

**Treasury Office of Inspector General  
Lapse in Appropriations Contingency Plan**



September 2013

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## **Purpose**

This shutdown plan provides policy guidance and instructions for actions to be taken by the Treasury Office of Inspector General (OIG) when Congress fails to enact regular appropriations, a continuing resolution, or need supplements, resulting in an interruption of appropriated funds available to continue OIG's activities.

## **Background**

The Attorney General issued two opinions in the early 1980s that the language and legislative history of the Anti-deficiency Act unambiguously prohibits agency officials from incurring obligations in the absence of appropriations ("Applicability of the Anti-deficiency Act upon a Lapse in an Agency's Appropriations" (1980) and "Authority for the Continuance of Government Functions during a Temporary Lapse in Appropriations" (1981)). The Office of Legal Counsel of the Department of Justice issued an opinion dated August 16, 1995, that reaffirms and updates the 1981 opinion. In general:

- Employees of affected agencies performing non-excepted activities (as discussed in the Department of Justice opinions) may not perform any services other than those involved in the orderly suspension of non-excepted activities; excepted activities that may be continued are generally those that are authorized by law or that protect life and property;
- Agencies may not permit voluntary performance of non-excepted services; and
- Agency heads make the determinations that are necessary to operate their agencies during an appropriations hiatus (within the guidance established by the Department of Justice opinions and pursuant to normal agency processes for the resolution of issues of law and policy).

## **Summary of Activities During Funding Lapse**

In the event of a lapse in funding, the OIG would suspend most operations (including audits) except those required by law. Approximately ten employees could be required (and others possibly recalled) for the protection of life and property, including those involved in investigative cases in which investigators would be compelled to testify in any state/federal grand jury or court proceeding and/or to act on significant threats or assaults on Department of the Treasury personnel or property. Limited support personnel in information technology and facilities would also be required. Oversight activities for the Small Business Lending Fund and State Small Business Credit Initiative would also continue since funding is provided through non-appropriated funds. The Inspector General would remain in work status to fulfill his role in the discharge of

the President’s constitutional duties. Should a lapse in funding exceed five days, the OIG would expect to take no additional actions.

## Summary of Shutdown Impacts

1. Estimated time to complete shutdown of non-excepted activities	Not in excess of a half day
2. Number of employees expected to be on board prior to implementation of shutdown plan	181
3. Number of employees to be retained due to:	
a. Funded by other than annual appropriated funds	19
b. Activities expressly authorized by law	0
c. Necessary for protection of life and property	5*
d. Authorized by necessary implication	2**
e. Discharge of President’s constitutional duties	1
4. Total number of excepted employees	27**

\* Some investigators within the Office of Investigations would be required to remain on duty during a shutdown to continue criminal investigations when compelled to testify in any state/federal grand jury or court proceeding and/or to act on significant threats or assaults on Department of the Treasury personnel or property. As needed, additional investigators could be recalled. Limited support personnel in information technology and facilities would also be required.

\*\*Approximately ten OIG employees will be needed to ensure an orderly shutdown. Time should not exceed one-half day. These employees are not included in the total count of excepted employees.

## Shutdown Plan Requirements

### Current List of Functions

A list of “excepted” and “non-excepted” organizational functions is included at the ATTACHMENT. Definitions include:

“Excepted” Activities are those where positions would not be furloughed as a result of a shutdown, per one of the below statutory exceptions:

1. Funded by other than annual appropriated funds: Some functions are covered by a multi-year, no-year and revolving funds or advance appropriation and thus would not be affected by an annual appropriation lapse.
2. Authorized by necessary implication: Certain activities could be implicitly authorized because of their connection with other operations which are mandated to continue by law or for which funds otherwise continue to be available
3. Necessary for safety of human life or protection of property: The Budget Enforcement Act of 1990 amends Section 1342 of Title 31 to make clear that regular, on-going functions whose suspension would not pose an imminent threat to life and property would not qualify as excepted activities. The risk to life or property must be real, not hypothetical, so that a delay in activities is not permissible. In particular, administrative, research and other overhead activities supporting excepted activities should be carefully reviewed to make certain their continuance is essential to carrying out such activities.
4. Discharge of President’s Constitutional duties: There are some executive branch functions that are considered instrumental in the performance on the President’s constitutionally assigned duties.
5. Necessary for the orderly shutdown of functions: Agencies may obligate funds during periods of lapsed appropriations to bring about the orderly close down of non-excepted activities. Contingency plans which call for winding down operations of an agency after an appropriations lapse should be consistent with the Anti-Deficiency Act. At the same time, the activities of employees during this period must be wholly devoted to closing down the function and, upon completion, these employees would be released.

“Non-Excepted” Activities are all other functions than those designated as “excepted” above. Positions in these functions would be furloughed, where “excepted” positions would remain on duty. This could also include positions that may have to be recalled at a later date, if the furlough continues for more than a week.

## Employee Notification Procedures

Employees will be advised of the potential shutdown of operations and their “excepted” or “non-excepted” status prior to the implementation phase of shutdown. Sample notifications are included as attachments to this contingency plan.

Employees will be assured that, should a shutdown be necessary, their health and life insurance coverage will not be affected. Employees may arrange to pay their portion of the health benefit costs on an on-going basis or upon their return to duty.

## **Shutdown Implementation**

### Shutdown Procedures

When a lapse occurs, all normal operations will cease and all further efforts will be devoted solely to closing down operations, protection of human life and health, protecting government property, and performing essential operations for outside agencies whose operations must continue. Management will determine the number of employees required to do this work.

Routine operations already in process at the time the lapse begins should be carried forward to completion, or to a point where they can safely be interrupted, in order to avoid losing the investment in the work which has already started. The invested work is a form of government property which should be protected from loss.

Employees in a travel status will be notified by management, whether to return home or to continue with their off-site business.

Employees on paid leave (i.e. annual, sick, administrative, military, etc.) and unpaid leave (i.e. absence without leave, leave-without-pay, etc.) will be notified by their managers of the Agency’s shutdown due to a lapse in appropriations. Managers will inform employees that their leave will be canceled and they will be placed in a furlough status. According to 5 CFR, 752.402(c), a furlough means: “the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.”

When a lapse occurs, essential operations for outside agencies whose operations must continue is allowable. An example would be continuing computer operations to prevent the loss of data in process. This (these) activitie(s) are typical with those identified with the “excepted” category.

When a funding lapse becomes imminent, OIG will develop procedures for furloughing employees. The procedures will take into consideration the various categories of employees: managerial, temporary, etc. Detailed instructions will be developed and issued when the need arises.

Actions necessary to transfer real and personal property will require some coordination within OIG and between those agencies associated with OIG. In some instances because of a significant connection with other agencies, activities may be continued according to law.

### Contracting Procedures

Treasury OIG secures procurement services through the Bureau of Public Debt's Administrative Resource Center. All contracts beginning in FY 2012 include the following language:

*52.232-18 AVAILABILITY OF FUNDS (APR 1984)*

*Funds are not presently available for this contract. The Government's obligation under this contract is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise until funds are made available to the Contracting Officer for this contract and until the Contractor receives notice of such availability. The current status of Fiscal Year 2012 funding and any necessary action required of the Contractor will be made available at the following website: [http://www.publicdebt.treas.gov/vendorinfo/vendor\\_info.htm](http://www.publicdebt.treas.gov/vendorinfo/vendor_info.htm). It is the Contractor's responsibility to monitor this website for information regarding Fiscal Year 2012 funding.*

Should a lapse in funding occur, BPD/ARC would notify contractors on OIG's behalf through their website of the need to suspend work.

## **Shutdown Reactivation of Functions**

Reactivation of functions is effected when funds are appropriated for OIG to continue its mission and all employees are able to return to work. In most cases, it is impossible to notify all employees that they should return to work with a moment's notice. In events like this, managers are encouraged to inform their employees that they should stay tuned to the media for information on returning to work. If possible, other sources of communications should also be made available such as:

1. OIG hotline or employee message line
2. A central point-of-contact should be established where employees may obtain information.
3. OIG phone tree will be activated.

### Listing of Functions by Shutdown Category

Office	Position	Excepted 1	Excepted 2	Excepted 3	Excepted 4	Excepted 5	Non- Excepted
Inspector General's Front Office	Inspector General			X			
	Deputy Inspector General		X				
	Senior Advisor the IG						X
	EEO Manager						X
	Executive Support						X
Office of Audit	AIG for Audit				X*		
	DAIG for Program Audits						X*
	DAIG for Financial Management						X
	Supervisory Auditors						X
	Auditors						X
	Supervisory Program Analysts						X
	Program Analysts						X
	Information Technology Specialists						X
	Office Manager						X
	Secretary						X
	All Students						X
Office of Investigations	AIG for Investigations		X				
	Special Agent in Charge (SAC)		X				
	Supervisory Criminal		X				

	Investigators (ASAC)						
	Criminal Investigators						X*
	Program Analysts						X*
	Office Manager						X
	Administrative Specialists						X
	All Students						X

**Codes**

Excepted 1 – Employees who have a continuing source of funding.

Excepted 2 – Employees who are necessary to ensure the safety of human life or the protection of property.

Excepted 3 – Employees who are necessary for the discharge of the President’s constitutional duties.

Excepted 4 – Employees who are necessary for a short period to ensure an orderly shutdown of operations.

Excepted 5 – Employees who are authorized by necessary implication.

\*These positions could be called back on an as needed basis.

**Listing of Functions by Shutdown Category (continued)**

Office	Position	Excepted 1	Excepted 2	Excepted 3	Excepted 4	Excepted 5	Non-Excepted
Office of Counsel	Counsel to the IG				X*		
	Attorneys						X
	Legal Assistant						X
	Office Manager						X
Office of Management	AIG for Management				X*	X*	
	DAIG for Management				X*		
	Administrative Specialists				X*		
	Contracting Officer				X*		
	HR Director				X*		
	Senior Human Resources Specialist				X*		
	Human Resources Specialists				X*		
	Budget Director				X*		
	Budget Analyst						X*
	Information Technology Director				X*		
	IT Systems Administrators					X*	
	IT Specialists				X		X*
	All Students (STEP &						X

	SCEP)						
Office of SBLF Program Oversight	Special DIG for SBLF	X					
	Supervisory Auditors	X					
	Auditors	X					
	Supervisory Program Analysts	X					
	Management/Program Analysts	X					

Codes

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Excepted 4 – Employees who are necessary for a short period to ensure an orderly shutdown of operations.

Excepted 5 – Employees who are authorized by necessary implication

\*These positions could be called back on an as needed basis.



OFFICE OF  
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

MEMORANDUM FOR ALL EMPLOYEES IN THE GENERAL SCHEDULE

FROM: [enter from text]

SUBJECT: Notice of Furlough

In the absence of either an appropriation, or a continuing resolution for the Department of the Treasury and the Office of Inspector General (OIG), no further financial obligations may be incurred by OIG, except for those related to the orderly suspension of OIG's operations or performance of excepted activities as defined by the Office of Management and Budget. Because your services are not necessary for the orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective [redacted]. This furlough, e.g., nonpay, nonwork status, is not expected to exceed 30 days. Therefore, this furlough expires on [redacted].

You should listen to public broadcasts, monitor the OIG hotline and make yourself available for contact through OIG telephone trees. When you hear that a continuing resolution or an appropriation for the Department of the Treasury has been approved, you will be expected to return to work on your next regular duty day.

Congress' failure to fund the Agency's work in a timely manner and the resulting curtailment of the Agency's activities qualifies as an emergency. Thus, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d)(2).

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, but must remain away from your work place unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. Employees in the excepted service who have veterans preference may appeal to the

MSPB if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, you may obtain information from the MSPB at <http://www.mspb.gov/appeals/appeals.htm>. If you do not have internet access, please contact **(Name of BPD representative)** for a copy of the MSPB regulations and appeal form.

\_\_\_\_\_

Deciding Official

\_\_\_\_\_

Date

I acknowledge receipt of this decision.

\_\_\_\_\_

Employee's Signature

\_\_\_\_\_

Date



OFFICE OF  
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

MEMORANDUM FOR ALL EMPLOYEES IN THE CAREER

SENIOR EXECUTIVE SERVICE

FROM: [enter from text]

SUBJECT: Notice of Furlough

In the absence of either an appropriation, or a continuing resolution for the Department of the Treasury and the Office of Inspector General (OIG), no further financial obligations may be incurred by OIG, except for those related to the orderly suspension of OIG's operations or performance of excepted activities as defined in the Office of Management and Budget memorandum for Heads of Executive Departments and Agencies dated November 17, 1981. Because your services are not necessary for the orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective [redacted]. This furlough, e.g., nonpay, nonwork status, is not expected to exceed 30 days. Therefore, this furlough expires on [redacted].

You should listen to public broadcasts, monitor the OIG hotline and make yourself available for contact through OIG telephone trees. When you hear that a continuing resolution or an appropriation for the Department of the Treasury has been approved, you will be expected to return to work on your next regular duty day.

Congress' failure to fund the Agency's work in a timely manner and the resulting curtailment of the Agency's activities qualifies as an emergency. Thus, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR § 359.806(a).

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, but must remain away from your work place unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Senior Executive Service career appointees adversely affected may appeal this action to the Merit Systems Protection Board (MSPB). Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, you may obtain information from the MSPB at <http://www.mspb.gov/appeals/appeals.htm>. If you do not have internet access, please contact **(Name of BPD Representative)** for a copy of the MSPB regulations and appeal form.

\_\_\_\_\_

Deciding Official

\_\_\_\_\_

Date

I acknowledge receipt of this decision.

\_\_\_\_\_

Employee's Signature

\_\_\_\_\_

Date



OFFICE OF  
INSPECTOR GENERAL

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

MEMORANDUM FOR EXCEPTED EMPLOYEES

FROM: [enter from text]

SUBJECT: Notice of Excepted Status

In the absence of either an appropriation, or a continuing resolution for the Department of the Treasury and the Office of Inspector General (OIG), no further financial obligations may be incurred by OIG, except for those related to the orderly suspension of OIG's operations or performance of excepted activities as defined by the Office of Management and Budget. Because your services are necessary for the orderly suspension of operations or you are engaged in one of the excepted functions, you are being notified that you are to remain in work status.

During this time, you are ineligible to use leave and can only perform excepted functions. Your supervisor will provide you with additional details.

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date