately or as specified by the successor acting, but shall be subject to reconsideration by the Commissioners when the Commission has been reconstituted and is functioning.

## 2. ORDER OF SUCCESSION TO THE CHAIR

This section details the order of succession to the Chair (“Order of Succession”) and the procedures for determining available leadership during activation of the COOP Plan.

The Office of the Secretary maintains the Order of Succession in the SEC’s official records.

Pursuant to 17 CFR 200.203(c)(1)(iii) above (“The Division Directors in the order designated by the Chair in the most recent designation prior to the commencement of emergency conditions...”), the Chair has signed “Designation of the Sequence of Division Directors Under Emergency Succession Rules” which states:

(b)(7)(E)



Additionally, pursuant to 17 CFR 200.203(c)(1)(iv) above (“The Regional Directors in the order designated by the Chair in the most recent designation prior to the commencement of emergency conditions...”), the Chair has signed “Designation of the Sequence of Regional Directors Under Emergency Succession Rules” which states:

(b)(7)(E)



Based on the foregoing rules and designations, the order of succession to the Chair in the event of his or her unavailability or incapacity during emergency conditions is as follows. However, refer to the most recent copy of the official Order of Succession, which is in the Office of the Secretary's possession.

1.	<b>The Commissioners in order of seniority:</b>
2.	<b>The General Counsel</b>
3.	<b>The Division Directors in order of seniority</b>
4.	<b>The Regional Directors as follows:</b> (b)(7)(E)

3. (b)(7)(E)

In the event of the Chair's unavailability or incapacity during emergency conditions, (b)(7)(E)

(b)(7)(E)

## 5. DIVISION AND OFFICE ORDER OF SUCCESSION

(b)(7)(E)

However, per 17 CFR 200.203(e):

Except as may be determined otherwise by the Chairman or his successor, the duties of each head of a division or office of the Commission shall be discharged, in the event of the unavailability or incapacity of such person during emergency conditions, by the available staff member next in line of succession. The head of each division or office shall designate the line of succession within his division or office. If no such designation has been made or the designatee is unavailable, such duties shall be assumed by the available subordinate officer or employee in the particular division or office who is highest in grade and in the event that there is more than one such person, in length of service with the Commission. A person who discharges or assumes the duties of the head of a division or office pursuant to this subsection is hereby delegated, throughout the period of the unavailability or incapacity of the head of the division or office during the emergency conditions, all of the functions that the Commission has delegated to the head of the division or office.

## 6. DELEGATIONS OF AUTHORITY


The Commission has delegated many of its functions to division and office heads in 17 CFR 200.30-1 through 18. Except in a few cases, these delegations exist regardless of emergency conditions. In addition, (b)(7)(E)

## ***ANNEX G: COMMUNICATIONS AND INFORMATION SYSTEMS***

### **1. INTRODUCTION**

This Annex discusses communication and critical technical information systems necessary to support a COOP activation.

Executive department and agencies' continuity responsibilities during an incident or event determine their assignment to one of four categories.<sup>7</sup> These categories are used for continuity planning, communications, and information service requirements, emergency operations capabilities, and other related requirements. As a Category 2 Agency, the SEC maintains continuity communication capabilities in accordance with the Office of Science and Technology Policy/Office of Management and Budget Directive D-16-1 (OSTP/OMB Directive D-16-1), *Minimum Requirements for Continuity Communication Capabilities*. (b)(7)(E)



### **2. REQUIRED IT/COMMUNICATIONS FOR ESSENTIAL FUNCTIONS**

(b)(7)(E)




As a part of interoperable and available communications capabilities, all ERG members receive Government Emergency Telecommunications Service (GETS) cards and have Wireless Priority Service (WPS) capabilities on their SEC issued mobile devices for priority communications during COOP activations.

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<sup>7</sup> IAW PPD-40.

### 3. IT/COMMUNICATIONS DURING ACTIVATION

(b)(7)(E)



## ANNEX H: ESSENTIAL RECORDS MANAGEMENT

### 1. INTRODUCTION

The (b)(7)(E) share responsibility for managing the Essential Records Program and meeting all the requirements in FCD-1, Annex H “Essential Records Management”. (b)(7)(E)

### 2. IDENTIFICATION

In COOP, “essential records”<sup>8</sup> are records in any format (including physical or electronic records, Internet or intranet-based systems or databases, and information systems) that are *critical and directly related* to the conduct of a D/O’s essential functions or essential supporting activities during COOP or devolution activations. Essential records are available to both ERG and DERG members. Additionally, essential records include records that are essential to (b)(7)(E)

(b)(7)(E) In the event of a COOP or devolution activation, these records must remain accessible or receive first priority for recovery.

Each D/O with essential functions is required to develop an essential records packet with assistance from ORMS. ORMS contacts each D/O’s [Records Liaison](#) annually to coordinate submission of the essential records plan packet. The Records Liaisons and COOP Liaisons collaborate in identifying essential records. ORMS reviews lists of records identified as essential, and maintains an inventory of all SEC’s records in their records file plan.

### 3. PROTECTION

Protection of essential records is a collaborative effort between (b)(7)(E)

### 4. AVAILABILITY

(b)(7)(E) assigned to conduct the D/O’s essential functions during devolution activation. Each D/O is responsible for ensuring (b)(7)(E)

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<sup>8</sup> Chapter 36 Section 1223 of the Code of Federal Regulation (36 CFR 1223). NARA defines essential records as: “[R]ecords an agency needs to meet operational responsibilities under national security emergencies or other emergency conditions (emergency operating records) or to protect the legal and financial rights of the Government and those affected by Government activities (legal and financial rights records).”

<sup>9</sup> SECR 7-1 (8.4): “Develop and implement an Essential Records Plan for the program area(s) of responsibility which ensures that office records defined as essential to the SEC and to the individuals directly affected by its activities are identified and appropriately safeguarded.”

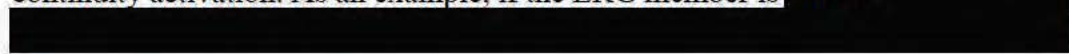
*ANNEX I: ALTERNATE LOCATION***1. INTRODUCTIONS**

The SEC designates the following as “Alternate Locations.”

(b)(7)(E)



ERG members may implement any of the above exceptions (b)(7)(E) during a continuity activation. As an example, if the ERG member is (b)(7)(E)





(b)(7)(E)







## *ANNEX J: HUMAN CAPITAL*

### **1. PURPOSE AND SCOPE**

This annex addresses Emergency Relocation Group (ERG) and Devolution Emergency Response Group (DERG) personnel as they relate to continuity of operations. (b)(7)(E)



### **2. CONTINUITY PERSONNEL**

Continuity personnel consists of the cadre of pre-identified personnel who have responsibilities for supporting the activation and implementation of the HQ COOP Plan. Continuity personnel are included in five teams.

(b)(7)(E)



### **3. IDENTIFICATION OF THE EMERGENCY RELOCATION GROUP (ERG)**

D/Os with continuity responsibilities select Primary and Alternate ERG members. (b)(7)(E)



(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

#### 4. CONTINUITY PERSONNEL RESPONSIBILITIES AND PREPAREDNESS

It is important to the success of a COOP activation that all ERG members understand their expectations, roles, responsibilities, and individual preparedness measures. Guidance in preparing for a COOP activation is located (b)(7)(E)

[REDACTED]

Guidance includes:

- Personal emergency preparedness planning.
- Staying informed during an emergency.
- Procuring an emergency supply kit.
- Making a family emergency plan.
- Staying informed about the different types of emergencies and the appropriate responses.

#### 5. GUIDANCE TO NON-CONTINUITY PERSONNEL

(b)(7)(E)

[REDACTED]

[REDACTED]

[REDACTED]

<sup>10</sup> See Annex E – Essential Functions

- (b)(7)(E)

Non-continuity personnel will (b)(7)(E)

## 6. ALL STAFF ACCOUNTABILITY

OHR is responsible for tracking employee and contractor personnel accountability. (b)(7)(E)

## 7. ACTIVATION BEYOND 30 DAYS

It is possible that a severe disruption could require the SEC to remain in activation status for an extended period. If that should happen, the following options are available (b)(7)(E)

## *ANNEX K: TEST, TRAINING, AND EXERCISE*

### **1. PURPOSE AND SCOPE**

The primary purpose of the Test, Training, and Exercise (TT&E) program is to ensure all members of the SEC (including Continuity Personnel, leadership, and personnel not affiliated with COOP) are aware of and can react appropriately to COOP activations.

This annex refers to TT&E as it pertains to the SEC's COOP program, and does not cover the (b)(7)(E)

or any other testing, training, or exercises required of SEC programs or personnel.

Generally, the COOP TT&E program includes, but is not limited to:

(b)(7)(E)

For an overall understanding and descriptions of the different types of TT&E events, see the U.S. DHS Homeland Security Exercise and Evaluation Program (HSEEP).<sup>11</sup> The SEC uses HSEEP methodology in our COOP TT&E program. Additionally, the COOP and Policy Branch maintains a (b)(7)(E)

### **2. PROGRAM MANAGEMENT**

All documentation concerning the TT&E program are (b)(7)(E)

Contact the COOP and Policy Branch for any necessary records.

When applicable, a single TT&E event consists of multiple tests, trainings, or exercises. For example, the annual (b)(7)(E) exercises may also encompass training on (b)(7)(E)

All continuity personnel who support SEC's essential functions are required to participate in TT&E events.

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<sup>11</sup> HSEEP Webpage: <https://www.fema.gov/emergency-managers/national-preparedness/exercises/hseep>

### **3. DOCUMENTING TESTS, TRAININGS, EXERCISES**

The COOP and Policy Branch develops and maintains after-action reports and Corrective Action Plans to assist in improving COOP planning, processes, procedures and future TT&E events. The after-action reports include the lessons learned, and are incorporated into the COOP Program's Corrective Action Plan.

*ANNEX L: CONTINUITY OF GOVERNMENT READINESS CONDITION MATRIX*

Level	(b)(7)(E)
COGCON 4	
COGCON 3	
COGCON 2	
COGCON 1	

*ANNEX M: ACRONYMS*

AAR	After-Action Report
BIA	Business Impact Analysis
BPA	Business Process Analysis
(b)(7)(E)	(b)(7)(E)
COGCON	Continuity of Government Readiness Condition
COOP	Continuity of Operations
CSR	Continuity Status Report
(b)(7)(E)	(b)(7)(E)
DERG	Devolution Emergency Response Group
D/Os	Divisions and Offices
ESA	Essential Supporting Activity
ERG	Emergency Relocation Group
(b)(7)(E)	(b)(7)(E)
FCD	Federal Continuity Directive
GETS	Government Emergency Telecommunications Service
HSEEP	Homeland Security Exercise and Evaluation Program
JWICS	Joint Worldwide Intelligence Communication System
MEF	Mission Essential Function
MYSMP	Multi-Year Strategy Program Management Plan
NEF	National Essential Functions
OEP	Occupant Emergency Plan
PMEF	Primary Mission Essential Function
PPD	Presidential Policy Directive
RSR	Reconstitution Status Report
RT	Reconstitution Team
(b)(7)(E)	(b)(7)(E)
TT&E	Test, Training, and Exercise
WPS	Wireless Priority Service

## *ANNEX N: GLOSSARY*

**Business Impact Analysis (BIA)** – A method of identifying the consequences of failing to perform a function or requirement.

**Business Process Analysis (BPA)** – A method of examining, identifying, and mapping the functional processes, workflows, activities, personnel expertise, systems, data, interdependencies, and alternate locations inherent in the execution of a function or requirement.

**Catastrophic Emergency** – Any event, regardless of location, which results in extraordinary levels of mass casualties, damage, or disruption severely affecting the U.S. population, infrastructure, environmental, economy, or government functions that interrupts normal day-to-day operations.

**Continuity Coordinator** – Senior accountable official at the Assistant Secretary or equivalent level who represents the SEC on the Continuity Advisory Group, ensures continuity capabilities in the SEC, and provides recommendations for continuity policy. The SEC Continuity Coordinator is the (b)(7)(E).

**Continuity of Government Readiness Conditions (COGCON)** – A system that establishes executive continuity program readiness levels, focusing on emergencies in or credible threats to the National Capital Region, or affecting the performance of National Essential Functions.

**Continuity of Operations (COOP)** – An effort within the Executive Office of the President and individual Departments and Agencies to ensure that essential functions continue to be performed during disruption of normal operations.

**COOP Liaisons** – The representatives from D/Os with a continuity role who serve as the conduit for COOP issues. COOP Liaisons ensure that respective D/O capabilities and resources that support the COOP Program mission are in place and ready. All COOP Liaisons are also Emergency Relocation Group members.

**Continuity Manager** – The Senior Continuity Planner responsible for managing day-to-day continuity programs, representing the SEC on the Continuity Advisory Group and working groups, as appropriate, and reporting to the Continuity Coordinator on all continuity program activities. The SEC Continuity Manager is the (b)(7)(E).

**Continuity Personnel** – Personnel including executive and senior leadership, staff with the technical expertise, and those that perform, conduct, or support continuity operations and essential support activities and functions. (b)(7)(E)

**Corrective Action Plan** – An organized method to document and track improvement actions for an organization's continuity program.

**Devolution** – The transfer of statutory authority and responsibility from an organization's primary operating staff and facilities to other staff and alternate locations to sustain essential functions when necessary.

**Devolution Emergency Response Group (DERG)** – Continuity personnel (b)(7)(E) who continue the performance of SEC HQ essential functions.

**Emergency Relocation Group (ERG)** – Continuity personnel (b)(7)(E) who are assigned responsibility to continue performance of essential functions at an alternate location in the event their primary operating facilities are threatened or have been incapacitated by an incident.

**Essential Functions** – A subset of government functions that are determined to be critical activities during an incident or event and must continue in a continuity situation, whether the functions are MEFs, PMEFs, or ESAs.

**Essential Records** – Information systems and applications, electronic and paper documents, references, and records needed to support essential functions during a continuity event.

**Essential Supporting Activities (ESA)** – Activities that support performance of MEFs. They are important facilitating activities performed by most organizations; however, the sole performance of ESAs does not directly accomplish an organization's mission.

**Government Functions** – The collective functions of the Executive Office of the President and the departments and agencies defined by statute, regulation, presidential direction, or other legal authority, to include the functions of the legislative branch and judicial branch.

**Mission Essential Functions (MEF)** – The essential functions directly related to accomplishing the SEC's mission as set forth in statutory or executive charter.

**Multi-Year Strategy and Program Management Plan (MYSPMP)** – A plan that guides the development of a program over a set number of years via a process that ensures the maintenance and continued viability of continuity plans and exercises.

**National Capital Region (NCR)** – Pursuant to the National Capital Planning Act of 1952 (40 U.S.C. § 71), the NCR is the District of Columbia; Montgomery and Prince George's Counties of Maryland; Arlington, Fairfax, Loudoun, and Prince William Counties of Virginia; and all cities within the geographic area bounded by the outer boundaries of the combined area of said counties.

**National Essential Functions (NEF)** – Select functions that are necessary to lead and sustain the Nation during a catastrophic emergency and that, therefore, must be supported through COOP capabilities.

**Occupant Emergency Plan (OEP)** – A short-term emergency response plan that establishes procedures for evacuating buildings or sheltering-in-place to safeguard lives and property. The (b)(7)(E)

**Primary Mission Essential Functions (PMEF)** – MEFs that must be continuously performed to support or conduct the uninterrupted performance of the NEFs during a catastrophic emergency.

**Reconstitution** – The process by which surviving and/or replacement D/O personnel resume normal operations.

**Telework Site** – An approved worksite where an employee performs his or her duties other than the location from which the employee would otherwise work. (b)(7)(E)

**Test, Training, and Exercise (TT&E)** – Activities designed to familiarize, impart skills, and ensure viability of continuity plans. TT&E aids in verifying that an organization's continuity plan is capable of supporting the continued execution of the organization's essential functions throughout the duration of a continuity event.

## ***ANNEX O: AUTHORITIES AND REFERENCES***

### **AUTHORITIES:**

- Presidential Policy Directive 40 (PPD-40), *National Continuity Policy*, July 15, 2016.
- Office of Science and Technology Policy and Office of Management and Budget (OSTP/OMB) Directive D-16-1, *Minimum Requirements for Federal Executive Branch Continuity Communications Capabilities*, December 15, 2016.
- SECR 30-3, SEC Continuity of Operations (COOP) Program, July 23, 2019.

### **REFERENCES:**

- Federal Continuity Directive 1, *Federal Executive Branch National Continuity Program and Requirements*, January 17, 2017.
- Federal Continuity Directive 2, *Federal Executive Branch Mission Essential Function and Primary Mission Essential Function Identification and Submission Process*, June 2017.