United States Department of the Interior

NATIONAL PARK SERVICE
National Capital Region
1100 Ohio Drive, S.W.
Washington, D.C. 20242

October 10, 2013

Ms. Cindy Messinger
Acting Director
Fairfax County Park Authority
12055 Government Center Pkwy, Suite 927
Fairfax, Virginia 22035-1118

Re: Operation of Langley Forks Park during the Government Shutdown
Permit NCR-GWMP-9500-12-162

Dear Ms. Messinger:

As you are aware, pursuant to 36 C.F.R. § 1.5, effective at 12:01 a.m. on October 1, 2013, all units of the National Park System nationwide were closed to public visitation and use, subject to the conditions and exceptions described in the Director's October 1, 2013 Closure Determination and Notice (Closure Notice). That national closure determination was necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park System. Under the provisions of the Antideficiency Act (Act), 31 U.S.C. s 1342, in the absence of an appropriation NPS is able to undertake only very limited activities, primarily related to emergencies which the Act explains as "the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."

Consistent with its regulations and the terms of the applicable permits, contracts and agreements, the Closure Notice suspended all permits to ensure that a violation of the Act would not occur. With the national closure in place, there has since been a limited opportunity to examine specific issues that have arisen and determine whether modification or clarification of the national closure is lawful and appropriate. With more than 20,000 NPS employees nationwide on furlough as a result, we only became aware of the issue at Langley Forks just prior to the court's issuance of an *Ex Parte* order on October 9.

After directing the Park Authority as required by the court order yesterday, we have had our first opportunity to review this matter and have been able to determine that the Park Authority's operations under Special Use Permit NCR-GWMP-9500-12-162 (SUP) will not result in NPS

expending or obligating funds in the absence of an appropriation in violation of the Act for the duration of the shutdown. Accordingly, I have confirmed with the Director of the National Park Service that your operations under this SUP are no longer subject to suspension under the National Closure Order. You may therefore resume operations under the SUP.

Sincerely,

Lisa A Mendelson-Ielmini

Lisa A. Mendelson-Ielmini
Deputy Regional Director

cc: Superintendent Alex Romero, George Washington Memorial Parkway

Jacobson, Rachel <rachel_jacobson@ios.doi.gov>

Re: Situational Awareness

1 message

Margaret O'Dell <peggy_o'dell@nps.gov> Fri, Oct 4, 2013 at 6:29 PM
To: Rachel Jacobson <rachel_jacobson@ios.doi.gov>

Will keep you informed of anything this weekend that is of note. Thank you Rachel.

Sent from my iPhone

On Oct 4, 2013, at 4:50 PM, Rachel Jacobson <rachel_jacobson@ios.doi.gov> wrote:

> As this drags on and on and on, please continue to include Michael and me
> in your daily touch-base calls with your regions, and let us know about
> big issues that are likely to require more attention. We won't ask for
> any separate briefings or anything like that because you all have enough
> on your plates, but we want to know in real time about evolving
> situations. Of course we are available to provide any assistance you may
> need.
>
> Hang in there!

Bean, Michael <michael_bean@ios.doi.gov>

Re: updated - for review

1 message

Bean, Michael <michael_bean@ios.doi.gov> Wed, Oct 9, 2013 at 9:33 AM
To: "Roth, Barry" <barry.roth@sol.doi.gov>, Edward Boling <ted.boling@sol.doi.gov>

(b) (5) [redacted]

On Wed, Oct 9, 2013 at 9:16 AM, Roth, Barry <barry.roth@sol.doi.gov> wrote:

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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——— Forwarded message ———
From: **Jarvis, Jonathan** <jon_jarvis@nps.gov>
Date: Wed, Oct 9, 2013 at 8:35 AM
Subject: Re: updated - for review
To: "Roth, Barry" <barry.roth@sol.doi.gov>, Ted Boling <Ted.Boling@sol.doi.gov>
Cc: "Waldron, Suzanne" <Sue_Waldron@nps.gov>, "Foster, Maureen" <Maureen_Foster@nps.gov>, "McDowall, Lena" <Lena_McDowall@nps.gov>, "Sheaffer, C. B." <Bruce_Sheaffer@nps.gov>, "O'Dell, Peggy" <Peggy_O'Dell@nps.gov>

(b) (5) [redacted]

On Tue, Oct 8, 2013 at 7:26 PM, Roth, Barry <barry.roth@sol.doi.gov> wrote:

Here is what Jack and Ted gave back to Kate.

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
202-208-4344
Fax: 202-208-3877
Barry.Roth@sol.doi.gov

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——— Forwarded message ———
From: **Boling, Edward** <ted.boling@sol.doi.gov>
Date: Tue, Oct 8, 2013 at 7:23 PM
Subject: Fwd: updated - for review
To: Katherine Kelly <kate_kelly@ios.doi.gov>
Cc: Jack Haugrud <jack.haugrud@sol.doi.gov>, Barry Roth <BARRY.ROTH@sol.doi.gov>

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

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202-208-5584 (fax)
Ted.Boling@sol.doi.gov

——— Forwarded message ———
From: **Boling, Edward** <ted.boling@sol.doi.gov>
Date: Tue, Oct 8, 2013 at 7:14 PM
Subject: Fwd: updated - for review
To: Jack Haugrud <jack.haugrud@sol.doi.gov>

Ted Boling
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Ted.Boling@sol.doi.gov

--------- Forwarded message ---------
From: **Kelly, Katherine** <kate_kelly@ios.doi.gov>
Date: Tue, Oct 8, 2013 at 7:00 PM
Subject: updated - for review
To: "Haugrud, Jack" <jack.haugrud@soi.doi.gov>, Ted Boling <Ted.Boling@sol.doi.gov>
Cc: "Androff, Blake J" <Blake_Androff@ios.doi.gov>, laura davis <Laura_Davis@ios.doi.gov>, Nicole Buffa <nicole_buffa@ios.doi.gov>

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

--

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Jonathan B. Jarvis
Director, NPS

--

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA

LORNA WEBER, PARKWAY INN, INC., Plaintiffs, v. MARK WOODS, in his official capacity as Superintendent, Blue Ridge Parkway, JONATHAN B. JARVIS, in his official capacity as Director, National Park Service, and the NATIONAL PARK SERVICE, Defendants.	**Civ. Action No. _____**

Motion For A Temporary Restraining Order and Preliminary Injunction and Memorandum In Support Thereof

Pursuant to Fed. R. Civ. Pr. 65, Plaintiffs Lorna Weber and Parkway Inn, Inc. ("The Pisgah Inn") respectfully submit this motion for a temporary restraining order and preliminary injunction and memorandum in support of that motion.

I. Introduction

The National Park Service's decision in light of Congress' reduction of its funding to shut down The Pisgah Inn to purportedly protect public safety and area resources is arbitrary, capricious, utterly non-sensical and creates an immediate threat to the public safety. The Pisgah Inn is a private company that provides

services to the public, such as food, lodging and restrooms, along the Blue Ridge Parkway. The Pisgah Inn does not receive any funds from the federal government, but in fact pays money to the federal government pursuant to its operations on the Blue Ridge Parkway. In issuing The Pisgah Inn its current authorization to provide visitor services to travelers on the Blue Ridge Parkway, NPS concluded that The Pisgah Inn's services "are necessary and appropriate for the public use and enjoyment of [the Blue Ridge Parkway] and should be provided to the public visiting [the Blue Ridge Parkway]." The Blue Ridge Parkway is currently open. The travelers on the Blue Ridge Parkway, including motorcyclists, rely upon the services provided by The Pisgah Inn for their safety. Even though NPS has kept the Blue Ridge Parkway open notwithstanding the current partial shutdown of certain government operations, NPS has arbitrarily determined that, pursuant to NPS's authority to close units of the National Park System under 36 C.F.R. §1.5(a), The Pisgah Inn must shut down. Given that The Pisgah Inn does not rely on federal funds and provides necessary services to the travelers on the Blue Ridge Parkway, NPS's decision to keep the Blue Ridge Parkway open but close The Pisgah Inn is entirely unreasonable and is likely to result in irreparable harm to travelers on the Blue Ridge Parkway and The Pisgah Inn as well as increase the risk of resource damage to the area.

II. Facts

1. On October 1, 2013, NPS made a determination pursuant to 36 C.F.R. § 1.5(a) to close certain NPS units and suspend all NPS concession operations by 6:00 p.m., October 3, 2013, whether or not those concession operations were within a closed unit of the NPS. *See* Attachment C to the Declaration of Bruce O'Connell ("National Park System Closure Determination and Notice") (declaration attached hereto as Exh. 1).

2. NPS asserted that its determination to close NPS units and suspend all NPS concession operations was "necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park Service and will remain in effect until funding is restored." *Id.*

3. NPS asserted that "this national closure determination and notice is necessary to maintain public health and safety in units of the National Park System and to protect park resources and values during the shutdown period." *Id.*

4. However, NPS determined that the Blue Ridge Parkway could remain open because it provides primary access between points located outside the

Parkway and its continued use was not a risk to public health or safety or to the protection of park resources and values. Exh. 1 at ¶ 8.

5. The Pisgah Inn is located on the Blue Ridge Parkway. *Id.* at ¶ 2.

6. Upon issuing the current contract for The Pisgah Inn to operate on the Blue Ridge Parkway, NPS determined that the services provided by The Pisgah Inn "are necessary and appropriate for the public use and enjoyment of [the Blue Ridge Parkway] and should be provided to the public visiting [the Blue Ridge Parkway]." Attachment A to Exh. 1 (page 2 of the attachment).

7. The Pisgah Inn provides one of the few spots for travelers to pull off the Blue Ridge Parkway and rest, obtain food or to use rest rooms. Exh. 1 at ¶ 5; Declaration of Lorna Weber at ¶¶ 2-9 (attached hereto as Exh. 2).

8. The Pisgah Inn helps ensure the safety and health of travelers on the Blue Ridge Parkway. Exh. 1 at ¶ 6; Exh. 2 at ¶ 4-6, 8.

9. On October 1, 2013, the Pisgah Inn was informed by an NPS employee that the Pisgah Inn had to close its operations by 6:00 p.m., October 3, 2013, pursuant to NPS's determination to close all NPS units. Exh. 1 at ¶ 9.

10. However, because NPS in fact had not closed all Park units but left open the Blue Ridge Parkway, The Pisgah Inn attempted to stay open to help ensure the safety and health of travelers on the Blue Ridge Parkway. Exh. 1 at ¶ 11.

11. The Pisgah Inn also sought to confirm the validity and authority of NPS's closure notice from NPS officials because the notice it received was not from an employee authorized to represent NPS. Exh. 1 at ¶ 12.

12. On October 4, 2013, multiple NPS Park Rangers arrived at The Pisgah Inn in several vehicles with their emergency lights on and forcibly closed down The Pisgah Inn's operations. Exh. 1 at ¶ 13.

13. An NPS official, Lena McDowall, Associate Director, National Park Service, Business Services, subsequently sent an email to The Pisgah Inn's counsel

asserting the NPS had properly issued directions to Pisgah Inn to close its operations pursuant to 36 C.F.R. § 1.5(a). Exh. 1 at ¶ 14.

14. In explaining this determination to The Pisgah Inn, NPS stated that:

> In the normal course of operations, park activities necessarily require the support of numerous National Park Service functions: park operations do not function independently of contracting support; visitor protection cannot exist without the support of payroll personnel; concessioners and volunteers cannot conduct activities without management oversight. With parks closed to the public and its inability to provide necessary oversight, consistent with the provisions of its concession contracts, the NPS has had to close all concession facilities in the National Park System.

Attachment C to Exh. 1.

15. However, The Pisgah Inn can and does function on a day-to-day basis without any NPS employees or contract support. Exh. 1 at ¶ 16.

16. NPS's administrative contracting support staff visit The Pisgah Inn approximately only once per year and have already visited for the current season. Exh. 1 at ¶ 17.

17. Thus, it is misleading for NPS to state that The Pisgah Inn's operation cannot function during the current period independent of NPS contracting support.

18. In addition, prior to October 1, 2013, NPS Park Rangers would infrequently stop by The Pisgah Inn. Exh. 1 at ¶ 18.

19. However, since October 3, 2013, NPS has had between 3-6 Park Rangers at The Pisgah Inn. Exh. 1 at ¶ 19.

20. Therefore, NPS clearly has sufficient resources to ensure that even greater protective measures are in place to protect visitors than were in place prior to the closure order. Exh. 1 at ¶ 20.

21. In addition, emergency medical services and police services in the Parkway area are provided by the local state and municipalities, including the Sheriff, EMT units and the fire departments, which all are still available and on duty. NPS never provided these services. Exh. 1 at ¶¶ 21-22.

22. Moreover, visitors are still present traveling on the Blue Ridge Parkway and NPS has determined that they can make use of the Blue Ridge Parkway in a safe manner without jeopardizing resources. Exh. 1 at ¶ 8; Exh. 2.

23. The use by the visitors to the Blue Ridge Parkway of The Pisgah Inn's facilities does not and cannot be viewed as increasing any of these already acceptable risks, and in fact, reduces these risks. Exh. 2 at ¶¶ 3-8.

24. NPS apparently subsequently allowed travelers on the Blue Ridge Parkway to access The Pisgah Inn to make use of its rest rooms which it provides. Exh. 1 at ¶ 23.

25. Given this permitted access to and use of The Pisgah Inn, there is no increase in risk to public health or the area's resources if travelers are also allowed to make use of the other services provided by The Pisgah Inn, such as its food and lodging.

III. Argument

A. Standard of Law

As set out in *Hargrove v. Universe Express Inc. Moving and Storage*, 2013 WL 5218104 (E.D.N.C. Sept. 17, 2013):

> A plaintiff seeking a preliminary injunction must establish [1] that he is likely to succeed on the merits, [2] that he is likely to suffer irreparable harm in the absence of preliminary relief, [3] that the balance of equities tips in his favor, and [4] that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).

NAACP-Greensboro Branch v. Guilford County Board of Elections, 858 F.Supp.2d 516, 522 (M.D.N.C. 2012). The standard for granting a temporary restraining order is the same as for granting a preliminary injunction. *U.S. Dept. of Labor v. Wolf Run Mining*, 452 F.3d 275, 281, n. 1 (4th Cir. 2006). As set out below, Plaintiffs have met all of the four applicable criteria.

B. Plaintiffs are likely to succeed on the merits

The Administrative Procedure Act ("APA") requires that a court "shall [] hold unlawful and set aside agency action, findings, and conclusions found to be [] arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law" or "without observance of procedure required by law." 5 U.S.C. § 706(2)(A), (D). When reviewing an agency action pursuant to the APA, a court shall "decide all relevant questions of law." 5 U.S.C. § 706.

NPS has clearly acted arbitrarily and capriciously by claiming that it has to shut down the operations at The Pisgah Inn "to maintain public health and safety in units of the National Park System and to protect park resources and values during the shutdown period" when NPS has (1) continued to allow visitors on the Blue Ridge Parkway and has (2) previously determined that The Pisgah Inn's operations provide "necessary" services to these travelers and those services "should be provided." NPS's actions here are patently unreasonable, contrary to its own past determinations and in fact increase the risk to public health and safety and the

potential harm to park resources. Whatever NPS's motivation may be, NPS's decision is not based on a legitimate and honest assessment of the facts in this particular situation.

Section 1.5(a) of 36 C.F.R. states that:

> (a) Consistent with applicable legislation and Federal administrative policies, and <u>based upon a determination that such action is necessary for the maintenance of public health and safety, protection of environmental or scenic values</u>, protection of natural or cultural resources, aid to scientific research, implementation of management responsibilities, equitable allocation and use of facilities, or the avoidance of conflict among visitor use activities, the superintendent may:
>
> (1) Establish, for all or a portion of a park area, a reasonable schedule of visiting hours, impose public use limits, or close all or a portion of a park area to all public use or to a specific use or activity.
>
> (2) Designate areas for a specific use or activity, or impose conditions or restrictions on a use or activity.
>
> (3) Terminate a restriction, limit, closure, designation, condition, or visiting hour restriction imposed under paragraph (a)(1) or (2) of this section.

(Emphasis added.) NPS made its decision to shut down The Pisgah Inn on the Blue Ridge Parkway purportedly pursuant to this regulation. *See* Exh. 1 at ¶ 10; Att. C to Exh. 1 ("Pursuant to 36 C.F.R. § 1.5 . . . National Park Service concessioners must suspend their operations in overnight accommodations by 6:00 p.m. EDT on October 3, 2013"); *id.* ("Under 36 C.F.R. § 1.5(a) this national closure determination and notice is necessary to maintain public health and safety

in units of the National Park System and to protect park resources and values during the shutdown period").

However, NPS decided not to shut down the Blue Ridge Parkway itself. Thus, there are as many travelers on the Parkway today as there always is, and in fact, right now is the busiest period due to the Fall foliage. Exh. 1 at ¶ 8. Therefore, by keeping the Parkway open, it is clear that NPS has determined that the impact of the partial reduction in federal funding has not created an unacceptable risk to the health and safety of visitors to the Parkway. Nor has NPS determined that the partial reduction in federal funding has created an unacceptable risk to the area's resources.

Moreover, when NPS authorized The Pisgah Inn to operate, it explicitly determined that its services "are necessary and appropriate for the public use and enjoyment of [the Blue Ridge Parkway] and should be provided to the public visiting [the Blue Ridge Parkway]." *See* Att. A to Exh. 1 (page 2 of The Pisgah Inn's contract authorizing its operations). Therefore, NPS has already determined that the services provided by The Pisgah Inn are "necessary" and "should be provided to the public visiting" the Parkway.

Given that NPS has allowed travelers on the Parkway and found The Pisgah Inn's services to these travelers are "necessary," there is no rational argument that the services which The Pisgah Inn provides to those travelers increases any risk to

their safety. In fact, The Pisgah Inn's operations actually reduce any risk to the public health and safety by providing necessary services such as food and lodging to travelers on the Parkway. Exh. 1 at ¶ 5-6; Exh. 2 at ¶ 2-8. The Pisgah Inn is an authorized concessioner of the NPS, has been thoroughly evaluated to determine that it can provide these services and in fact has been doing just that for thirty-five (35) years. Exh. 1 at ¶ 2. It has well-demonstrated competency.

The specific basis for NPS's argument that it would be unsafe for The Pisgah Inn to operate is that, because NPS has a reduced staff, NPS cannot provide oversight to The Pisgah Inn's operations which is necessary to ensure that The Pisgah Inn itself does not cause harm to the public health or damage the Parkway's resources. This assertion is patently false. First, The Pisgah Inn was selected by NPS to operate because of its demonstrated ability to safely provide necessary services to travelers on the Parkway. Exh. 1 at ¶¶ 3-6. Moreover, The Pisgah Inn has been providing these services for thirty-five (35) years at no cost to the federal government. Exh. 1 at ¶¶ 2, 7. In fact, the federal government makes money from The Pisgah Inn's operations. Exh. 1 at ¶ 7.

NPS's specious claim that NPS must conduct day-to-day or week-to-week oversight of The Pisgah Inn to ensure that it continues to operate properly is not only invalid, it is entirely belied by the fact that NPS's contracting staff visits The Pisgah Inn approximately once a year. Exh. 1 at ¶¶ 16-17. NPS's implication that

it somehow must and does conduct day-to-day, week-to-week or even month-to-month oversight at The Pisgah Inn is patently false. NPS authorized The Pisgah Inn to provide food and services because that it what The Pisgah Inn does, and does well, and that is what NPS cannot do.

In addition, NPS has apparently allowed travelers on the Parkway to make use of The Pisgah Inn's restrooms, even though it has closed down The Pisgah Inn's other operations. Exh. 1 at ¶ 23. By doing so, NPS is acknowledging that there is no safety or resource risk posed by travelers leaving the Parkway, entering The Pisgah Inn's area (which is adjacent to the Parkway) and moving about its facilities. Thus, NPS appears to believe that the only risk is created by The Pisgah Inn providing food or lodging to these visitors. There does not appear to be any valid basis for this assertion, and certainly none has been offered.

Furthermore, NPS's claim that it does not have sufficient resources to ensure the public safety or protect its resources at The Pisgah Inn is belied by the fact that NPS obviously has sufficient resources to have 3-4 Park Rangers in several vehicles stationed at The Pisgah Inn's facility right now, even with reduced funding. Exh. 1 at ¶ 19. In an action that can only make sense to the federal government, Park Rangers are currently spending federal funds to keep visitors <u>out</u> of the facility. It would appear that a more sensible use of those Rangers' services is to allow visitors in to the facilities and have those same Rangers ensure the

safety of the visitors as well as the protection of the resources, if in fact that is required. Incredibly, even in past periods when NPS has full funding, it has never stationed any Park Ranger at The Pisgah Inn, much less 3-4 of them. Exh. 1 at ¶¶ 18-19. In light of this fact, NPS's assertion that it does not have sufficient funding to protect public safety or the resources at The Pisgah Inn is totally baffling.

This case is not unprecedented, as courts have reversed prior NPS decisions to close down NPS units pursuant to federal budget issues. In *Rivera v. United States*, 910 F. Supp. 239 (D.V.I. 1996), NPS also attempted to close down an NPS area and all operations within it due to a federal budget crisis. As in the present case, NPS cited its authority under 36 C.F.R. § 1.5(a) as its authority for this determination. The court granted a temporary restraining order prohibiting the NPS from closing down the area because it found that NPS's claims that continued use would created a danger to public safety and damage resources was baseless.

C. Plaintiffs are likely to suffer irreparable harm

In addition to their likelihood of success on the merits, plaintiffs also are likely to suffer irreparable harm if injunctive relief is not issued. Ms. Weber will still be traveling on the Parkway on her motorcycle, but she will not be able to obtain food or lodging during her travels, services which NPS has already found are "necessary" and "should be provided to visitors." Exh. 2 at ¶¶ 2-9. Thus, there is a risk that NPS's decision to shut down The Pisgah Inn will cause harm to

her health and safety, which clearly is an irreparable harm. *See Shell Offshore Inc. v. Greenpeace, Inc.*, 864 F. Supp. 2d 839, 851 (D. Ak. 2012)("It is well established that demonstrated risks to health and safety constitute the type of irreparable harm for which there is no adequate remedy at law"); *Texaco Indep. Union of Coraopolis Terminal v. Texaco, Inc.*, 452 F.Supp. 1097, 1107 (D.C.Pa.1978) ("no adequate remedy at law or in arbitration" for threats to health and safety of employees) (*citing United Steelworkers v. Blaw–Knox Foundry and Mill Mach., Inc.,* 319 F.Supp. 636, 641 (W.D.Pa.1970)).

In addition, NPS's actions have completely shut down The Pisgah Inn and will eliminate not only its revenues and impact its employees paychecks, but also the revenues for the entire region which depends on the Parkway being opened with full services available. Exh. 1 at ¶¶ 1-2, 13. While Defendants will not doubt try to dismiss the harm to The Pisgah Inn and the region, even as they themselves receive back pay for this shut down period, this harm does constitute irreparable harm. As held in *Hornbeck Offshore Services, L.L.C. v. Salazar*, 696 F. Supp. 2d 627, 638-639 (E.D. La. 2010):

> The plaintiffs assert that they have suffered and will continue to suffer irreparable harm as a result of the [government] moratorium. The Court agrees. Some of the plaintiffs' contracts have been affected; the Court is persuaded that it is only a matter of time before more business and jobs and livelihoods will be lost. The defendants trivialize such losses by characterizing them as merely a small percentage of the drilling rigs affected, but it does not follow that this will somehow reduce the convincing harm suffered. Furthermore,

courts have held that in making the determination of irreparable harm, "both harm to the parties and to the public may be considered." *In re Nw. Airlines Corp.,* 349 B.R. 338, 384 (S.D.N.Y.2006) (*quoting Long Island R.R. v. Int'l Ass'n of Machinists,* 874 F.2d 901, 910 (2nd Cir.1989)). The effect on employment, jobs, loss of domestic energy supplies caused by the moratorium as the plaintiffs (and other suppliers, and the rigs themselves) lose business, and the movement of the rigs to other sites around the world will clearly ripple throughout the economy in this region.

D. The balance of equities strongly favors Plaintiffs

In addition, the balance of equities strongly favors Plaintiffs. While Plaintiffs will likely incur the harms discussed above, NPS will incur no harm if injunctive relief is provided. The Pisgah Inn will continue providing the same services it has for thirty-five (35) years. The Pisgah Inn has never had nor does it need NPS day-to-day oversight. The Pisgah Inn's contracts sets forth the required guidelines for operations, and NPS has never before asserted that it needs to provide frequent oversight to its operations. This assertion was made for the first time to justify shutting down The Pisgah Inn pursuant to the decision by the United States Congress to reduce NPS's funding. Furthermore, NPS now has even more Park Rangers present than they ever had in the past, so, to the extent they believe their presence is necessary to protect the public safety and protect the resources, this can easily be done.

E. An injunction is in the public interest

Because there is no valid reason to shut down The Pisgah Inn, and in fact NPS has already found that The Pisgah Inn's operations are "necessary" and "should be provided" to the visiting public, it is clearly in the public interest to allow these operations to continue. The Pisgah Inn provides a valuable and "necessary" service to the public. NPS's effort to eliminate this service appears to be solely motivated by a desire to deliberately make the public angry. There is no other legitimate basis for NPS's clearly arbitrary decision. However, it is not fair to the public to make The Pisgah Inn a football in NPS's political battles with the United States Congress.

III. Conclusion

For the reasons set forth above, Lorna Weber and The Pisgah Inn respectfully request that their motion for a temporary restraining order and a preliminary injunction be granted.

Respectfully submitted,

s/ Jon Yarbrough
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s/ Kevin R. Garden

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Pro hac vice application pending

Dated: October 7, 2013

Bean, Michael <michael_bean@ios.doi.gov>

Fwd: updated - for review

1 message

Roth, Barry <barry.roth@sol.doi.gov> Wed, Oct 9, 2013 at 9:16 AM
To: Michael Bean <michael_bean@ios.doi.gov>

Barry N. Roth
Associate Solicitor
Division of Parks & Wildlife
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Barry.Roth@sol.doi.gov

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From: **Jarvis, Jonathan** <jon_jarvis@nps.gov>
Date: Wed, Oct 9, 2013 at 8:35 AM
Subject: Re: updated - for review
To: "Roth, Barry" <barry.roth@sol.doi.gov>, Ted Boling <Ted.Boling@sol.doi.gov>
Cc: "Waldron, Suzanne" <Sue_Waldron@nps.gov>, "Foster, Maureen" <Maureen_Foster@nps.gov>, "McDowall, Lena" <Lena_McDowall@nps.gov>, "Sheaffer, C. B." <Bruce_Sheaffer@nps.gov>, "O'Dell, Peggy" <Peggy_O'Dell@nps.gov>

(b) (5) [redacted]

On Tue, Oct 8, 2013 at 7:26 PM, Roth, Barry <barry.roth@sol.doi.gov> wrote:

> Here is what Jack and Ted gave back to Kate.
>
> Barry N. Roth
> Associate Solicitor
> Division of Parks & Wildlife
> 202-208-4344
> Fax: 202-208-3877
> Barry.Roth@sol.doi.gov
>
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——— Forwarded message ———
From: **Boling, Edward** <ted.boling@sol.doi.gov>
Date: Tue, Oct 8, 2013 at 7:23 PM
Subject: Fwd: updated - for review
To: Katherine Kelly <kate_kelly@ios.doi.gov>
Cc: Jack Haugrud <jack.haugrud@sol.doi.gov>, Barry Roth <BARRY.ROTH@sol.doi.gov>

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

Ted Boling
Deputy Solicitor -- Parks & Wildlife
U.S Department of the Interior
1849 C Street NW
Washington, DC 20240
202-208-4423 (main)
202-208-3125 (direct)
202-208-5584 (fax)
Ted.Boling@sol.doi.gov

——— Forwarded message ———
From: **Boling, Edward** <ted.boling@sol.doi.gov>
Date: Tue, Oct 8, 2013 at 7:14 PM
Subject: Fwd: updated - for review
To: Jack Haugrud <jack.haugrud@sol.doi.gov>

Ted Boling
Deputy Solicitor -- Parks & Wildlife
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202-208-5584 (fax)
Ted.Boling@sol.doi.gov

——— Forwarded message ———
From: **Kelly, Katherine** <kate_kelly@ios.doi.gov>
Date: Tue, Oct 8, 2013 at 7:00 PM
Subject: updated - for review
To: "Haugrud, Jack" <jack.haugrud@sol.doi.gov>, Ted Boling <Ted.Boling@sol.doi.gov>
Cc: "Androff, Blake J" <Blake_Androff@ios.doi.gov>, laura davis <Laura_Davis@ios.doi.gov>, Nicole Buffa <nicole_buffa@ios.doi.gov>

(b) (5) [redacted]

[redacted]

[redacted]

[redacted]

[redacted]

–

Kate Kelly
Director of Communications
Department of the Interior
(202) 208 2409
kate_kelly@ios.doi.gov

–
Jonathan B. Jarvis
Director, NPS

Interim Policy.docx

19K

10/11/2013. 810am

Amendment to National Park System Closure Determination and Notice

Pursuant to 36 C.F.R. § 1.5, effective at 12:01 a.m. on October 1, 2013, all units of the National Park System nationwide were closed to public visitation and use, subject to the conditions and exceptions described in the Director's October 1, 2013 Closure Determination and Notice (Closure Notice). That national closure was necessitated by a lapse in funds appropriated by the United States Congress for the operation of the National Park System. Under the provisions of the Antideficiency Act (Act), in the absence of an appropriation NPS is able to undertake only very limited activities, primarily related to emergencies. (b) (5) [redacted]

Consistent with its regulations and the terms of the applicable agreements, the Closure Notice suspended special use permits, concessions, commericial use authorizations and other partner agreements to ensure that a violation of the Act would not occur. The shutdown of the Government and the National Parks has created significant hardships for many persons and organizations, including the partner organizations which operate facilities (b) (5) [redacted] under concession contracts and other agreements. Because a limited number of those partner organizations may be able to resume operation of such facilities within the scope of their existing written authorizations, at least in the short term, without requiring an obligation or expenditure of funds by NPS (b) (5) [redacted], the Closure Notice is hereby amended as follows:

14. The Director of the National Park Service, (b) (5) [redacted] will make a determination, on a case-by-case basis, whether a commercial, concession, and/or partnership facility may be re-opened during the government shutdown. The October 1 National Closure determination is not final agency action as to such partner organization until (b) (5) [redacted] the Director (b) (5) [redacted] has made a determination in accordance with the process and criteria described below:

    A. A written request for reconsideration must be submitted by the facility operator or its legal representative to (b) (5) [redacted].
    B. The facility or area is accessible from private land or a road that is currently open. This may be a state or park road that remains open to the public in accordance with the NPS Closure Notice, e.g. a "through road."
    C. The facility and/or area is self-contained and visitors do not require access to or the use of other closed National Park lands or facilities
    D. Re-opening of the facility will not require NPS to obligate or expend any funds in violation of the Antideficiency Act.
    E. The operator of the facility confirms in writing that its existing agreement requires it to indemnify NPS and the United States for any liabilities that may be incurred as a result of its operations during the government shutdown.

    (b) (5) [redacted]

    (b) (5) [redacted]

(b) (5) [redacted]

Any decision by the Director to reopen such a facility during the shutdown is contingent on his finding that the facility could operate without NPS incurring any expenditure or obligation in violation of the Antideficiency Act during this shutdown period, currently framed for this purpose from the present until October 30. If an individual facility, or various facilities on a cumulative basis, would likely cause such expenditures or obligations to be made, NPS would have to require partner organizations to again suspend operations. Therefore this interim policy is intended to be used sparingly and each decision will be made in consideration of its NPS-wide implications.

Notification: Notification of the decision to allow or deny a facility to re-open will be conveyed in writing (including by email), and documentation supporting each decision will be assembled for the administrative record. Specific provisions may be attached to each decision to re-open, but at a minimum, each operator must agree to inform the visitors using their facility that the National park remains closed to public use with the exception of the immediate environs subject to the control of the partner under its existing agreement with NPS. (b) (5) [redacted]

(b) (5) [redacted]

(b) (5) [redacted]

Jonathan Jarvis
Director, National Park Service

Date

Rachel's edits 10/9/13

DRAFT: Confidential, Pre-decisional and Not for Release

10/9/2013. Version 1.2

Interim Policy Regarding Commercial and Partnership Operations:

(b) (5)

(b) (5)

DRAFT: Confidential, Pre-decisional and Not for Release

10/9/2013

Interim Policy Regarding Commercial and Partnership Operations:

(b) (5)

Considerations: (b) (5)

Notification: (b) (5)

Communications:

(b) (5)

(b) (5)

[redacted]

On background:

(b) (5)

[redacted]

CONTINGENCY PLANNING TIMELINE - As of COB Sept 24, 2013

Tuesday 24 Sep 2013

- 2 PM Planning Meeting
  FAQs being posted to www.doi.gov/shutdown

Wednesday 25 Sep 13

- Noon: Final bureaus plans are due to PMB.
- 1:30pm: Meeting with Bureau Human Resource leaders
- OMB provides all employee communication template
- COB: Secretary issues all employee message
- COB: Final plans to OMB
- Daily OMB phone call

Thurs 26 Sep 13

- Supervisors begin contacting individual employees to let them know whether they will be furloughed if there is a government shutdown. This activity is expected to be completed before plans are made public.
- Union notification occurs (PMB handles Interior national unions, bureaus handle local bargaining units)
- Contractors, grantees and other stakeholders are notified of potential shutdown
- COB: Bureau/Office Fact Sheets and public FAQs due
- Daily OMB phone call
- Daily meeting with Human Resource leaders

Fri 27 Sep 13

- Plans posted to www.doi.gov/shutdown between Noon and 3 PM
- All employee video from the Secretary
- Daily stand-up meeting with Human Resource leaders
- Daily OMB phone call

Sunday 29 Sep 13

- Senate votes on CR

Monday 30 Sep 13

- House votes on CR
- All employee email from the Secretary
- Daily meeting with Human Resource leaders

Tues 1 Oct 13

- Furlough notices provided to employees
- Shutdown activities begin

DEPARTMENT OF THE INTERIOR
September 2013

Contingency Planning based on OMB Circular A-11 (2013), Section 124.1.

OMB requires up-to-date plans in preparation for a potential lapse in appropriation.

The last near shutdown took place in April 2011. Bureaus and offices are updating their plans including designation of programs and employees, their protocol for handling visitors, protection of facilities and resources, ongoing requirements for animal caretaking, hazards monitoring, etc.

The treatment of individual programs and employees is based on the determination of programs that would be excepted from shutdown.

Excepted:

- Presidential appointees – Senate confirmed.

- Employees in programs financed by other than annual appropriations and in which work will continue. E.g. Port Inspection program in FWS funded by fees, BSEE OCS inspection program funded by fees, FWS Sport Fish and Federal Aid grants.

- Employees needed to perform activities expressly authorized by law. This includes employees to make mandatory entitlement payments.

- Employees needed to perform activities necessarily implied by law. This includes activities that need to continue because suspension would prevent or significantly damage the execution of the terms of a statutory authorization or appropriation. For example, staff to continue to make monthly payments to States that are required by law, e.g. Mineral Leasing Act payments.

- Employees necessary to the discharge of the President's constitutional duties and powers. This includes the Commander in Chief and employees conducing foreign relations.

- Employees necessary to protect life and property including law enforcement. These determinations should be made based on an assessment that the safety of life or the protection of property would be compromised in some significant degree and that the threat to life and property can be reasonably said to be near at hand and demanding of immediate attention. Examples include protection of Federal lands, buildings, equipment and property, care of prisoners, emergency and disaster assistance, activities required to ensure production of power and maintenance of power distribution, and active law enforcement and criminal

investigation.

Not Excepted

Employees that are not excepted are furloughed beginning October 1, when the funds lapse.

The retention of positions/employees for the categories above is to be based on a legal determination.

- Prudent planning directs us to minimize the number of employees that are treated as excepted that are funded by the lapsing appropriation. They will not be paid and this is incurring liabilities to the government.

- Minimize the number necessary to protect life and safety and those that would be needed to support programs that have a non-lapsing source of funds.

The employees that are not included in the categories above and will be furloughed.

DOI maintains a significant number of employees on call.

GOVERNMENT OPERATIONS IN THE EVENT OF A LAPSE IN APPROPRIATIONS

A government agency may employ personal services in advance of appropriations only when there is a reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property, and when there is some reasonable likelihood that either or both would be compromised in some significant degree by the delay in the performance of the function in question.

August 16, 1995

MEMORANDUM OPINION FOR THE DIRECTOR OFFICE OF MANAGEMENT AND BUDGET

This memorandum responds to your request to the Attorney General for advice regarding the permissible scope of government operations during a lapse in appropriations.[1]

The Constitution provides that "no money shall be drawn from the treasury, but in consequence of appropriations made by law." U.S. Const. art. I, § 9, cl. 7. The treasury is further protected through the Antideficiency Act, which among other things prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations and prohibits employing federal personnel except in emergencies, unless otherwise authorized by law. *See* 31 U.S.C. § 1341 *et seq.* [2]

In the early 1980s, Attorney General Civiletti issued two opinions with respect to the implications of the Antideficiency Act. *SeeApplicability of the Antideficiency Act Upon A Lapse in an Agency's Appropriations*, 4A Op. O.L.C. 16 (1980); *Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations* , 5 Op. O.L.C. 1 (1981) ("*1981 Opinion*"). The *1981 Opinion* has frequently been cited in the ensuing years. Since that opinion was written, the Antideficiency Act has been amended in one respect, and we analyze the effect of that amendment below. The amendment amplified on the emergencies exception for employing federal personnel by providing that "[a]s used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property." 31 U.S.C. § 1342.

With respect to the effects of this amendment, we continue to adhere to the view expressed to General Counsel Robert Damus of the Office of Management and Budget that "the 1990 amendment to 31 U.S.C. § 1342 does not detract from the Attorney General's earlier analyses; if anything, the amendment clarified that the Antideficiency Act's exception for emergencies is narrow and must be applied only when a threat to life or property is imminent." Letter from Walter Dellinger, Assistant Attorney General, Office of Legal Counsel, to Robert G. Damus, General Counsel, Office of Management and Budget (Oct. 19, 1993) ("*1993 Letter*"). In order to ensure that the clarification of the

1990 amendment is not overlooked, we believe that one aspect of the *1981 Opinion's* description of emergency governmental functions should be modified. Otherwise, the *1981 Opinion* continues to be a sound analysis of the legal authorities respecting government operations when Congress has failed to enact regular appropriations bills or a continuing resolution to cover a hiatus between regular appropriations.

I.

Since the issuance of the extensive *1981 Opinion*, the prospect of a general appropriations lapse has arisen frequently. In 1981, 1982, 1983, 1984, 1986, 1987, and 1990, lapses of funding ranging from several hours to three days actually did occur. While several of these occurred entirely over weekends, others required the implementation of plans to bring government operations into compliance with the requirements of the Antideficiency Act. These prior responses to the threat of or actual lapsed appropriations have been so commonly referred to as cases of "shutting down the government" that this has become a nearly universal shorthand to describe the effect of a lapse in appropriations. It will assist in understanding the true extent of the Act's requirements to realize that this is an entirely inaccurate description. Were the federal Government actually to shut down, air traffic controllers would not staff FAA air control facilities, with the consequence that the nation's airports would be closed and commercial air travel and transport would be brought to a standstill. Were the federal government to shut down, the FBI, DEA, ATF and Customs Service would stop interdicting and investigating criminal activities of great varieties, including drug smuggling, fraud, machine gun and explosives sales, and kidnapping. The country's borders would not be patrolled by the border patrol, with an extraordinary increase in illegal immigration as a predictable result. In the absence of government supervision, the stock markets, commodities and futures exchanges would be unable to operate. Meat and poultry would go uninspected by federal meat inspectors, and therefore could not be marketed. Were the federal Government to shut down, medicare payments for vital operations and medical services would cease. VA hospitals would abandon patients and close their doors. These are simply a few of the significant impacts of a federal government shut down. Cumulatively, these actions and the others required as part of a true shut down of the federal government would impose significant health and safety risks on millions of Americans, some of which would undoubtedly result in the loss of human life, and they would immediately result in massive dislocations of and losses to the private economy, as well as disruptions of many aspects of society and of private activity generally, producing incalculable amounts of suffering and loss.

The Antideficiency Act imposes substantial restrictions on obligating funds or contracting for services in advance of appropriations or beyond appropriated levels, restrictions that will cause significant hardship should any lapse in appropriations extend much beyond those we have historically experienced. To be sure, even the short lapses that have occurred have caused serious dislocations in the provision of services, generated wasteful expenditures as agencies have closed down certain operations and then restarted them, and disrupted federal activities. Nevertheless, for any short-term lapse in appropriations, at least, the federal Government will not be truly "shut down" to the degree just

described, simply because Congress has itself provided that some activities of Government should continue even when annual appropriations have not yet been enacted to fund current activities.

The most significant provisions of the Antideficiency Act codify three basic restrictions on the operation of government activities. First, the Act implements the constitutional requirement that "No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law." U.S. Const. art. I, § 9, cl. 7. Second, when no current appropriations measure has been passed to fund contracts or obligations, it restricts entering into contracts or incurring obligations (except as to situations authorized by other law). Third, it restricts employing the services of employees to perform government functions beyond authorized levels to emergency situations, where the failure to perform those functions would result in an imminent threat to the safety of human life or the protection of property.[3] The *1981 Opinion* elaborated on the various exceptions in the Antideficiency Act that permit some continuing government functions, and we will only summarize the major categories here:

- Multi-year appropriations and indefinite appropriations.

Not all government functions are funded with annual appropriations. Some operate under multi-year appropriations and others operate under indefinite appropriations provisions that do not require passage of annual appropriations legislation. Social security is a prominent example of a program that operates under an indefinite appropriation. In such cases, benefit checks continue to be honored by the treasury, because there is no lapse in the relevant appropriation.

- Express authorizations: contracting authority and borrowing authority.

Congress provides express authority for agencies to enter into contracts or to borrow funds to accomplish some of their functions. An example is the "food and forage" authority given to the Department of Defense, which authorizes contracting for necessary clothing, subsistence, forage, supplies, etc. without an appropriation. In such cases, obligating funds or contracting can continue, because the Antideficiency Act does not bar such activities when they are authorized by law. As the *1981 Opinion* emphasized, the simple authorization or even direction to perform a certain action that standardly can be found in agencies' enabling or organic legislation is insufficient to support a finding of express authorization or necessary implication (the exception addressed next in the text), standing alone. There must be some additional indication of an evident intention to have the activity continue despite an appropriations lapse.

- Necessary implications: authority to obligate that is necessarily implied by statute.

The *1981 Opinion* concluded that the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well. Examples include the check writing and distributing functions necessary to disburse the social security benefits that operate under indefinite appropriations. Further examples

include contracting for the materials essential to the performance of the emergency services that continue under that separate exception. In addition, in a 1980 opinion, Attorney General Civiletti opined that agencies are by necessary implication authorized " to incur those minimal obligations necessary to closing [the] agency." The *1981 opinion* reiterated this conclusion and consistent practice since that time has provided for the orderly termination of those functions that may not continue during a period of lapsed appropriations.

- Obligations necessary to the discharge of the President's constitutional duties and powers.

Efforts should be made to interpret a general statute such as the Antideficiency Act to avoid the significant constitutional questions that would arise were the Act read to critically impair the exercise of constitutional functions assigned to the Executive. In this regard, the *1981Opinion* noted that when dealing with functions instrumental in the discharge of the President's constitutional powers, the "President's obligational authority . . . will be further buttressed in connection with any initiative that is consistent with statutes — and thus with the exercise of legislative power in an area of concurrent authority — that are more narrowly drawn than the Antideficiency Act and that would otherwise authorize the President to carry out his constitutionally assigned tasks in the manner he contemplates." *1981 Opinion*, at 6-7.[4]

- Personal or voluntary services "for emergencies involving the safety of human life or the protection of property."

The Antideficiency Act prohibits contracting or obligating in advance of appropriations generally, except for circumstances just summarized above. The Act also contains a separate exception applicable to personal or voluntary services that deal with emergencies. 31 U.S.C. § 1342. This section was amended in 1990. We will analyze the effects of that amendment in Part II of this memorandum.

Finally, one issue not explicitly addressed by the *1981 Opinion* seems to us to have been settled by consistent administrative practice. That issue concerns whether the emergency status of government functions should be determined on the assumption that the private economy will continue operating during a lapse in appropriations, or whether the proper assumption is that the private economy will be interrupted. As an example of the difference this might make, consider that air traffic controllers perform emergency functions if aircraft continue to take off and land, but would not do so if aircraft were grounded. The correct assumption in the context of an anticipated long period of lapsed appropriations, where it might be possible to phase in some alternatives to the government activity in question, and thus over time to suspend the government function without thereby imminently threatening human life or property, is not entirely clear. However, with respect to any short lapse in appropriations, the practice of past administrations has been to assume the continued operation of the private economy, and so air traffic controllers, meat inspectors, and other similarly situated personnel have been considered to be within the emergency exception of section 1342.

II.

The text of 31 U.S.C. § 1342, as amended in 1990, now reads:

> An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. This section does not apply to a corporation getting amounts to make loans (except paid in capital amounts) without legal liability of the United States Government. As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property.

31 U.S.C. § 1342. Because of the section 1342 bar on employing personal services, officers and employees may employ personal services in excess of other authorizations by law only in emergency situations.[5] This section does not by itself authorize paying employees in emergency situations, but it does authorize entering into obligations to pay for such labor.

The central interpretive task under section 1342 is and has always been to construe the scope of the emergencies exception of that section. When the *1981 Opinion* undertook this task, the predecessor to section 1342 did not contain the final sentence of the current statute, which was added in 1990. Examining that earlier version, the Attorney General concluded that the general language of the provision and the sparse legislative history of it did not reveal its precise meaning. However, the opinion was able to glean some additional understanding of the statute from that legislative history.

The Attorney General noted that as originally enacted in 1884, the provision forbade unauthorized employment "except in cases of sudden emergency involving the loss of human life or the destruction of property." 23 Stat. 17. He then observed that in 1950, Congress enacted the modern version of the Antideficiency Act and accepted revised language for section 1342 that originally had been suggested by the Director of the Bureau of the Budget and the Comptroller General in 1947. In analyzing these different formulations, the Attorney General stated that

> [w]ithout elaboration, these officials proposed that 'cases of sudden emergency' be amended to 'cases of emergency,' 'loss of human life' to 'safety of human life,' and 'destruction of property' to 'protection of property. These changes were not qualified or explained by the report accompanying the 1947 recommendation or by any aspect of the legislative history of the general appropriations act for fiscal year 1951, which included the modern section [1341]. Act of September 6, 1950, Pub. L. No. 81-759, § 1211, 64 Stat. 765. Consequently, we infer from the plain import of the language of their amendments that the drafters intended to broaden the authority for emergency employment.

5 Op. O.L.C. at 9.

The *1981 Opinion* also sought guidance from the consistent administrative practice of the Office of Management and Budget in applying identical "emergencies" language found in another provision. That other provision prohibits OMB from apportioning appropriated funds in a manner that would indicate the need for a deficiency or supplemental appropriation, except in cases of "emergencies involving the safety of human life, [or] the protection of property" — phraseology identical to the pre-1990 version of section 1342.[6] Combining these two sources with the statutory text, the Attorney General articulated two rules for identifying functions for which government officers may enter into obligations to pay for personal services in excess of legal authority other than section 1342 itself:

> First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some degree, by delay in the performance of the function in question.

5 Op. O.L.C. at 8.

While we continue to believe that the 1981 articulation is a fair reading of the Antideficiency Act even after the 1990 amendment, *see1993 Letter*, we are aware of the possibility the second of these two rules might be read more expansively than was intended, and thus might be applied to functions that are not emergencies within the meaning of the statute. To forestall possible misinterpretations, the second criteria's use of the phrase "in some degree" should be replaced with the phrase, "in some significant degree."

The reasons for this change rest on our understanding of the function of the 1990 amendment, which comes from considering the content of the amendment, its structure, and its sparse legislative history. That history consists of a solitary reference in the conference report to the Omnibus Budget Reconciliation Act of 1990, Pub. L. No. 101-508, 104 Stat. 1388:

> The conference report also makes conforming changes to title 31 of the United States Code to make clear that . . . ongoing, regular operations of the Government cannot be sustained in the absence of appropriations, except in limited circumstances. These changes guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General issued on January 16, 1981, regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.

H.R. Rep. No. 964, 101st Cong., 2d Sess. 1170 (1990). While hardly articulating the intended scope of the exception, the conference report does tend to support what would otherwise be the most natural reading of the amendment standing alone: because it is phrased as identifying the functions that should be excluded from the scope of the term "emergency," it seems intended to limit the coverage of that term, narrowing the circumstances that might otherwise be taken to constitute an emergency within the meaning of the statute.

Beyond this, however, we do not believe that the amendment adds any significant new substantive meaning to the pre-existing portion of section 1342, simply because the most prominent feature of the addition — its emphasis on there being a threat that is imminent, or "ready to take place, near at hand," *see* Webster's Third New International Dictionary 1130 (1986) — is an idea that is already present in the term "emergency" itself, which means "an unforeseen combination of circumstances or the resulting state that calls for immediate action" to respond to the occurrence or situation. *Id.* at 741. [7] The addition of the concept of "imminent" to the pre-existing concept of "emergency" is thus largely redundant. This redundancy does, however, serve to emphasize and reinforce the requirement that there be a threat to human life or property of such a nature that immediate action is a necessary response to the situation. The structure of the amendment offers further support for this approach. Congress did not alter the operative language of the statute; instead, Congress chose to enact an interpretive provision that simply prohibits overly expansive interpretations of the "emergency" exception.

Under the formulation of the *1981 Opinion*, government functions satisfy section 1342 if, inter alia, the safety of human life or the protection of property would be "compromised, in some degree." It is conceivable that some would interpret this phrase to be satisfied even if the threat were de minimis, in the sense that the increased risk to life or property were insignificant, so long as it were possible to say that safety of life or protection of property bore a reasonable likelihood of being compromised at all. This would be too expansive an application of the emergency provision. The brief delay of routine maintenance on government vehicles ought not to constitute an "emergency," for example, and yet it is quite possible to conclude that the failure to maintain vehicles properly may "compromise, to some degree" the safety of the human life of the occupants or the protection of the vehicles, which are government property. We believe that the revised articulation clarifies that the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to the near at hand and demanding of immediate response.

WALTER DELLINGER
Assistant Attorney General
Office of Legal Counsel

1. We do not in this memorandum address the different set of issues that arise when the limit on the public debt has been reached and Congress has failed to raise the debt ceiling.

2. For the purposes of this inquiry, there are two relevant provisions of the Antideficiency Act. The first provides that "[a]n officer or employee of the United States Government or the District of Columbia government may not . . . involve either government in a contract or obligation for the payment of money before an appropriation is made unless authorized by law." 31 U.S.C. § 1341(a)(1)(B). The second provides that "[a]n officer or employee of the United States Government . . . may not accept voluntary services . . . or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property." 31 U.S.C. § 1342.

3. These restrictions are enforced by criminal penalties. An officer or employee of the United States who knowingly and willfully violates the restrictions shall be fined not more than $5,000, imprisoned for not more than 2 years, or both. 31 U.S.C. § 1350.

4. The Attorneys General and this office have declined to catalog what actions might be undertaken this heading. In 1981, for example, Attorney General Civiletti quoted Attorney General (later Justice) Frank Murphy. "These constitutional powers have never been specifically defined, and in fact cannot be, since their extent and limitations are largely dependent upon conditions and circumstances. . . . The right to take specific action might not exist under one state of facts, while under another it might be the absolute duty of the Executive to take such action." 5 Op. O.L.C. at 7 n.9 (quoting 39 Op. Att'y Gen. 343, 347-48 (1939)). This power should be called upon cautiously, as the courts have received such Executive Branch assertions skeptically. *See, e.g.*, *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952); *George v. Ishimaru*, 849 F. Supp. 68 (D.D.C.), *vacated as moot*, No. 94-5111, 1994 WL 517746 (D.C. Cir., Aug. 25, 1994). *But see Haig v. Agee*. 453 U.S. 280 (1981); *In re Neagle*, 135 U.S. 1 (1890).

5. The *1981Opinion* concluded that:

> [d]espite the use of the term 'voluntary service,' the evident concern underlying this provision is not government agencies' acceptance of the benefit of services rendered without compensation. Rather, the original version of Section [1342] was enacted as part of an urgent deficiency appropriation act in 1884, Act of May 1, 1994, ch. 37, 23 Stat. 15, 17, in order to avoid claims for compensation arising from the unauthorized provision of services to the government by non-employees, and claims for additional compensation asserted by government employees performing extra services after hours. This is, under [section 1342), government officers and employees may not involve government in contract for *employment*, i.e., for compensated labor, except in emergency situations. 30 Op. Att'y Gen. 129, 131 (1913).

6. 31 U.S.C. § 1515 (recodified from § 665(e) at the time of the Civiletti opinion). Analyzing past administrative practice under this statute, Attorney General Civiletti found that:

> Directors of the Bureau of the Budget and of the Office of Management and Budget have granted dozens of deficiency reapportionments under this subsection in the last 30 years, and have apparently imposed no test more stringent than the articulation of a reasonable relationship between the funded activity and the safety of human life or the protection of property. Activities for which deficiency apportionments have been granted on this basis include [FBI] criminal investigations, legal services rendered by the Department of Agriculture in connection with state meat inspection programs and enforcement of the Wholesome Meat Act of 1967, 21 U.S.C. §§ 601-695, the protection and management of commodity inventories by the Commodity Credit Corporation, and the investigation of aircraft accidents by the National Transportation Safety Board. These few illustrations

> demonstrate the common sense approach that has guided thion of Section 665(e). Most important, under Section 665(e)(2), each apportionment or reapportionment indicating the need for a deficiency or supplemental appropriation has been reported contemporaneously to both Houses of Congress, and, in the face of these reports, Congress has not acted in any way to alter the relevant 1950 wording of § 665(e)(1)(B), which is, in this respect, identical to § 665(b).

5 Op. O.L.C. at 9-10.

7. *See also* Random House Dictionary of the English Language Unabridged 636 (2d ed. 1987) ("emergency" means "a sudden, urgent, usually unexpected occurrence or occasion requiring immediate action"); Webster's II New Riverside University Dictionary 427 (1988) ("an unexpected, serious occurrence or situation urgently requiring prompt action").

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

September 30, 2013

M-13-24

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Sylvia M. Burwell
Director

SUBJECT: Update on Status of Operations

This memorandum follows the September 17, 2013, Memorandum M-13-22, and provides an update on the potential lapse of appropriations.

Appropriations provided under the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) expire at 11:59 pm tonight. Unfortunately, we do not have a clear indication that Congress will act in time for the President to sign a Continuing Resolution before the end of the day tomorrow, October 1, 2013. Therefore, agencies should now execute plans for an orderly shutdown due to the absence of appropriations. We urge Congress to act quickly to pass a Continuing Resolution to provide a short-term bridge that ensures sufficient time to pass a budget for the remainder of the fiscal year, and to restore the operation of critical public services and programs that will be impacted by a lapse in appropriations.

Agencies should continue to closely monitor developments, and OMB will provide further guidance as appropriate. We greatly appreciate your cooperation and the work you and your agencies do on behalf of the American people.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

THE DIRECTOR

September 17, 2013

M-13-22

MEMORANDUM FOR THE HEADS OF EXECUTIVE DEPARTMENTS AND AGENCIES

FROM: Sylvia M. Burwell
Director

SUBJECT: Planning for Agency Operations during a Potential Lapse in Appropriations

Appropriations provided under the Consolidated and Further Continuing Appropriations Act, 2013 (P.L. 113-6) expire at 11:59 pm on Monday, September 30. The Administration does not want a lapse in appropriations to occur. There is enough time for Congress to prevent a lapse in appropriations, and the Administration is willing to work with Congress to enact a short-term continuing resolution to fund critical Government operations and allow Congress the time to complete the full year 2014 appropriations. However, prudent management requires that agencies be prepared for the possibility of a lapse. To that end, this guidance reminds agencies of their responsibilities to plan for agency operations under such a contingency.

At this time, agencies should be updating their plans for operations in the absence of appropriations, consistent with Section 124.2 of OMB Circular A-11 (which is available at http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/s124.pdf). In doing so, agencies should refer to relevant legal opinions issued by the Attorney General and the Office of Legal Counsel of the Department of Justice, which set forth the legal requirements imposed by the Antideficiency Act (Act) during a lapse in appropriations and the guiding standards agencies should use in making decisions under the Act during a lapse in appropriations.

In updating contingency plans, agency leaders should ensure that only those activities that are "excepted" pursuant to applicable legal requirements would continue to be performed during a lapse in the appropriation for those activities (unless the agency has a separate funding source for an activity that will remain available during a lapse and that the agency would use for the activity's continued performance). Also, agency leaders should carefully review determinations regarding which employees would be necessary for the agency's continued performance of those "excepted" functions, to ensure that these case-by-case determinations are consistent with the applicable legal requirements.

In addition, agencies should consult the attached Frequently Asked Questions (FAQ) documents, which address technical questions about particular matters related to agency operations during a lapse in appropriations. OMB previously issued these FAQ documents in April 2011 and December 2011 (in conjunction with OMB Memoranda M-11-13 and M-12-03), and they provide an overview of relevant legal principles that apply to all government operations, address particular issues with contracts and grants, and answer questions relating to information technology, travel, orderly shutdown, and payment for excepted work. Also, the Office of Personnel Management (OPM) previously issued FAQs to assist agencies and employees on personnel issues associated with a funding lapse, which can be found on OPM's website.

Agencies should continue the process of updating their plans until further guidance is provided. Should it prove necessary, OMB will provide additional information on planning efforts at a later date, including regarding external outreach to stakeholders and the release of updated plans.

Agency leaders with questions on the contents of this Memorandum or about the process for updating plans for the orderly shutdown of operations should contact Joseph Jordan, OMB's Administrator for Federal Procurement Policy, or Geovette Washington, OMB's General Counsel. Your staff should direct queries to your OMB Resource Management Office or your agency's Office of General Counsel.

We greatly appreciate your cooperation. We will continue to be in close contact with you as developments unfold.

Attachments

Attachment 1

Frequently Asked Questions on Contracting, Grant Administration, and Payment Processing During a Lapse in Appropriations

As agencies update plans for an orderly shutdown in the event of an absence of appropriations, there are a number of cross-cutting issues that apply to all agencies. The below FAQ is meant to address these issues in a way that is understandable, accessible, and convenient to agencies. If you have further questions, please consult your agency counsel or your appropriate points of contact within OMB.

Normally, routine, ongoing operational and administrative activities relating to contract or grant administration (including payment processing) cannot continue when there is a lapse in funding. Therefore, agency employees who are paid with annual appropriations and who perform an activity associated with contract or grant administration (including oversight, inspection, payment, or accounting) should generally not continue work during a funding hiatus.

Below is an outline of the general principles that govern an agency's operations during a lapse in appropriations. Following this outline is a set of Q&As, based on these principles, for agencies to use in addressing contract and grant situations that arise during a lapse in appropriations.

The outline and Q&As are based on the legal opinions issued by the Justice Department (DOJ), and the guidance issued by the Office of Management and Budget (OMB), regarding agency operations during a lapse in appropriations (see, generally, OMB Circular A-11, Section 124). To the extent that agency staff need further guidance regarding the situations addressed below, or on other situations involving contracts and grants, the staff should consult with the agency counsel, which may in turn consult with OMB and DOJ.

I. Basic Principles of Agency Operations during a Lapse in Appropriations.

The Antideficiency Act prohibits agencies from incurring obligations that are in advance of, or that exceed, an appropriation. Thus, with certain limited exceptions, an agency may not incur obligations when the funding source for the obligation is an appropriation that has lapsed.

A. Excepted activities under the Antideficiency Act (express statutory authorizations, emergency circumstances, and the President's constitutional authorities).

As DOJ has explained in its opinions, an agency may incur an obligation in the absence of an appropriation in certain "excepted" situations:

1. A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations.

In very rare situations, Congress has granted an agency the statutory authority to incur obligations in advance of appropriations. The best known example, in the contracting realm, is the Civil War-era Feed and Forage Act (41 U.S.C. § 6301), which provides authority to the Defense Department to contract for necessary clothing, subsistence, forage, fuel, quarters, transportation or medical and hospital supplies in advance of appropriations. Other examples are the authorities provided by 25 U.S.C. § 99 (Bureau of Indian Affairs contracts for goods and supplies) and 41 U.S.C. § 6302 (Army contracts for fuel).

2. The function addresses emergency circumstances, such that the suspension of the function would imminently threaten the safety of human life or the protection of property.

As DOJ has explained, the emergency exception applies when both of the following exist:

(a) a reasonable and articulable connection between the obligation (in this case, involving a contract or grant) and the safety of life or the protection of property,

and

(b) some reasonable likelihood that either the safety of life or the protection of property would be compromised in some significant degree by failure to carry out the function in question -- and that the threat to life or property can be reasonably said to be near at hand and demanding of immediate response.

As the Antideficiency Act states, the emergency exception does not authorize the continuation of ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property.

3. The function is necessary to the discharge of the President's constitutional duties and powers (e.g., Commander-in-Chief or conducting foreign relations).

B. Activities that an agency must continue, in the absence of appropriations, because their continuation is "necessarily implied" from the authorized continuation of other activities.

In addition, as DOJ has explained, there are a limited number of government activities which an agency must otherwise continue despite a lapse in their appropriations because the lawful continuation of other funded or excepted activities "necessarily implies" that these additional activities will continue as well. A "necessary implication" can arise when an agency needs to incur obligations, even though there has been a lapse in the appropriation against which those obligations would be charged, in order to implement:

1. An "orderly shutdown" when there has been a lapse in appropriations (as DOJ has explained, "authority may be inferred from the Antideficiency Act itself for federal officers to incur those minimal obligations necessary to closing their agencies"),

2. One of the "excepted" activities in I.A. above, or

3. A congressionally authorized or appropriated function for which Congress has provided funding that remains available during the lapse (including funds already obligated from the current fiscal year), where the suspension of the related activity (during the funding lapse) would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation. The touchstone of the analysis is determining whether execution of the terms of the statutory provision – not the terms of the funded contract or grant pursuant to that statute – would be significantly damaged in the absence of immediate performance of the unfunded, related activity.

As DOJ has explained, an example of a "necessarily implied" activity, for which obligations can continue to be incurred despite a funding lapse, are the administrative activities (funded out of annual appropriation) that are necessary to disburse benefit payments under entitlement programs, such as social security benefits, for which an indefinite appropriation provides the funding for the benefits (and for which there is a congressional authorization to make regular payments to beneficiaries).

However, as DOJ has also explained, a "necessary implication" may not ordinarily be inferred from the kind of broad, categorical authority that often appears in the organic statutes of government agencies.

Moreover, the fact that an agency has unobligated balances (appropriated in a prior fiscal year on a multi-year or no-year basis) that continue to remain available for funding a program does not, in itself, demonstrate that the incurring of obligations for related activities (for which there has been a lapse in appropriations) is necessarily implied. In this regard, it is often the case that agencies possess discretion with respect to when, during the period of availability, the agency engages in activities for which Congress has provided funding. Furthermore, in those cases when Congress has provided funding on a multi-year or no-year basis, the agency may often possess substantial discretion with respect to the timing of when the agency carries out these funded activities. In such situations, where an agency is not otherwise compelled by the terms of a statute to engage in a funded activity during a period in which there is a lapse in appropriations, there is not a "necessary implication" that the agency must incur obligations for related activities for which the appropriation has lapsed.

II. Questions and Answers on Contracts and Grants.

The following Q&As address principally the impact on contract and grant activity of a lapse of appropriations, with respect to an agency incurring obligations for the contract or grant itself as well as for the administrative activities in support thereof.

Of course, in the situation in which performance under an already-issued contract or grant is not impacted by such a lapse, the contractor or grantee may continue to proceed with its work during

the lapse period. An example is the situation where an agency has already obligated funds representing the entire price under a contract or task order before the funding lapse began, or where the agency may use multi-year or no-year funds to incur new obligations for the contract or grant. This assumes there is no problem with funding for any necessary related activities, for example, by federal employees overseeing the contract or grant. The question of what to do if necessary activities related to the contract or grant are funded out of lapsed appropriations is addressed in Question 5 below.

A. Incurring New Obligations for Contracts or Grants.

Q1. When an appropriation has lapsed, may an agency incur a new obligation – by signing a new contract or grant, or by extending a contract or a grant, or by exercising a renewal option – when the funding source for that obligation would be the lapsed appropriation?

A1: No – except in very limited circumstances.

The Antideficiency Act prohibits agencies from incurring obligations that are in advance of, or that exceed, an appropriation. Thus, except in certain limited circumstances, an agency may not incur obligations when the funding source for the obligation would be an appropriation that has lapsed. As outlined above in I.A.-B., these limited circumstances are when:

1. A statute expressly authorizes an agency to obligate funds in advance of appropriations.

2. The function addresses emergency circumstances, such that the suspension of the function would imminently threaten the safety of human life or the protection of property.

3. The function is necessary to the discharge of the President's constitutional duties and powers.

4. The agency must continue the function, in the absence of appropriations, because its continuation is "necessarily implied" from the continuation of other authorized activities.

In these limited circumstances, an agency may incur the obligation (e.g., by awarding a contract to support an emergency activity, such as the minimal necessary guard services to protect a facility), but the agency cannot pay the contractor until appropriations are enacted. Agency staff should work with agency counsel to establish if such an exception may be appropriately invoked.

Q2. May an agency incur a new contractual or grant obligation in order to address emergency circumstances, even though the annual appropriation, against which the obligation would be charged, has lapsed?

A2: Yes, if the new obligation is necessary to address emergency circumstances that imminently threaten the safety of human life or the protection of property. See I.A.2., above, and the DOJ

opinions that address the emergency exception.

Q3. May an agency incur a new contractual or grant obligation – even though the appropriation for this obligation has lapsed – as part of the agency carrying out a program that is separately funded through an appropriation that remains available?

A3: That depends on whether the authority to incur the obligation during the lapse is a "necessary implication" of the program (see I.B. above).

Q4: May an agency incur a new contractual or grant obligation that would be charged against an appropriation that remains available for obligation if the agency would not incur any related obligations (such as for administrative activities by agency employees) for which the appropriation has lapsed?

A4: Yes. In this situation, the agency may incur the new contractual or grant obligation, since both the contract or grant obligation itself, as well as the obligations for necessary related activities (e.g., the administrative actions that are needed in order for the agency to incur the contract or grant obligation), may be charged against an available appropriation.

B. Continued Performance of Administrative, Supervisory, or Support Activities, During a Funding Lapse, In Connection With a Previously-Awarded Contract or Grant.

Q5: The agency has previously awarded a contract or grant, and the contractor or grantee is in the midst of performance. If there has been a lapse in the appropriation that funds the Federal employees who supervise or support the performance of the contract or grant, can the Federal employees continue these activities during the funding lapse?

A5: In most cases, the absence of appropriations would prevent the continuation of such supervision or support. Routine ongoing activities, related to the agency's contract and grant administration, would not usually be authorized to continue when there has been a lapse in the appropriation that funds the contract and grant administration activities. In other words, during a funding lapse, the performance – by contracting officers, contracting officer technical representatives, contract administration personnel, and grants management specialists – of routine oversight, inspection, accounting, administration, payment processing, and other contracting or grant management activity would generally not continue.

There are very limited circumstances under which such work may continue, notwithstanding the lapse in appropriations. As is further explained in I.B. above, these limited circumstances are when the continued performance of the contract or grants administration is "necessarily implied" for carrying out:

1. An "orderly shutdown" when there has been a lapse in appropriations,

2. One of the "excepted" activities in I.A. above (i.e., express statutory authorizations, emergency circumstances, and the President's constitutional authorities), or

3. A congressionally authorized or appropriated function for which Congress has provided funding that remains available during the lapse, where the suspension of the related activity (during the funding lapse) would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation.

For example, in the situation where an agency has awarded a contract to provide services that are necessary to address emergency circumstances that pose an imminent threat to life or property, some contract administration might well be necessary in order to enable this "excepted" activity to accomplish its objective (e.g., where a contractor cannot perform an emergency service unless the contractor receives direction from the contracting officer regarding how and where to proceed). In that situation, that direction by the contracting officer would be a "necessarily implied" activity, and thus could occur even though there has been a lapse in the appropriation that funds contract administration.

Another example might be a grant program that cannot proceed to the next milestone, under the previously-awarded grant, unless the grant administrator provides approval to the grantee for its continued performance. If the grant program is one that is mandated by Congress, and if failing to proceed to that next milestone – during the period of the funding lapse – would violate a statutory timetable, then in that case the review and approval by the grant administrator would be a "necessarily implied" activity, and thus could occur even though there has been a lapse in the appropriation that funds grant administration. Again, the touchstone of the analysis is determining whether execution of the terms of the statutory authorization or appropriation for which funding remains available – not the terms of the funded contract or grant pursuant to that statute – would be significantly damaged in the absence of performance of the unfunded activity.

These situations are expected to be very limited ones, and the employee may be excepted from furlough only for the bare minimum of time necessary to carry out the review and approval.

Q6: The agency has previously awarded a contract or grant, and the contractor or grantee is in the midst of performance. In addition, the agency has determined that, due to a lapse in the appropriation that funds the Federal employees who supervise or support the performance of the contract or grant, those Federal employees cannot continue these activities during the funding lapse. In the absence of such supervision or support, may the contractor or grantee nevertheless continue performance?

A6: If the continued supervision or support, during the lapse period, is not critical to the contractor's or grantee's continued performance during that period, then the contractor or grantee may continue to proceed with its work. This is the case, for example, if an agency had obligated funds representing the entire price for a good or service under a contract or task order before the funding lapse began. In that example, the agency would not have to issue an affirmative direction to the contractor or grantee to continue performance, such as a notice to proceed. Instead, the

contractor or grantee could continue to engage in performance. (It is always prudent to be in communication with the contractor or grantee to avoid a misunderstanding.)

However, depending on the duration of a funding lapse, the absence of available Federal employee oversight may lead an agency to reconsider whether the contract or grant activity should continue to be performed. In particular, if the continued supervision or support, during the lapse period, is critical to the contractor's or grantee's continued performance during that period, then – where consistent with law and the terms of the contract or grant – the agency should instruct the contractor or grantee to suspend performance.

The same would be true if continued performance depends on the participation of other Federal agencies or the availability of other Federal facilities that would be precluded by the lapse of appropriations.

Q7: The agency has previously awarded a contract or grant, and the contractor or grantee is in the midst of performance. In addition, the agency has determined that the continued performance of the contract or grant, during a lapse in appropriations, does not require the supervision or support of Federal employees who may not continue to perform these activities during the funding lapse. In that case, should performance of the contract or grant always continue during the funding lapse?

A7: The first consideration is whether continued performance of the contract or grant is required in order for the agency to comply with its authorization or appropriations statute.

If it is the case that continued performance is statutorily required, then performance should proceed.

If continued performance is not statutorily required, then the agency should consider whether having the contract move forward is a sensible use of taxpayer funds in light of the lapse of appropriations. In this regard, there might be situations in which the continued performance of a contract would be wasteful due to the impact that the funding lapse is having on other agency activities. For example, if a Federal building is closed due to the funding lapse, it might be wasteful to have a contractor perform its normal duties of emptying trash cans every day in the building's offices. In that situation, the agency should consider whether to have the contractor suspend performance.

If an agency decides that continued performance would be wasteful and thus should be suspended during the funding lapse, the agency should take appropriate contractual action (which would be part of the agency's orderly-shutdown activities). Contracting staff will need to work closely with agency counsel in making and implementing these decisions to minimize costs to the government.

Q8: Is the duration of a funding lapse a factor in the analysis in Q&As 5-7?

A8: Yes. In evaluating whether, and to what extent, Federal employee activities – and contractor or grant performance – should continue during a lapse in appropriations, agencies should consider whether these activities or the performance can be postponed until after appropriations are enacted.

In some cases, activities and performance would not qualify for continuation during a very brief funding lapse (under the analysis in Q&As 5-7), but they would qualify if the duration of the funding lapse became longer.

In other cases, the opposite conclusion should be reached, namely, that activities or performance which would qualify for continuation at the outset of a funding lapse, or at some point during a funding lapse, become unnecessary – having been discharged – and thus should be discontinued (e.g. in the case of an agency's initial shutdown activities, or in the case of the one-time, grant-administrator approval that is discussed in the answer to Question 5).

Another situation in which the duration of a funding lapse can have a significant impact on the analysis is where the agency had previously awarded a contract or grant, and – under the analysis in Q&As 5-7 – the contractor or grantee could continue to perform during the initial period of the funding lapse. However, if the funding lapse extended for a sufficiently long period, a situation might arise in which continued performance could occur only if the agency obligated additional funds to the contract or grant. Whether the agency could obligate such additional funds would depend on whether the lapse of appropriations includes the funding for the contract or grant payments, and/or for the contract or grants administration, and whether the continued performance would be wasteful because of the impact of the funding lapse on other agency activities. The agency would therefore need to undertake the analysis under Q&As 2-8 to determine how to proceed in that situation. If the agency determines that the contract or grant performance should discontinue due to the funding lapse, then the agency would not obligate additional funds to the contract or grant, and the contactor or grant would cease work when the previously-obligated funds run out. (Agencies would be well advised to communicate with contractors to avoid any misunderstanding.)

C. Making Payments to Contractors and Grantees during a Lapse in Appropriations

Q9: In the case of a contract or grant that has been previously awarded (and thus for which available funds were obligated), can Federal employees be excepted from furlough in order to make timely payments to the contractor or grantee in accordance with the contract or grant?

A9: No – except in very limited circumstances.

During a lapse in appropriations, the activity of making contract and grant payments on a timely basis does not, by itself, qualify as one of the limited circumstances for which obligations can be incurred under the Antideficiency Act (as outlined in I.A.-B., above). In this regard, the fact that the government would incur interest penalties under the Prompt Payment Act or other law, due to

the delay in payment caused by a funding lapse, does not provide a legal justification under the Antideficiency Act for an agency to continue to make payments during a funding lapse.

An exception would exist in the very limited situation in which making the payment to a contractor or grant – during the funding lapse – is "necessarily implied" under the analysis outlined in I.B., above. There may be very limited circumstances where making a payment, during the funding lapse, is necessary because the agency's failure to make the payment – during the funding lapse – itself would result in an imminent threat to life or property, or would critically impair the President's constitutional functions, or would prevent or significantly damage the execution of a congressionally authorized and funded function. In that latter situation (applying the analysis in I.B.3., above), the agency must determine that (1) the continuation of the program during the funding lapse has been contemplated by Congress in authorizing or appropriations legislation, (2) the agency's failure to make the payment during the funding lapse would delay contract or grant performance, and (3) this delay in payment would significantly damage the execution of the terms of the authorizing or appropriations legislative provision.

Q10: Can an agency pay a contractor or grantee, during a funding lapse, for performance under a contract or grant that the agency awarded during the funding lapse under one of the exceptions to the Antideficiency Act (see Q&As 1-2)?

A10: No. As is the case with federal employees who are excepted from furlough to perform authorized activities during a funding lapse, the agency will incur obligations for the excepted work that a contractor or grantee is authorized to perform during a funding lapse. However, as with the pay of the excepted federal employees, the agency cannot liquidate those contract and grant obligations until an appropriation is enacted.

D. Can Non-furloughed Employees Perform Other Work?

Q11: The agency has excepted, from furlough, employees who are performing necessary contract or grant support functions for an "excepted" activity or under the "necessarily implied" standard. Can these employees also continue to perform other work (that is not for an excepted activity and is not "necessarily implied") during the remaining hours of the workday?

A11: If the non-furlough ("excepted') support function can be performed in less than an entire day, the employee is required to resume furlough status after completing the function.

However, there may be cases in which an employee is required to perform this "excepted" support function intermittently throughout the course of the day, and the intervals in between are too short to enable the employee to be furloughed and then recalled in time to perform the function. In such cases, the employee may remain at work, and may perform non-"excepted" functions during these intervals. In such situations, agencies must minimize the number of employees who are performing "excepted" functions on an intermittent basis, by consolidating the "excepted" functions, to the extent possible, for performance by a smaller number of employees (e.g., agencies

should not except, from furlough, multiple employees in order to perform intermittent "excepted" work, when instead the agency could have fewer employees perform the "excepted" work on more of a full-time basis). In this way, the agency properly minimizes its reliance on the Antideficiency Act to incur obligations for which the appropriation has lapsed.

Attachment 2

Supplement to Frequently Asked Questions Concerning Contingency Planning for Lapse in Appropriations

The FAQs below are designed to respond to additional questions posed by agencies in preparation for prior potential lapses in appropriations concerning IT, travel, orderly shutdown, and entitlement to payment for excepted work, and build upon the Basic Principles of Agency Operations During a Lapse in Appropriations that were set forth in the FAQs on Contracting, Grant Administration, and Payment Processing During a Lapse in Appropriations.

A: Information Technology

Q1: What is the controlling consideration for the continuity or suspension of IT operations for an agency during a lapse in appropriations?

A1: The consideration governing all determinations concerning continuity or suspension of Federal activities funded through lapsed appropriations is that such activities, including IT operations, may continue only if they are excepted activities under the Antideficiency Act, or where their continuation is necessarily implied from a congressional authorization or appropriation of other continued functions.

Q2: How should agencies determine what systems, including linked interoperable systems, are to be maintained and operated during an appropriations lapse?

A2: If a single system must operate to avoid significant damage to the execution of authorized or excepted activities, only this system should maintain operations, and support for continued operation of the single system (whether by agency IT staff or by a contractor) should be the minimum necessary to maintain functionality and ensure the security and integrity of the system during the period of the lapse. If the integration of that system with other systems makes it infeasible to maintain operation of the single system without maintaining others with which it is integrated, an agency must provide guidance on operations consistent with avoiding any imminent threat to Federal property (including avoiding any permanent disruption to agency IT systems and ensuring preservation of agency electronic records). Given that websites represent the front-end of numerous back-end processing systems, agencies must determine whether the entire website can be shut down or components of the website will be shut down.

Q3: What is the guidance on keeping Government websites up during a lapse in appropriations if the costs of maintaining the website are funded by a lapsed appropriations source?

A3: The same standards described above would apply. The mere benefit of continued access by the

public to information about the agency's activities would not warrant the retention of personnel or the obligation of funds to maintain (or update) the agency's website during such a lapse. However, if maintenance of the website is necessary to avoid significant damage to the execution of authorized or excepted activities (e.g., maintenance of the IRS website may be necessary to allow for tax filings and tax collection, which are activities that continue during an appropriations lapse), then the website should remain operational even if its costs are funded through appropriations that have lapsed. If it becomes necessary to incur obligations to ensure that a website remains available in support of excepted activities, it should be maintained at the lowest possible level. For example, in the IRS case above, the IRS website would remain active, but the entire Treasury Department website would not, absent a separate justification or a determination that the two sites cannot not feasibly be operated separately.

Q4: What notice should agencies provide to the public regarding the status of their websites during a lapse of appropriations?

A4: If an agency's website is shut down, users should be directed to a standard notice that the website is unavailable during the period of government shutdown. If any part of an agency's website is available, agencies should include a standard notice on their landing pages that notifies the public of the following: (a) information on the website may not be up to date, (b) transactions submitted via the website might not be processed until appropriations are enacted, and (c) the agency may not be able to respond to inquiries until appropriations are enacted.

Q5: What if the cost of shutting down a website exceeds the cost of maintaining services?

A5: The determination of which services continue during an appropriations lapse is not affected by whether the costs of shutdown exceed the costs of maintaining services.

Q6: If websites are down, will agencies be able to extend deadlines for applications that would otherwise have been due during the lapse in appropriations?

A6: To the extent permitted by law, agencies may extend deadlines for activities, as necessary to compensate for the period of the lapse in appropriations and the unavailability of the website.

Q7: What is the guidance regarding the use of mobile devices such as Blackberries, or home access to work email through Secure ID?

A7: Furloughed employees should be given clear guidance that the prohibitions of the Antideficiency Act extend to work performed from outside of the office, including via mobile devices or remote computer connections. Orderly shutdown procedures should not rely on mobile devices or home access to work email for providing notices of when to return to work. Agencies have discretion to enforce these access restrictions in light of their own particular needs. Some may choose, for example, to include in orderly shutdown activities a requirement that furloughed employees turn in their Blackberries until they return to the office; others may determine that circumstances warrant a different approach.

B. Orderly Shutdown

Q8: How long should "orderly shutdown" take?

A8: Ordinarily, furloughed employees should take no more than three or four hours to provide necessary notices and contact information, secure their files, complete time and attendance records, and otherwise make preparations to preserve their work. OMB Circular A-11 requires agencies to provide OMB with written justification for the conduct of orderly shutdown activities in excess of a half-day. While it may be appropriate in limited circumstances for some employees to take longer to assist in shutdown activities (e.g., seeking court continuances or stop-work orders on pending contracts), these may not be necessary in the event that a very short period of a lapse in appropriations is anticipated. Agencies should make every effort to prepare for these needs in advance of a lapse so that orderly shutdown activities are minimized.

Q9: In the event of a lapse on a Friday, when would employees whose schedule is a normal Monday-Friday work week and who are funded by annual appropriations be expected to conduct orderly shutdown activities?

A9: They should be directed to return to work on the following Monday morning to conduct such activities.

Q10: Does this mean that they can continue to work remotely over the preceding weekend?

A10: No. Following a lapse in appropriations, the Antideficiency Act bars nonexcepted work by such employees other than to perform orderly shutdown activities.

C. Travel

Q11: If employees funded through appropriations that have lapsed are on temporary duty assignments away from their normal duty stations at the time of an appropriations lapse, can they make arrangements to return home sooner than planned?

A11: They are encouraged to do so wherever reasonable and practicable. However, agencies should make a determination of reasonableness and practicality based on the length of the assignment and the time required for return travel, compared to the anticipated length of the lapse, so as to minimize the burdens of doing so.

D. Entitlement to Payment for Excepted Work

Q12: How will excepted employees be paid for excepted work required during the lapse in appropriations?

A12: Without further specific direction or enactment by Congress, all excepted employees are

entitled to receive payment for obligations incurred by their agencies for their performance of excepted work during the period of the appropriations lapse. After appropriations are enacted, payroll centers will pay all excepted employees for time worked.

SECTION 124—AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

Table of Contents

124.1 What types of actions may my agency conduct during a funding hiatus?

(a) *Background.*

The Attorney General issued two opinions in the early 1980s that the language and legislative history of the Antideficiency Act unambiguously prohibit agency officials from incurring obligations in the absence of appropriations ("Applicability of the Antideficiency 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.

(b) *Policies.*

This section provides policy guidance and instructions for actions to be taken by Executive Branch agencies when Congress fails to enact regular appropriations, a continuing resolution, or needed supplementals, resulting in an interruption of fund availability.

This section does not apply to specific appropriations action by the Congress to deny program funding.

When the Congress fails to act on program supplementals and the result is partial funding interruptions, special procedures beyond those outlined in this section may be warranted. In such cases, you should consult your OMB representative.

In the absence of appropriations:

- Federal officers may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.

- Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but funds may not be disbursed.

Within the guidance established by the opinions issued by the Department of Justice and this Circular, agency heads, in consultation with their general counsels, must decide what agency activities are excepted or otherwise legally authorized to continue during an appropriations hiatus. Agencies should address questions to OMB, including questions about the interpretation of the Antideficiency Act. OMB will engage with the agency and the Department of Justice's Office of Legal Counsel, as necessary and appropriate.

124.2 What plans should my agency make in anticipation of a funding hiatus?

Agency heads, in consultation with their general counsels, must develop and maintain plans for an orderly shutdown in the event of the absence of appropriations. Up-to-date plans must be on file with OMB. Whenever there is a change in the source of funding for an agency program or any significant modification, expansion, or reduction in agency program activities, the agency must submit an update to

its plan to reflect this change. At a minimum, agencies should submit updated plans to OMB every four years, starting August 1, 2014.

Given that the duration of an appropriations hiatus is inherently uncertain, your plan should describe agency actions to be taken during a short hiatus (1-5 days). It also should identify anticipated changes if the hiatus extends beyond that time period. Your plan should also designate personnel responsible for implementing and adjusting the plan to respond to the length of the appropriations hiatus and changes in external circumstances.

Include the following information at the beginning of your plan:

- A brief summary of significant agency activities that will continue and those that will cease during an appropriations hiatus.
- An estimate of the time (to the nearest half-day) needed to complete shutdown activities. To the extent that specific shutdown activities will not be completed within one-half day, specify the nature of each such activity, together with the time and the number of employees necessary to complete the activity.
- A statement of the total number of agency employees expected to be on-board before implementation of the plan.
- A statement of the total number of employees to be retained under the plan for each of the following categories:
  - Their compensation is financed by a resource other than annual appropriations;
  - They are necessary to perform activities expressly authorized by law;
  - They are necessary to perform activities necessarily implied by law;
  - They are necessary to the discharge of the President's constitutional duties and powers;
  - They are necessary to protect life and property.

The plan should then proceed to describe in detail, for each component within your agency, the following:

- The total number of employees in the component to be on-board before implementation of the plan;
- The total number of employees to be retained in the component under the plan for each of the categories listed above (i.e., the employees' compensation is financed by a resource other than annual appropriations, they are necessary to perform activities expressly authorized by law, they are necessary to perform activities necessarily implied by law, they are necessary to the discharge of the President's constitutional duties and powers, or they are necessary to protect life and property); and
- The agency's legal basis for each of its determinations to retain categories of employees, including a description of the nature of the agency activities in which these employees will be engaged.

124.3 When should my agency's shutdown plans be implemented?

OMB will monitor the status of congressional actions on appropriations bills and will notify agencies if shutdown plans are to be implemented. Whenever it appears that a hiatus in appropriations might occur, you should review your shutdown plans, and, if revisions are required, promptly submit the revised plan to OMB.

After OMB has identified a hiatus in appropriations and all available funds (including realloted/reallocated funds) are exhausted, you must begin orderly shutdown activities. Each agency head must determine the specific actions that will be taken; however, all your actions must contribute to an orderly shutdown of the agency and give primary consideration to protecting life and safeguarding Government property and records. Agency heads will notify OMB immediately when shutdown activities are being initiated.

During an absence of appropriations, agencies should only engage in activities consistent with their shutdown plan.

Take necessary personnel actions to release employees in accordance with applicable law and regulations of the Office of Personnel Management. You must prepare employee notices of furlough and process personnel and pay records in connection with shutdown furlough actions. You should plan for these functions to be performed by employees who are retained for orderly termination of agency activities as long as those employees are available.

OMB will notify you when the hiatus of appropriations has ended.

Haze, Pam <pam_haze@ios.doi.gov>

ɔtential Lapse In Appropriations

message

Interior, Secretary <secretary_of_the_interior@ios.doi.gov> Wed, Sep 25, 2013 at 6:04 PM
Bcc: doi_all_employees@doi.gov

To: All DOI Employees

From: Secretary Sally Jewell

Subject: Potential lapse in appropriations

In follow-up to my message from September 18, 2013, I am providing you with an update on our planning for a potential lapse in appropriations at midnight on September 30. The Administration continues to believe that a lapse in funding should not occur. There is enough time for Congress to prevent a lapse in appropriations and the Administration is willing to work with Congress to enact a short-term continuing resolution to fund critical Government operations and allow Congress the time to complete the full year 2014 appropriations. However, prudent management requires that we continue to prepare for all contingencies, including the possibility that a lapse could occur at the end of the month.

As part of our effort to keep employees apprised of planning efforts, we are providing further information on how a potential lapse will affect our staff and operations. Under a lapse in funding, our actions and decisions about what operations continue are governed by legal opinions issued by the Attorney General and the Office of Legal Counsel of the Department of Justice.

In consultation with our Solicitor's Office, we are working to determine which of our activities may continue under these legal requirements. Similarly, we are working to determine which employees would continue to report to work in the event of a lapse in funding and which employees would be placed on furlough. Should a lapse occur and depending on the length of the lapse period, these determinations may change over time as circumstances evolve. Importantly, the categorization of employees and whether or not someone is furloughed is not a reflection on the quality of their work or their importance to our agency. It is merely a reflection of the legal requirements that we must operate under should a lapse occur.

Managers will begin reaching out to employees tomorrow, Thursday, September 26, to provide additional details on our contingency plans and your status under a potential lapse. These conversations are designed to provide clarity on how a potential lapse will affect you, but they do not constitute an official notice of furlough. Official furlough notices will only be issued on October 1 if a lapse in funding has occurred.

The uncertainty of the current circumstances puts our workforce in a difficult situation. If a lapse occurs, it could impose hardships on many employees as well as the people that we serve every day. We will work closely with all staff to do our best to support you throughout this period. In addition, the Office of Personnel Management (OPM) has created a document to address some of the questions related to a lapse that may be on your mind. The document can be accessed on OPM's website.

Thank you again for your hard work, dedication, and patience through this process, and for your continued service to the Department, the Nation, and the American people. I am proud of the work you do to conserve America's resources, power our economy, and uphold our Nation's responsibilities to the First Americans.

Visit oneINTERIOR for employee news and events - http://oneinterior.doi.net.

Haze, Pam <pam_haze@ios.doi.gov>

essage from President Barack Obama to All Government Employees

1 message

Interior, Secretary <secretary_of_the_interior@ios.doi.gov> Tue, Oct 1, 2013 at 9:00 AM
Bcc: doi_all_employees@doi.gov

October 1, 2013

TO: All Department of the Interior Employees

FROM: Secretary Sally Jewell

SUBJECT: Message from President Barack Obama to All Government Employees

Please see the attached note from President Obama. I am hopeful that this shutdown will be resolved quickly so that we can return to fulfilling our important mission at the Department of the Interior. I appreciate how hard this is on all of you, and the difficult messages many of you will be required to deliver to the people who rely on our services. My thoughts are with you and your families during this challenging time.

Thank you again for your hard work, dedication and patience through this process, and for your continued service to the Department, the Nation and the American people.

Please monitor www.doi.gov/shutdown for continued communication during this period.

Warmly,

Sally Jewell

THE WHITE HOUSE

WASHINGTON

October 1, 2013

To the dedicated and hard-working employees of the United States Government:

The Federal Government is America's largest employer, with more than 2 million civilian workers and 1.4 million active duty military who serve in all 50 States and around the world.

But Congress has failed to meet its responsibility to pass a budget before the fiscal year that begins today. And that means much of our Government must shut down effective today.

I want you to know that I will keep working to get Congress to reopen the Government, restart vital services that the American people depend on, and allow public servants who have been sent home to return to work. At my direction, your agencies should have reached out to you by now about what a shutdown means for you and your families.

Today, I wanted to take a moment to tell you what you mean to me—and to our country.

That begins by saying thank you for the work you do every day—work that is vitally important to our national security and to American families' economic security. You defend our country overseas and ensure that our troops receive the benefits they deserve when they come home. You guard our borders and protect our civil rights. You help small businesses expand and gain new footholds in overseas markets. You guide hundreds of thousands of people each day through the glory of America's national parks and monuments, from Yosemite to the Statue of Liberty. And much more.

You do all this in a political climate that, too often in recent years, has treated you like a punching bag. You have endured three years of a Federal pay freeze, harmful sequester cuts, and now, a shutdown of our Government. And yet, you persevere, continuing to serve the American people with passion, professionalism, and skill.

None of this is fair to you. And should it continue, it will make it more difficult to keep attracting the kind of driven, patriotic, idealistic Americans to public service that our citizens deserve and that our system of self-government demands.

Public service is noble. Public service is important. And by choosing public service, you carry on a proud tradition at the heart of some of this country's greatest and most lasting achievements. In fact, more than 50 current or former Federal employees have received the Nobel Prize for their efforts. It was grants from the Department of Energy that helped businesses unlock new sources of renewable energy, and from the National Science Foundation that helped

entrepreneurs like the founders of Google change the world. It is your efforts that will help this country meet the great challenge of our time—rebuilding an economy where all who work hard can get ahead.

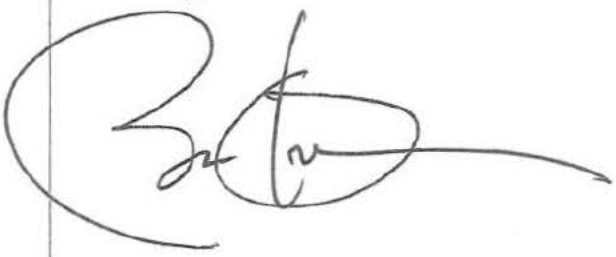
So while the budget fights in Washington are too often partisan, your service to the country must never be. As one of my predecessors, President George H.W. Bush, once said, "There is nothing more fulfilling than to serve your country and your fellow citizens and to do it well. And that is what our system of self-government depends on."

This shutdown was completely preventable. It should not have happened. And the House of Representatives can end it as soon as it follows the Senate's lead, and funds your work in the United States Government without trying to attach highly controversial and partisan measures in the process.

Hopefully, we will resolve this quickly. In the meantime, I want you to know—whether you are a young person who just joined public service because you want to make a difference, or a career employee who has dedicated your life to that pursuit—you and your families remain at the front of my mind. Your agency leaders and I will continue to defend your work at a time when that work has rarely been more important. We will continue to work with your agencies to keep you and your families apprised and informed of what is happening. And I will continue to do everything in my power to get the House of Representatives to allow our Government to reopen as quickly as possible, and make sure you receive the pay that you have earned.

Thank you, again, for your service, your sacrifice, and everything you do every day for this country we love so much.

Sincerely,



TO: All Department of the Interior Employees

I want to provide you with important information and guidance concerning efforts to plan for and address a potential lapse of appropriations and government shutdown on Tuesday, October 1, 2013.

While the Administration get believes that a lapse in funding should not occur, we have a responsibility to the public and to our employees to do everything possible to prepare for a potential shutdown.

These are challenging times – and we understand that these circumstances are challenging to you and your family. A lapse in government activities could impose hardships on you, your families, and the people we serve. We hope that Congress acts quickly to prevent a shutdown and pass a continuing resolution. In the meantime, we want you to know that we are doing everything we can to prepare for a potential shutdown. We will provide you with as much information as possible.

The information, guidance and resources outlined below cover the most important information that you will need to know over these next few days. I encourage you to read it, to print out the Shutdown Checklist for Furloughed Employees, and to make note of telephone numbers you can call and websites you can visit to help keep you updated on the latest information.

Employee Status during a Funding Lapse
If a shutdown occurs, most of our agency's staff will be furloughed. Other employees will designated as "exempt" or "excepted". Employees who fall into these specialized categories have been apprised of their designation. Exempted employees are able to continue to work because they are funded from non-lapsing appropriations. Excepted employees will continue to work, despite lapsing appropriations, in order to protect life and property.

A set of general questions and answers can be found on http://www.doi.gov/shutdown

Shutdown Notification
If there is a lapse in appropriations on Tuesday, October 1, 2013 and Congress has not passed an appropriation or continuing resolution and we have direction to proceed with shutdown the following applies:

Employees should report to work at their normal time and will be given up to four hours to conduct shut down activities. Within the four hour timeframe, an employee should complete their timesheet, work with their supervisor to secure property and files, receive a furlough letter and acknowledge receipt, and conduct other activities as directed. Supervisors may make other arrangements with employees in order to accomplish these shutdown activities through other means, such as teleworking. Employees should report to work unless they have received different direction from their supervisors. Some employees will be given additional time, on an exception basis only, for shutdown activities that will extend beyond the 4 hours. Your supervisor will inform you if you are one of these individuals that is needed to help with these efforts.

If there no lapse in appropriations and the government is operating, the following applies:

Employees should report to work on their normal schedule unless the employee is on previously scheduled and approved leave or is approved for telework or has made other arrangements with their supervisor. Employees should work with their supervisors on any specific circumstances not addressed in this general guidance.

A set of human resources questions and answers can be found on http://www.doi.gov/shutdown

Shutdown Activities

All employees will be required to complete a series of shutdown activities. Employees must use their time for shutdown activities only, not to work on any projects, tasks, activities or respond to emails. Shutdown activities include:

- Accessing your email.
- Reading your furlough notice and affirming to your supervisor that you did receive it.
- Changing your voicemail message to indicate you will be out of the office for an unspecified time.
- Changing and enabling your email "out of office" message.
- Securing your work documents appropriately.
- Completing your time card.
- Securing your work station and securing government property.

A checklist of shutdown activities with additional guidance is included at the end of this message.

Telework
Employees who have been approved to telework on Tuesday, October 1 should complete as many shutdown activities as possible (please see attached checklist) before they leave work on Monday, September 30, including completing their timecards, so that on Tuesday, October 1, their responsibilities will be to read their furlough email notification and affirm to their supervisor that they did receive it.

Time and Attendance
In the event of a government shutdown, employees should record their actual hours for the current pay period, 2013-21, as you normally would for the time period September 22-30, 2013. On October 1, record the actual amount of time spent on shutdown activities up to 4 hours as regular time worked.

- For employees who are not exempt or excepted and would be furloughed – record the balance of the pay period, October 2-5, against the Furlough pay code (pay code 103).
- For employees who are excepted and remain on duty to protect life and property - record the balance of the pay period, October 2-5, against the Furlough pay code (pay code 103).
- For employees who are exempt and will continue to work because they are paid from non-lapsing appropriations – report all hours worked as you normally would.

A set if questions and answers on this are at the end of this document.

Employee Pay
October 1, 2013 is a regular payday covering the pay period ending Saturday, September 21, 2013. Employees will be paid on schedule for their hours worked during that pay period. If a shutdown continues, all employees can expect to be paid on Tuesday, October 15, 2013 for hours worked from September 22, 2013 through September 30, 2013. During the shutdown, exempted employees will be paid for actual hours worked in subsequent pay periods every two weeks. Excepted employees will be paid for actual hours worked during the shutdown upon the next regular payday following passage of a funding bill. Congress will determine if furloughed employees will be paid subsequent to enactment of an appropriation or continuing resolution.

Use of Electronic Equipment
Please keep in mind that employees are prohibited from working while furloughed, including using agency owned computers, mobile devices, and using remote access service to access email or other applications. You should turn off all devices and secure and store government equipment.

Leave
If you have been previously approved to take leave on Tuesday, October 1, and there is a shutdown, your leave will be cancelled. You are expected to report to your duty station unless you have made alternative arrangements with your supervisor. If there is no shutdown or the government reopens and you had pre-existing leave plans, you should contact your supervisor to ensure your leave approval is still in place or if you are needed to return to work.

Travel

All employees should refrain from beginning official travel leading up to a possible shutdown and should not be traveling during the shutdown, with certain exclusions.

- Exempt employees who are funded through non-lapsing appropriations may travel with the appropriate approvals from their supervisor.
- Excepted employees who need to travel to protect life and property should do so with the approval of their supervisor. If there is a shutdown, please check with your supervisor to find out if you should immediately return to your duty station or remain in travel status.
- Employees who would be furloughed and are on travel when the shutdown occurs, must return to their duty station as soon as possible.
- Employees assigned overseas are not considered to be in travel status because their overseas location is considered their permanent station.
- Employees on extended TDY travel where a detail personnel action (SF52) was issued and funded should not return to their home location unless instructed by their supervisor.

A set of travel questions and answers can be found on http://www.doi.gov/shutdown

Access to Buildings and Facilities
The Main Interior Building (MIB) and South Interior Building (SIB) will be closed to the public throughout the shutdown with access by employees who are exempt or excepted. Employees that are furloughed will be able to access the credit union – please stop at the guard desk to check in.

The cafeteria in MIB will be closed. The snack bars in MIB and SIB will be open.

Parking will be available for those employees that have parking permits for MIB, SIB and the Federal Reserve if they are exempt or excepted. Ramp A and D will be open.

Agency Services
During a government shutdown, for MIB and SIB there will be no shuttle or mail services and all health units and fitness centers will be closed. The MIB child day care centers will be closed throughout the duration of the shutdown.

Information Resources
There are a number of resources available where you can get further shutdown information and status updates. Shutdown information can be found on http://www.doi.gov/shutdown

In addition, furlough guidance can also be found at the Office of Personnel Management website at www.opm.gov/furlough. Also, you are encouraged to listen to the news media to obtain information on the status of government funding and whether a shutdown is necessary.

Shutdown Checklist for Furloughed Employees

- Meet with your supervisor to obtain additional necessary details and guidelines about shutdown procedures.
- Provide information about where your supervisor can reach you in the event the government reopens – home phone, personal cell phone, relative phone, etc.
- Access your email and read your furlough notice and affirm to your supervisor that you have received it.
- Change your voicemail message. Suggested language for employee voicemail:
  "I am out of the office for the duration of the government shutdown. I will not be checking messages, but will return your call upon my return to the office."
- Change and enable your email "out of office" message. Suggested message:
  "I am out of the office for the duration of the government shutdown. I will not be checking messages, but will return your email upon my return to the office."
- Secure your work documents appropriately and are not left out in the open.

- Turn off and put away devices, phones, laptops, etc. for safekeeping.
- Throw out any perishable food.
- Remove or store any personal items for safekeeping.
- Complete your time card
- Turn off the lights and lock the door when you leave (presuming there are no other occupants in the office).

FAQ'S FOR ENTRY OF TIME & ATTENDANCE DURING GOVERNMENT SHUTDOWN

SEPTEMBER 27, 2013

1. I have received notice that I will be furloughed (not excepted) during the government shutdown. How do I enter my time and attendance?

For the current pay period, 2013-21, *through September 30*, report all hours worked, leave taken, etc., as you normally would (only for September 22-30).
On October 1st, employees will come into work for an orderly shutdown of their workplace. Most employees will complete shutdown activities in four hours or less. Record the **actual** amount of time spent in shutdown activities, **up to 4 hours**, as regular time worked. For example, an employee that completes shutdown activities in two hours should only record two hours as regular time. The balance of October 1st should be recorded against the Furlough pay code (pay code 103).

The remainder of the October 2-5 period should be recorded against the Furlough pay code (pay code 103).

Note: If an employee's shutdown activities take longer than four hours, these should be recorded outside the system. After government operations resume, an amended timesheet will need to be completed reflecting the actual hours worked to shutdown operations.

2. I have received notice that I have been excepted from the furlough. How do I enter my T&A?

For the current pay period, 2013-21, *through September 30*, report all hours worked, leave taken, etc., as you normally would (for September 22-30).

On October 1st, excepted employees may report time worked supporting shutdown activities as regular time worked. **Only 4 hours may be recorded as regular time**. The balance of October 1st should be recorded against the Furlough pay code (pay code 103).

For the balance of the pay period (October 2-5), hours should be recorded against the Furlough pay code.

Excepted personnel should keep track off-line the hours worked for later submission of an amended timesheet when Congress enacts an appropriation bill.

3. I have received notice that I am exempt from the furlough. How do I enter my T&A?

Exempt personnel are funded by a non-lapsing appropriation, and therefore you report all hours worked or leave taken as you normally would.

4. What if I am furloughed, but it's only for a few days?

If Congress enacts an appropriation bill and an employee Returns to Duty anytime between October 1 – October 5, 2013 (in pay period 2013-21), timesheets would need to be "unverified" to allow for update for actual hours worked and/or furlough hours. Normal T&A processing procedures would then be followed.

5. What if the furlough lasts longer than this pay period, 2013-21, which ends on October 5?

Exempt employees will continue to record their actual time worked.

For excepted personnel, hours should continue to be recorded against the pay code 103 (furlough hours). Excepted personnel should continue to keep track off-line the hours worked for later submission of an amended timesheet when Congress enacts an appropriation bill.
IBC will assume that timesheets not submitted by October 23 (for the pay period ending October 20), should be charged to pay code 103 (furlough hours).

DEPARTMENT OF THE INTERIOR
September 2013

Contingency Planning based on OMB Circular A-11 (2013), Section 124.1.

OMB requires up-to-date plans in preparation for a potential lapse in appropriation.

The last near shutdown took place in April 2011. Bureaus and offices are updating their plans including designation of programs and employees, their protocol for handling visitors, protection of facilities and resources, ongoing requirements for animal caretaking, hazards monitoring, etc.

The treatment of individual programs and employees is based on the determination of programs that would be excepted from shutdown.

Excepted:

- Presidential appointees – Senate confirmed.

- Employees in programs financed by other than annual appropriations and in which work will continue. E.g. Port Inspection program in FWS funded by fees, BSEE OCS inspection program funded by fees, FWS Sport Fish and Federal Aid grants.

- Employees needed to perform activities expressly authorized by law. This includes employees to make mandatory entitlement payments.

- Employees needed to perform activities necessarily implied by law. This includes activities that need to continue because suspension would prevent or significantly damage the execution of the terms of a statutory authorization or appropriation. For example, staff to continue to make monthly payments to States that are required by law, e.g. Mineral Leasing Act payments.

- Employees necessary to the discharge of the President's constitutional duties and powers. This includes the Commander in Chief and employees conducing foreign relations.

- Employees necessary to protect life and property including law enforcement. These determinations should be made based on an assessment that the safety of life or the protection of property would be compromised in some significant degree and that the threat to life and property can be reasonably said to be near at hand and demanding of immediate attention. Examples include protection of Federal lands, buildings, equipment and property, care of prisoners, emergency and disaster assistance, activities required to ensure production of power and maintenance of power distribution, and active law enforcement and criminal

investigation.

Not Excepted

Employees that are not excepted are furloughed beginning October 1, when the funds lapse.

The retention of positions/employees for the categories above is to be based on a legal determination.

- Prudent planning directs us to minimize the number of employees that are treated as excepted that are funded by the lapsing appropriation. They will not be paid and this is incurring liabilities to the government.

- Minimize the number necessary to protect life and safety and those that would be needed to support programs that have a non-lapsing source of funds.

The employees that are not included in the categories above and will be furloughed.

DOI maintains a significant number of employees on call.

This email provides you with feedback on your initial FY14 Shutdown Plan. Feedback will be provided in three categories: general (applies to all bureaus and staff offices) and specific (feedback applies to a specific bureau or staff office). This guidance is the general that applies to all bureaus. Specific guidance will be provided later today.

GENERAL

1. Please standardize terminology throughout your document as follows:

Please use excepted for the entire category of employees that will not be furloughed, due to availability of non-lapsing appropriations, Senate-confirmed political appointees, employees who are deemed essential for protection of life and property. The term "essential" is no longer used.

Excepted: Employees designated as Excepted may perform essential activities during a Government shutdown even though they are funded through lapsing appropriations. Excepted Employees will not be furloughed as long as they perform essential functions. Excepted employees fall into two categories: 1) For Protection of Life and Property and 2) For Law Enforcement:

Exempt: Employees designated as Exempt Employees perform activities that are funded by non-lapsing appropriations. Exempt Employees will not be furloughed.

2. If your plan does not start with an explanation of your bureau/office, please include one paragraph that explains your mission, the organization and breadth of responsibilities and infrastructure. [Note: feel free to borrow from the Budget in Brief]

3. Plans must contain an explanation of your excepted functions, please include the legal basis for the excepted functions. If you have any questions about the legal basis for an essential function, please contact Ed Keable in the Solicitor's Office. Please include:

a. Functions that are financed by non-lapsing appropriations. Please indicate in your plan which programs or accounts this includes (you may follow the model used by FWS with an attached listing of mandatory programs).

b. Functions to perform activities expressly authorized by law or needed to prevent significant damage to the execution of the terms of a statutory authorization.

c. Functions necessary for law enforcement or to conduct duties to protect life and property.

4. Where you have employees continuing to work in support areas (finance, human resources, etc.) be sure you explain, why these individuals are need based on the categories listed in #3 above. If the need is temporary, include timeframes. For example, if you have payroll technicians who cannot be furloughed, explain that these individuals are needed to support the payroll for programs that are funded through non-lapsing appropriations.

5. For Land Management Bureaus: Please include an explanation in your plan regarding visitor management issues and your timeframes for moving visitors off of campgrounds and closing public facilities. You should specify if contingents of your workforce would need to extend their shutdown past four hours while this work is being conducted.

6. For bureaus with land acquisition and construction, please differentiate between the aspects of the program that would continue as you conduct work on projects funded from carryover and you need to maintain inspection and oversight capacity. Please indicate the aspects of these programs that would need to shutdown involving planning and preparation for new projects and/or new work in rights-of-way, boundary surveys, etc.

7. For bureaus with law enforcement programs, please consider the cadre of employees that will need to be excepted to protect life and property. Do not assume all law enforcement employees are to be retained on duty, rather you should designate a portion that can be on call if they are not needed for direct protection of life and property.

8. For bureaus that are part of the Wildland Fire program, you cannot assume that the program will be entirely shutdown. Rather, you should designate a cadre of employees that would need to be excepted in order to maintain dispatch operations, conduct initial attack. Please be sure you have a cadre of employees on call and a protocol to contact and bring back employees if the need arises.

9. For bureaus that have large contingents of reimbursable employees, please speak directly to how you will treat these employees. Will some of them be excepted to continue to work on projects that are funded through 2014?

10. Remove all names of employees from the plan and instead include position listings in a separate document. Plans will be posted on a public web page and we do not want to have individual jobs or employees identified.

11. In finalizing your plan, please explain that your timeframes assume a shutdown of approximately 30 calendar days or 22 workdays.

12. Early in your plan, after the paragraph that explains your mission, identify by title, the official(s) who is(are) responsible for implementing and adjusting the plan to respond to the length of the appropriations hiatus and changes in external circumstances (an OMB A-11 requirement).

13. Please include the number of employees that will be on call.

FORMAT

1. Remove all acronyms from your plan –spell them out.
2. Use Times New Roman Font.
2. Use 12 pitch.
3. Establish one inch margins on all four sides
4. Number pages at bottom right. Using Insert Pages, select "Plain Number 3" (that is, no "Page x of x") using automatic page numbering.
5. Do not use page borders on any sides.
6. Be sure text is left justified
7. Set "Spacing" on Single Space with "0" spacing "Before" and "After"
8. Use only black text.
9. Do not include anything but the page number in the Footer.

BUREAU AND STAFF OFFICE SPECIFIC FEEDBACK

1. BLM

- Use excepted not essential throughout the plan.
- Employee numbers in the document do match the totals. For example, there are two numbers for employees on call – 525 and 530. Our numbers indicate you will furlough 10,200.
- Employee numbers are estimates and need to be precise counts.
- For the Helium narrative, please add to the explanation the following:
  " Ongoing decommissioning would be considered excepted to protect life and property and would continue from October 7 – 14."
- In Attachment 2, page 6 please do not use the phrase "break in service and enact COOP Plan procedures." The employees should prepare for shutdown. There is no requirement to impose COOP during a lapse in appropriations.
- Please provide more detail regarding your excepted functions for mandatory accounts. You may follow the FWS model and provide a listing of accounts and indicate if the entire cadre of employees would be excepted.
- It would be helpful to have a chart of the Excepted and Exempted employees by category
- Please change your reference to Wildland Fire being on-call to something along the lines of:

  "Fire management staff designated excepted for purposes of protecting life and property, and to provide emergency services. Fire staff must suppress wildfires because those fires can harm life and/or property and to private landowners. The need for fire management staff varies across the nation according to weather and season. The following positions will be excepted for basic protection of life and property; however, these positions are not sufficient for regular fire management activities such as prescribed burning. Therefore, fire management activities will be limited to initial attack and wildfire suppression.

  Units within their fire season will retain essential fire staff sufficient for minimal Initial Attack capability on site (per staffing plans and preparedness levels).

Excepted staff must be approved by the Project Leader and Regional Fire Management Coordinator (RFMC), and each unit must establish procedures for calling in additional capability as needed for larger scale fire suppression activities. Units will not implement any prescribed fires until after shutdown ends.

- Regions and Units will retain essential staff in established interagency Dispatch and/or Coordination Centers if these areas are experiencing wildfires.

- Regions will retain the RFMC, or acting, as essential staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed for fire suppression.

- The Bureau will retain the Chief of the Fire Management Branch, or acting, as essential staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed.

- Number pages at bottom right. Using Insert Pages, select "Plain Number 3" (that is, no "Page x of x") using automatic page numbering.
- Please explain if you have any mandatory payments that are required by law to be made on a monthly basis, which would require you retain excepted employees to continue as appropriate.

2. BOEM

- Use excepted not essential throughout the plan.
- Please address whether your excepted activities will include review and approval of exploration and development plans or if you expect to stop this activity. BSSE says they will continue to review and approve plans.
- Please be more explicit about the cash flow issue relative to offsetting collections so it is clear that there is a change in how you would operate under this shutdown as compared to the threatened shutdown in 2011.
- Please specify the source of funds for non-lapsing appropriations – carryover or offsetting collections.
- Your 3.b) excepted employees funded from non-lapsing appropriations should be 64 and 3.c) employees considered exempt should be 8.
- Please indicate employees on call.

3. BSEE

- Use excepted not essential throughout the plan.
- Number pages at bottom right. Using Insert Pages, select "Plain Number 3" (that is, no "Page x of x") using automatic page numbering.
- Please specify the source of funds for non-lapsing appropriations – carryover or offsetting collections.
- Please include the number of employees on call.

4. OSM

- Please remove all footer content on each page except the page number.

5. USGS

- Use excepted not essential throughout the plan.
- Please identify reimbursable programs and employees that would be continued in a shutdown due to ongoing project funds. If no employees will be continued please explain why.
- Please indicate if reimbursable funds are a source of funding that would allow the continuation of excepted functions.
- Please clarify the role of animal care givers in terms on on-call, part time, etc.
- Please indicate the portion of employees involved in natural hazard monitoring that would be considered excepted vs would be furloughed. This is important to demonstrate that you have identified only those employees needed. Please indicate if any of the hazard employees are on call.
- Can you explain in more detail your plans for continuity as required for protection of life and property for Landsat – both satellite operations and data management and management of the streamgage system. Also, please explain how you will ensure the protection of Federal assets at the labs.
- Establish one inch margins on all four sides
- Number pages at bottom right. Using Insert Pages, select "Plain Number 3" (that is, no "Page x of x") using automatic page numbering.
- Do not use page borders on any sides.
- Set "Spacing" on Single Space with "0" spacing "Before" and "After"
- Please include the number of employees on call.

6. BOR

No specific feedback, but the General feedback applies.

- Please include the number of employees on call.

7. FWS

- Would be helpful to have a chart of the Excepted and Exempted employees by category
- Employee counts on Page 5 vs Attachment do not match. Your permanent funding number on page 5 is 658 and is 1,252 in the attachment.
- Please clarify law enforcement personnel role – we understand the need to keep the entire cadre of refuge law enforcement personnel, but do not understand the rationale for retaining all law enforcement personnel. There are surely some that are not actively involved in investigations and support staff that should be furloughed. Please specifically call out the ability to retain the port inspectors because they are funded fully by fees.
- Please clarify the role of the AD for Budget, Planning and Human Capital – is this person staying beyond the initial shutdown effort? If so why?

- On Page 6 please expand the discussion about shutdown operations to apply to your field operations and how this will apply to shutting down refuges and other facilities where you have visitors, e.g. campgrounds, fishing and hunting plans.
- You indicate on page 4 that you will retain one payroll person – is this sufficient for support of the mandatory programs?
- Number pages at bottom right. Using Insert Pages, select "Plain Number 3" (that is, no "Page x of x") using automatic page numbering.
- Please include the number of employees on call.

8. NPS

- Employee numbers are estimates, please update with more precise numbers – if you cannot do that by Wednesday please indicate that this will be part of your initial shutdown efforts at each park.
- Phase I shutdown procedures on page 6 say that you will identify personnel performing excepted activities. Please explain that you will have identified the WASO and regional personnel by the time of shutdown but your task on October 1 (or what date?) will be to identify the personnel exempt in each park unit.
- Can you provide more context for the types of operations that would require longer than one-half day for shutdown?
- Please address the issue of public gatherings on public grounds and the issuance of permits and protection of life and property (e.g., gatherings on the National Mall). That is, while the permit cannot be issued, the public cannot be stopped from gatherings and NPS Police will have to protect life and property as a result of the public gathering. This is the first amendment issue that we will be asked about.
- Please replace the Wildland Fire narrative on P10 with something along the lines of :

"Fire management staff designated excepted for purposes of protecting life and property, and to provide emergency services. Fire staff must suppress wildfires because those fires can harm life and/or property and to private landowners. The need for fire management staff varies across the nation according to weather and season. The following positions will be excepted for basic protection of life and property; however, these positions are not sufficient for regular fire management activities such as prescribed burning. Therefore, fire management activities will be limited to initial attack and wildfire suppression.

Units within their fire season will retain essential fire staff sufficient for minimal Initial Attack capability on site (per staffing plans and preparedness levels). Excepted staff must be approved by the Project Leader and Regional Fire Management Coordinator (RFMC), and each unit must establish procedures for calling in additional capability as needed for larger scale fire suppression activities. Units will not implement any prescribed fires until after shutdown ends.

- Regions and Units will retain essential staff in established interagency Dispatch and/or Coordination Centers if these areas are experiencing wildfires.

- Regions will retain the RFMC, or acting, as essential staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed for fire suppression.
- The Bureau will retain the Chief of the Fire Management Branch, or acting, as essential staff to coordinate suppression activities, and they will establish procedures for calling in additional capability as needed.

- Set "Spacing" on Single Space with "0" spacing "Before" and "After"
- Please include the number of employees on call.

9. BIE

- Use excepted not essential throughout the plan.
- Please indicate if you have any activities that are explicitly required by law because you have a legal requirement to deliver services. If you did not deliver these services there would be harm to beneficiaries.
- Employee counts do not align in document
- Remove all footer comments except page number
- Left justify text.
- Please include the number of employees on call.

10. BIA

- Use excepted not essential throughout the plan.
- Please indicate if you have any activities that are explicitly required by law because you have a legal requirement to deliver services. If you did not deliver these services there would be harm to beneficiaries.
- Number of employees does not match ASIA plan
- Left justify text.
- Number pages at bottom right. Using Insert Pages, select "Plain Number 3" (that is, no "Page x of x") using automatic page numbering.
- Please include the number of employees on call.

11. ASIA

- Use excepted not essential throughout the plan.
- BIA plan numbers differ
- Please consider maintaining one person full time to handle Congressional Affairs
- Please identify and legal requirements to continue to make benefit payments such as welfare payments or to operate child protection services and detention centers.
- Left justify text.
- Please include the number of employees on call.

12. OST

- Use excepted not essential throughout the plan.
- Please address how contractors are funded such that they will continue to work.

- Please address specific funding sources for Excepted and Exempt employees and how long the funding is expected to last – carryover, mandatory, etc.
- What functions, if any, are required by law (explain the function, legal basis, etc.)?
- Please indicate if you have any activities that are explicitly required by law because you have a legal requirement to deliver services. If you did not deliver these services there would be harm to beneficiaries.
- Please reduce the number of staff except those needed to perform excepted functions such as Land Buy Back.
- Number pages at bottom right. Using Insert Pages, select "Plain Number 3" (that is, no "Page x of x") using automatic page numbering.
- Set "Spacing" on Single Space with "0" spacing "Before" and "After"
- Please include the number of employees on call.

13. SOL
- No specific feedback, but the General feedback applies.
- Please include the number of employees on call.

14. OIG
- We recommend you consider designating at least one person as excepted to remain available to respond to high level issues.
- Set "Spacing" on Single Space with "0" spacing "Before" and "After"
- Please include the number of employees on call.

15. IOS
- Under Insular Affairs, please change the title from "Assistant Secretary" to "Acting AS" "Office Director" as you determine appropriate
- Under AS-FWP, please change "Acting AS" to "Principal Deputy"
- Under AS-WS, please remove "Acting"
- Under AS LMM, please delete "Acting AS", this position is accounted for under the BLM plan since the individual serving in the Acting role is the Bureau Director.

16. FBMS
- Please review your list of employees who will not be furloughed to determine if there are any that are critically important for ongoing operations. The availability of carryover should not be the determinant factor. We presume the cadre identified are needed for D8 activities, please explain the need to retain this number of employees.
- Please include the number of employees on call.

17. IBC
- Please verify funding is available for indirect cost funded positions.
- Please include the number of employees on call.

18. ONRR
- No specific feedback, but the General feedback applies.
- Please include the number of employees on call.

* DPS bullets
* 1 pager + q+a
* Timeline employees

DEPARTMENT OF THE INTERIOR
CONTINGENCY PLANNING FOR A LAPSE IN APPROPRIATION
September 2013

Contingency Planning Timeline

OMB has issued a schedule to guide us through contingency planning and preparation for a possible shut down.

The plans will be discussed by senior government leadership at a Monday, September 23 PMC Meeting.

OMB examiners will be actively engaged in the review of the plans.

That means we need employee counts and updated plans by cob Tuesday, September 24. We will be giving you comments on your plans on Monday, September 23 with instructions for revision.

website - Post FAQ

Schedule for Contingency Planning:

- Monday, September 23 – PMC meeting that AS-PMB will attend.
  PMB meeting and possible additional direction
  DOI Summary, Matrix of employee numbers, and comments on bureau/office plans will be issued by PMB.

- Tuesday, September 24- Daily updates start
  Team meeting 2-3 pm
  Bureaus/offices to provide employee counts, and updated plans by cob Tuesday.

- Wednesday, September 25 - Plans are due to OMB
  Bureaus/offices to complete one page summary and q&a
  message + website

  Communications to employees ?

- Thursday, September 26 – Discussions begin with unions on furlough decisions
  PMB will notify national unions and bureaus/offices notify local unions
  PMB and bureau/office acquisition offices alert contractors

- Friday, September 27 – Federal agencies post their contingency plans – video of Secretary *
  PMB will work with Communications on posting plans.

- Monday, September 30 - DOI issue an all employee notice, bureaus/offices should conduct communications to employees

- Tuesday, October 1 - Employees report to duty.
  Bureaus/offices provide employees with furlough notices and furloughed employees are released when they complete their shutdown (within four hours).

DEPARTMENT OF THE INTERIOR
CONTINGENCY PLANNING FOR A LAPSE IN APPROPRIATION
September 2013

Contingency Planning Checklist
This checklist is based on OMB Circular A-11 (2013), Section 124.1.

Summary of significant agency activities that will continue and will cease.

An estimate of time to the nearest half day needed to complete shut down.

- Identify the number of employees that would be able to complete shutdown in one-half day

- Identify activities that cannot be shut down in one-half day and indicate the number of employees involved in those activities and the estimated time for shut down

The number of employees on board on September 30.

The number of employees that are exempt from furlough including Presidential appointees,

The number of employees to be retained in the following "excepted" categories:

1. Presidential appointees

2. Employees in programs financed by other than annual appropriations and in which work will continue. Provide the specific list of programs with estimated positions/employees for each.

2. Employees needed to perform activities expressly authorized by law. This includes employees to make mandatory entitlement payments.

3. Employees needed to perform activities necessarily implied by law. This includes activities that need to continue because suspension would prevent or significantly damage the execution of the terms of a statutory authorization or appropriation. For example, staff to continue to make monthly payments to States that are required by law, e.g. Mineral Leasing Act payments.

4. Employees necessary to the discharge of the President's constitutional duties and powers. This includes the Commander in Chief and employees conducing foreign relations.

5. Employees necessary to conduct law enforcement duties.

6. Employees necessary to protect life and property. These determinations should be made based on an assessment that the safety of life or the protection of property would be compromised in some significant degree and that the threat to life and property can be reasonably said to be near at hand and demanding of immediate attention. Examples include protection of Federal lands, buildings, equipment and property, care of prisoners, emergency and disaster assistance, activities required to ensure production of power and maintenance of power distribution, and active law enforcement and criminal investigation.

The legal basis for the retention of positions/employees for the categories above

The number of employees that are not included in the categories above and will be furloughed.

The number of employees on call.

United States Department of the Interior

OFFICE OF THE SECRETARY
Washington, DC 20240

SEP - 9 2013

Memorandum

To: Assistant Secretaries
Bureau and Office Directors

From: Pamela Haze
Deputy Assistant Secretary
Budget, Finance, Performance and Acquisition

Subject: Contingency Planning for a Possible Lapse in Appropriations for Fiscal Year 2014

With Congress returning from the August recess, they will begin negotiations on a continuing resolution to allow for operation of Federal programs for Fiscal Year 2014. We are optimistic that they will come to agreement and timely enact a continuing resolution so that funds are in place by October 1, 2013. In order to be prepared, however, we have begun discussions with your staffs about contingency planning for a possible lapse in appropriations.

Office of Management and Budget Circular A-11 requires that agency heads maintain plans for an orderly shutdown in the event of an absence of appropriations and keep up-to-date plans on file with the Office of Management and Budget. We last conducted a wholesale update of our plans in the spring of FY 2012. Thus, we have designated a contingency plan coordinator in your bureau/office to work with us and the contingency planning team to update plans and ensure we are prepared I hope you will provide your support to these individuals as they work with the programs in your bureau/office to facilitate plan updates and preparations.

Our planning effort began in earnest on August 27th, 2013 when PMB leaders met with your representatives and discussed timeframes for plan updates.

As in 2012, we are using the framework of OMB's Circular A-11, "Preparation, Submission and Execution of the Budget". This will allow us to comply with the Circular and have an effective plan in place in case we need to implement a shutdown. We will assemble the bureau and office plans in order to post them on an internal website, prepare a Department-wide summary, and share copies with OMB when the time is appropriate to do so. We will be reviewing your plans to ensure you have designated an appropriate cadre of individuals that will be excepted from furlough to protect life and property, those that would continue to work in the absence of appropriations because they are funded from resources other than appropriations, and staff to conduct shut down activities.

We will, of course, follow direction from OMB with respect to implementation of our planned actions as they will be monitoring congressional action in the coming weeks. If OMB informs us to proceed with any aspect of our plans we will immediately notify you and your contingency plan coordinators. You may reference A-11 for further guidance at: http://www.whitehouse.gov/sites/default/files/omb/assets/a11_current_year/s124.pdf.

We have established two key dates for our planning: September 17, 2013 will be a follow-on meeting with the contingency planning team to discuss the status of planning and deal with any barriers. Updated plans are due by September 13 to Ralph Charlip, ralph_charlip@ios.doi.gov via email. In the meantime we will be sharing questions and answers about a potential lapse in appropriations and other materials in order to guide you through the process.

We have asked Ralph to coordinate our planning effort and he has been in touch with your representatives. If you have any questions about our process, please feel free to contact him at 202-208-2574.

The names and contact information for the contingency planning team is attached for your reference. Thank you for your attention to this important process.

Attachment

DEPARTMENT OF THE INTERIOR
CONTINGENCY PLANS KEY CONTACT ROSTER
Email changes to ralph_charlip@ios.doi.gov
(as of Sep 3, 2013)

PRIMARY REPRESENTATIVES

Bureau/Office	Contact	Phone Number	E-mail Address
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ADDITIONAL INDIVIDUALS WHO ARE PART OF THE MASTER EMAIL GROUP

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GUIDANCE ON OBLIGATIONS AND PAYMENTS
DURING A LAPSE IN APPROPRIATIONS

Based on OMB's September 17th guidance M-13-22, *Planning for Operations during a Potential Lapse in Appropriations*. http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-22.pdf

Exempt Programs
For exempt programs, those that are funded from non-lapsing appropriations, which are supported by exempt payment processing staff, there is no impediment to making payments (i.e., business as usual).

Excepted Programs
For excepted programs, those that are funded from appropriations that have lapsed, there are four situations in which obligations (but not payments) may be incurred:

1. A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations;
2. The function addresses emergency circumstances, such that the suspension of the function would imminently threaten the safety of human life or the protection of property;
3. The function is necessary to discharge the President's constitutional duties and powers; **or**
4. Activities that an agency must continue, in the absence of appropriations, because their continuation is "necessarily implied" from the authorized continuation of other activities (i.e., exempted programs).

A separate analysis is required for payments in excepted programs. Basically, a payment in an excepted program may only be made if it meets a separate "necessarily implied" analysis, or more simply stated, a payment in an excepted program may be made if failure to make the payment would:

A. result in an imminent threat to life or property;
B. critically impair the President's constitutional functions; **or**
C. significantly damage the execution of a Congressionally authorized and funded function (i.e., an exempted program). In this situation, there are further criteria to determine if a payment can be considered "necessarily implied":

- The continuation of the program during the funding lapse has been contemplated by Congress in authorizing or appropriations legislation (i.e., has available funding);
- The agency's failure to make the payment during the funding lapse would delay contract or grant performance; **and**
- A delay in payment would significantly damage the execution of the terms of the authorizing or appropriations legislative provision.

Staff Support for Payments
For exempt programs that are supported by excepted or furloughed payment processing staff, if a payment meets criteria A – C above, the furloughed staff can perform this work. Thus, you are advised not to place otherwise furloughed staff in an excepted status to process payments that do NOT meet these conditions.

We are available to confer with you to assist in understanding the application of this guidance. Please contact Pam Haze, Debra Sonderman, or Doug Glenn. The application of the criteria for working on matters during a lapse in appropriations has important legal aspects - Ed Keable and Mark Teskey in the Solicitors Office are available to answer any questions people might have as they make these decisions.

Please read message below prior to 4pm call. From: Blum, Mathew C. Sent: Monday, October 07, 2013 5:30 PM To: spe@listserv.gsa.gov Subject: Evaluating the Impact of a Funding Lapse on Federal Acquisition The following is sent on behalf of Joe Jordan, Administrator for Federal Procurement Policy

\\\

10/1/2013 website

Contracts Decision Tree

Sept 2013

Is the contract fully funded using FY 13 appropriations or are other funds available to fund it (no year or multi-year)?

If **YES,** will contract require government supervision?

If **NO**, contract can continue if contract is a sensible use of taxpayer funds.

If **YES** and an excepted individual will be available to oversee it in between excepted activities (and overseeing the contract does not interrupt, interfere with, or delay the individual's performance of an excepted function), the contract may continue during the furlough, provided the furlough is brief.

If **NO**, is the contract necessary to support one of the following excepted functions?

A. A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations; or
B. The function addresses emergency circumstances, such that the suspension of the function would imminently threaten the safety of human life or the protection of property; or
C. The function is necessary to the discharge of the President's constitutional duties and powers (e.g., Commander-in-Chief or conducting foreign relations).

If **NO**, contract cannot continue.

If **YES,** will contract require government oversight?

If **NO**, contract can continue.

If **YES**, there must be excepted individuals available to oversee it, so the contract may continue during the furlough.

Contracts Decision Tree
Sept 2013

Is the *contract/agreement/partnership/grant* fully funded using FY 13 appropriations or are other funds available to fund it (no year or multi-year)?

If **YES,** will contract require government supervision?

If **NO**, contract can continue if contract is a sensible use of taxpayer funds.

If **YES** and an excepted individual will be available to oversee it in between excepted activities (and overseeing the contract does not interrupt, interfere with, or delay the individual's performance of an excepted function), the contract may continue during the furlough, provided the furlough is brief.

If **NO**, is the contract necessary to support one of the following excepted functions?

A. A statute or other legal requirement expressly authorizes an agency to obligate funds in advance of appropriations; or

B. The function addresses ***emergency circumstances***, such that the suspension of the function would ***imminently threaten the safety of human life or the protection of property***; or

C. The function is necessary to the discharge of the President's ***constitutional duties and powers*** (e.g., Commander-in-Chief or conducting foreign relations).

If **NO**, contract cannot continue.

If **YES,** will contract require government oversight?

If **NO**, contract can continue.

If **YES**, excepted individuals will be made available to oversee it, **AND** the contract may continue during the furlough.

Other Considerations –

- If the *contract/agreement/partnership/grant* performance requires access to DOI facilities that are closed, most bureaus have suspended performance
- If performance is at a facility where operations are limited (e.g. MIB) many support services contracts have a reduced scope of performance

DRAFT

September 26, 20113

[Contractor Name]
[Contractor Address 1]
[Contractor City, State Zip]

Dear Contractor,

As you are likely aware, the Congress has yet to pass a fiscal year 2014 budget or a continuing resolution and there is a possibility that there will be a lapse of appropriation on October 1st 2014. As partners with the Department of the Interior (DOI), we are writing to provide you with timely and clear information about how this unfortunate budget situation impact us, and in turn what it means for our contract with you.

At this time, the DOI is taking every step to prepare for a lapse in appropriation, but based on our initial analysis, it is likely that your company's workforce, revenue, and planning processes may be affected. For example, the Department may determine it necessary to stop or suspend work, reduce the scope of work, or partially or completely terminate your contract for convenience. Additionally, planned contract actions for new work may be rescoped, delayed, or canceled depending on the nature of the work and the degree to which it directly supports the agency's mission goals.

To the extent that your contract is affected due to these budget cuts, you will be contacted by the appropriate Contracting Officer with additional details.

Thank you for your continued partnership with the Department of the Interior, and for your cooperation as we work together to manage these unfortunate circumstances.

Sincerely,

[Insert Date]

[Insert Contractor POC Name]
[Insert Contractor POC Title]
[Insert Contractor Name]
[Insert Contractor Address]

SUBJECT: Suspension of Work
Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

In accordance with Federal Acquisition Regulation (FAR) clause 52.242-14, Suspension of Work, of the referenced contract, I am issuing a suspension of the work you perform for the Department of the Interior (DOI). In the absence of either a Fiscal Year 2014 appropriation or a continuing resolution for DOI, no further financial obligations may be incurred by DOI except for those related to the orderly suspension of DOI's operations or performance of excepted or emergency activities.

You are hereby ordered to suspend all work on the referenced contract effective [insert time, date, and local time zone], except for the following activities:

[None, or itemize by line items, task or delivery order, etc, with narrative description of the specific work exempted from the shutdown, and include the following paragraph if applicable:

If any contract activities are performed at a DOI facility, provide me, or if I am not available, one of the contacts listed below, a list of the names of contractor employees who will be performing work on-site, and will require access to a certain DOI facility. Individuals whose names are not on the list will not be granted access to the DOI facility.]

Within a period of 90 days or any extension to this period for which we have agreed, DOI will either:

1. Cancel the suspension of work; or
2. Terminate the work covered as provided in the termination clause in the contract.

DOI will be unable to process payments during the lapse in appropriations. Do not submit any invoices or other claims for reimbursement until I notify you to do so.

If you have questions regarding this letter, please contact me at [insert CO contact information] . If I am in furlough status and unavailable, please contact one of the Contracting Officers listed below.

[Insert Non-furloughed CO #1: Name, phone number, e-mail]
[Insert Non-furloughed CO #2: Name, phone number, e-mail]
[Insert Non-furloughed CO #3: Name, phone number, e-mail]

Sincerely,

[Insert Name]
Contracting Officer
Department of the Interior

[Insert Date]

[Insert Contractor POC Name]
[Insert Contractor POC Title]
[Insert Contractor Name]
[Insert Contractor Address]

SUBJECT: Stop-Work Order
Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

In accordance with Federal Acquisition Regulation (FAR) clause 52.242-15, Stop-Work Order, of the referenced contract, I am ordering a suspension of the work you perform for the Department of the Interior (DOI). In the absence of either a Fiscal Year 2014 appropriation or a continuing resolution for DOI, no further financial obligations may be incurred by DOI except for those related to the orderly suspension of DOI's operations or performance of excepted or emergency activities.

You are hereby ordered to suspend all work on the referenced contract effective [insert time, date, and local time zone], except for the following activities:

[None, or itemize by line items, task or delivery order, etc, with narrative description of the specific work exempted from the shutdown, and include the following paragraph if applicable:

If any contract activities are performed at a DOI facility, provide me, or if I am not available, one of the contacts listed below, a list of the names of contractor employees who will be performing work on-site, and will require access to a certain DOI facility. Individuals whose names are not on the list will not be granted access to the DOI facility.]

Within a period of 90 days or any extension to this period for which we have agreed, DOI will either:

1. Cancel the suspension of work; or
2. Terminate the work covered as provided in the termination clause in the contract.

If this temporary suspension results in an increase in the time required for, or in your cost properly allocable to, the performance of any part of the referenced contract, you must assert your right to an adjustment in writing within 30 days from the date of the receipt of the notification that the suspension has been lifted, but in no case after final payment under this

contract.

If DOI should cancel the stop-work order or the period of the order or any extension expires, you shall resume work.

DOI will be unable to process payments during the lapse in appropriations. Do not submit any invoices or other claims for reimbursement until I notify you to do so.

If you have questions regarding this letter, please contact me at [insert CO contact information] . If I am in furlough status and unavailable, please contact one of the Contracting Officers listed below.

[Insert Non-furloughed CO #1: Name, phone number, e-mail]
[Insert Non-furloughed CO #2: Name, phone number, e-mail]
[Insert Non-furloughed CO #3: Name, phone number, e-mail]

Sincerely,

[Insert Name]
Contracting Officer
Department of the Interior

[Insert Date]

[Insert Contractor POC Name]
[Insert Contractor POC Title]
[Insert Contractor Name]
[Insert Contractor Address]

SUBJECT: Continuation of Work in Absence of Fiscal Year 2014 Appropriation
Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

The purpose of this memorandum is to inform you of the continuation of work you perform for the Department of the Interior (DOI) in the absence of either a Fiscal Year 2014 appropriation or a continuing resolution for the DOI.

The referenced contract is either considered essential to the orderly suspension of operations or is considered an emergency or excepted activity. Therefore, all work under the referenced contract must continue in the absence of an FY 2014 appropriation or a continuing resolution.

If any contract activities are performed at a DOI facility, provide me, or if I am not available, one of the contacts listed below, a list of the names of contractor employees who will be performing work on-site, and will require access to a certain DOI facility. Individuals whose names are not on the list will not be granted access to the DOI facility.

DOI will be unable to process payments during the lapse in appropriations. Do not submit any invoices or other claims for reimbursement until I notify you to do so.

If you have questions regarding this letter, please contact me at [insert CO contact information] . If I am in furlough status and unavailable, please contact one of the Contracting Officers listed below.

[Insert Non-furloughed CO #1: Name, phone number, e-mail]
[Insert Non-furloughed CO #2: Name, phone number, e-mail]
[Insert Non-furloughed CO #3: Name, phone number, e-mail]

Sincerely,

[Insert Name]
Contracting Officer
Department of the Interior

[Insert Date]

[Insert Contractor POC Name]
[Insert Contractor POC Title]
[Insert Contractor Name]
[Insert Contractor Address]

SUBJECT: Cancellation of Suspension of Work
Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

In accordance with Federal Acquisition Regulation (FAR) clause 52.242-14, Suspension of Work, of the referenced contract, I am canceling the suspension of work that was effective [insert time, date, and local time zone]. You are hereby directed to resume work as of [insert time, date, and local time zone].

DOI will resume operations and be able to process payments again effective [insert time, date, and local time zone]. Invoices or other claims for reimbursement may be submitted after that date and time.

If you have questions regarding this letter, please contact me at [insert CO contact information].

Sincerely,

[Insert Name]
Contracting Officer
Department of the Interior

[Insert Date]

[Insert Contractor POC Name]
[Insert Contractor POC Title]
[Insert Contractor Name]
[Insert Contractor Address]

SUBJECT: Cancellation of Stop-Work Order
Re: [Insert Contract Number]

Dear [Insert Contractor POC Name]:

In accordance with Federal Acquisition Regulation (FAR) clause 52.242-15, Stop-Work Order, of the referenced contract, I am canceling the stop-work order that was effective [insert time, date, and local time zone]. You are hereby directed to resume work as of [insert time, date, and local time zone].

Under the terms of the Stop-Work clause of your contract, you may assert your right to an equitable adjustment within thirty (30) calendar days after resumption of work. Accordingly, you should submit any request for equitable adjustment to me in writing at [insert CO email and mailing address].

DOI will resume operations and be able to process payments again effective [insert time, date, and local time zone]. Invoices or other claims for reimbursement may be submitted after that date and time.

If you have questions regarding this letter, please contact me at [insert CO contact information].

Sincerely,

[Insert Name]
Contracting Officer
Department of the Interior

TO: All Department of the Interior Employees

I want to provide you with important information and guidance concerning efforts to plan for and address a potential lapse of appropriations and government shutdown on Tuesday, October 1, 2013.

While the Administration believes that a lapse in funding should not occur, we have a responsibility to the public and to our employees to do everything possible to prepare for a potential shutdown.

These are challenging times – and we understand that these circumstances are challenging to you and your family. A lapse in government activities could impose hardships on you, your families, and the people we serve. We hope that Congress acts quickly to prevent a shutdown and pass a continuing resolution. In the meantime, we want you to know that we are doing everything we can to prepare for a potential shutdown. We will provide you with as much information as possible.

The information, guidance and resources outlined below cover the most important information that you will need to know over these next few days. I encourage you to read it, to print out the Shutdown Checklist for Furloughed Employees, and to make note of telephone numbers you can call and websites you can visit to help keep you updated on the latest information.

Employee Status during a Funding Lapse
If a shutdown occurs, most of our agency's staff will be furloughed. This is not a reflection on the value or importance of our employees' work.

A limited number of employees will designated as "exempt" or "excepted". Employees who fall into these specialized categories have been apprised of their designation. Exempt employees will continue to work because they are funded from non-lapsing appropriations. Excepted employees will continue to work, despite lapsing appropriations, in order to protect life and property.

A set of general questions and answers can be found on http://www.doi.gov/shutdown

Shutdown Notification
If there is a lapse in appropriations on Tuesday, October 1, 2013 because Congress has not passed an appropriation or continuing resolution and we have direction to proceed with shutdown, the following applies:

Employees should report to work at their normal time and will be given up to four hours to conduct shut down activities. Within the four hour timeframe, an employee should complete their timesheet, work with their supervisor to secure property and files, receive a furlough letter and acknowledge receipt, and conduct other activities as directed. Supervisors may make other arrangements with employees in order to accomplish these shutdown activities through other means, such as teleworking. Employees should report to work unless they have received different direction from their supervisors. Some employees will be given additional time for shutdown activities that will extend beyond the 4 hours. Your supervisor will inform you if you

are one of these individuals that is needed to help with these extended shutdown efforts.

If there is no lapse in appropriations and the government is operating, the following applies:

Employees should report to work on their normal schedule unless the employee is on previously scheduled and approved leave or is approved for telework or has made other arrangements with their supervisor. Employees should work with their supervisors on any specific circumstances not addressed in this general guidance.

A set of human resources questions and answers can be found on http://www.doi.gov/shutdown

Shutdown Activities

All employees will be required to complete a series of shutdown activities. Employees must use their time for shutdown activities only, not to work on any non-shutdown projects, tasks, activities or respond to emails. Shutdown activities include:

- Accessing your email.
- Reading your furlough notice and affirming to your supervisor that you did receive it.
- Changing your voicemail message to indicate you will be out of the office for an unspecified time.
- Changing and enabling your email "out of office" message.
- Securing your work documents appropriately.
- Completing your time card.
- Securing your work station and securing government property.

A checklist of shutdown activities with additional guidance is included at the end of this message.

Supervisors should have a phone tree.

Telework

Employees who have been approved to telework on Tuesday, October 1 should complete as many shutdown activities as possible (please see attached checklist) before they leave work on Monday, September 30, including completing their timecards, so that on Tuesday, October 1, their responsibilities will be to read their furlough email notification and affirm to their supervisor that they did receive it.

Time and Attendance

In the event of a government shutdown, employees should record their actual hours for the current pay period, 2013-21, as you normally would for the time period September 22-30, 2013.

- For employees who are not exempt or excepted and would be furloughed – record the balance of the pay period, October 1-5, against the Furlough pay code (pay code 103). Employees should keep track of hours spent on shutdown activities. Amended time sheets will be completed after operations resume.
- For excepted employees who will remain on duty to protect life and property - record the balance of the pay period, October 1-5, against the Furlough pay code (pay code 103). Excepted employees should keep track of their time outside of the system.
- For employees who are exempt and will continue to work because they are paid from non-lapsing appropriations – report all hours worked as you normally would.

Timesheets should be verified and certified for pay period 21 on October 1, 2013.

A set of questions and answers on this are at the end of this document.

Employee Pay
October 1, 2013 is a regular payday covering the pay period ending Saturday, September 21, 2013. Employees will be paid on schedule for their hours worked during that pay period. If a shutdown occurs, all employees can expect to be paid on Tuesday, October 15, 2013 for hours worked from September 22, 2013 through September 30, 2013.

All employees will be paid for actual time spent conducting shutdown activities (for most employees this will be no more than 4 hours) after the Congress enacts an appropriation or a continuing resolution.

During the shutdown, exempt employees will be paid for actual hours worked in subsequent pay periods every two weeks. Excepted employees will be paid for actual hours worked during the shutdown upon the next regular payday following passage of a funding bill. Congress will determine if furloughed employees will be paid subsequent to enactment of an appropriation or continuing resolution.

Use of Electronic Equipment
Please keep in mind that employees are prohibited from working while furloughed, including using agency owned computers, mobile devices, and using remote access service to access email or other applications. You should turn off all devices and secure and store government equipment.

check 15 minutes a day

Leave
If you have been previously approved to take leave on Tuesday, October 1, and there is a shutdown, your leave will be cancelled. You are expected to report to your duty station unless you have made alternative arrangements with your supervisor. If there is no shutdown or the government reopens and you had pre-existing leave plans, you should contact your supervisor to ensure your leave approval is still in place or if you are needed to return to work.

Travel
All employees should refrain from beginning official travel leading up to a possible shutdown and should not be traveling during the shutdown, with certain exclusions.

- Exempt employees who are funded through non-lapsing appropriations may travel with the appropriate approvals from their supervisor.
- Excepted employees who need to travel to protect life and property should do so with the approval of their supervisor. If there is a shutdown, please check with your supervisor to find out if you should immediately return to your duty station or remain in travel status.
- Employees who would be furloughed and are on travel when the shutdown occurs, must return to their duty station as soon as possible.

- Employees assigned overseas are not considered to be in travel status because their overseas location is considered their permanent station.
- Employees on extended TDY travel where a detail personnel action (SF52) was issued and funded should not return to their home location unless instructed by their supervisor.

A set of travel questions and answers can be found on http://www.doi.gov/shutdown

Access to Buildings and Facilities
The Main Interior Building (MIB) and South Interior Building (SIB) will be closed to the public throughout the shutdown with access by employees who are exempt or excepted. Employees that are furloughed will be able to access the credit union – please stop at the guard desk to check in.

The cafeteria in MIB will be closed. The snack bars in MIB and SIB will be open.

All ramps to the MIB garage will be open on October 1, 2013. Commencing October 2, 2013, only Ramps A and D will be open in MIB.

Parking will be available during the shutdown for those employees that have parking permits for MIB, SIB and the Federal Reserve if they are exempt or excepted.

Transit Subsidy
The transit subsidy has already been loaded onto the electronic media and will be available to employees on October 1, 2013. Employees are authorized to use the subsidy for October 1, 2013 and excepted and exempt employees can use the subsidy during the duration of the shutdown. On call staff can use the subsidy it if they are called back to work.

All unused subsidy media will be swept back by DOT at the end of the month.

Agency Services
In October 1, 2013, the shuttles to MIB are expected to be operating. During a government shutdown, after October 1, there will be no shuttle services to MIB and SIB. During the shutdown there will be limited custodial and mail service and the health unit and fitness center will be closed. The MIB child day care center will be closed throughout the duration of the shutdown.

Information Resources
There are a number of resources available where you can get further shutdown information and status updates. Shutdown information can be found on http://www.doi.gov/shutdown
In addition, furlough guidance can also be found at the Office of Personnel Management website at www.opm.gov/furlough. Also, you are encouraged to listen to the news media to obtain information on the status of government funding and whether a shutdown is necessary.

Shutdown Checklist for Furloughed Employees

- Meet with your supervisor to obtain additional necessary details and guidelines about shutdown procedures.
- Provide information about where your supervisor can reach you in the event the government reopens – home phone, personal cell phone, relative phone, etc.
- Access your email and read your furlough notice and affirm to your supervisor that you have received it. Instructions can be found at http://googl/tN1PRt.
- Change your voicemail message. Suggested language for employee voicemail:
  "I am out of the office for the duration of the government shutdown. I will not be checking messages, but will return your call upon my return to the office."
- Change and enable your email "out of office" message. Suggested message:
  "I am out of the office for the duration of the government shutdown. I will not be checking messages, but will return your email upon my return to the office."
- Secure your work documents appropriately and are not left out in the open.
- Turn off and put away devices, phones, laptops, etc. for safekeeping.
- Throw out any perishable food.
- Remove or store any personal items for safekeeping.
- Complete your time card
- Turn off the lights and lock the door when you leave (presuming there are no other occupants in the office).

FAQ'S FOR ENTRY OF TIME & ATTENDANCE DURING GOVERNMENT SHUTDOWN
SEPTEMBER 27, 2013

1. I have received notice that I will be furloughed (not excepted) during the government shutdown. How do I enter my time and attendance?

For the current pay period, 2013-21, *through September 30*, report all hours worked, leave taken, etc., as you normally would (only for September 22-30).

The remainder of the October 1-5 period should be recorded against the Furlough pay code (pay code 103). Employees should keep track of the time they spent on shutdown activities. Amended timesheets will be completed after government operations resume to reflect actual time spent on shutdown activities.

2. I have received notice that I have been excepted from the furlough. How do I enter my T&A?

For the current pay period, 2013-21, *through September 30*, report all hours worked, leave taken, etc., as you normally would (for September 22-30).

For the balance of the pay period (October 1-5), hours should be recorded against the Furlough pay code.

Excepted personnel should keep track off-line the hours worked for later submission of an amended timesheet when Congress enacts an appropriation bill.

3. I have received notice that I am exempt from the furlough. How do I enter my T&A?

Exempt personnel are funded by a non-lapsing appropriation, and therefore you report all hours worked or leave taken as you normally would.

4. What if I am furloughed, but it's only for a few days?

If Congress enacts an appropriation bill and an employee Returns to Duty anytime between October 1 – October 5, 2013 (in pay period 2013-21), timesheets would need to be "unverified" to allow for update for actual hours worked and/or furlough hours. Normal T&A processing procedures would then be followed.

5. What if the furlough lasts longer than this pay period, 2013-21, which ends on October 5?

Exempt employees will continue to record their actual time worked.

For excepted personnel, hours should continue to be recorded against the pay code 103 (furlough hours). Excepted personnel should continue to keep track off-line the hours worked for later submission of an amended timesheet when Congress enacts an appropriation bill.

IBC will assume that timesheets not submitted by October 23 (for the pay period ending October 20), should be charged to pay code 103 (furlough hours).

Timesheets should be verified and certified for pay period 21 on October 1, 2013.

Logistical Questions for Shutdown

Will there be a standard note given to employees who are exempted or excepted indicating procedures for recording time, entrance into the buildings, security procedures to enter buildings, availability or lack thereof of services in the building (nurse, trash, mail, cafeteria)?

What procedures should managers ensure are in place to process time and attendance during the shutdown?

- The shutdown date of October 1, 2013, falls in the middle of pay period 21. In the event a shutdown lasts through the week of October 7, will payroll be processed for work performed during the first part of pay period 21 (September 22-October 1) during the shutdown?

- Time and attendance for those employees who are excepted or paid from exempt accounts will need to be recorded in the Quicktime system.

    - During the shutdown transition should non-excepted/exempt employees be directed to enter 4 hours for October 1 and 0 hours for October 2, 3 and 4?

    - Should timekeepers ensure transition of validation and certification authorities to the appropriate excepted/exempt managers?

During the shutdown, the FBMS system will be in blackout. The blackout is not caused by the government shutdown, but is due to the final implementation of Deployment 8. Excepted or exempt employees will need guidance on how to record transactions during the blackout.

- How will travel and charge cards be posted during this time?

Charge card transactions are recorded automatically in FBMS based on the invoice file received by JP Morgan. Travel transactions operate similarly as charges are posted when the traveler's voucher is processed in the E-gov travel system, which is interfaced for payment in FBMS. This interface will be down for the transition to the Concur Government Expense (CGE) travel management system. Manual transactions will be few and will not take place during the fiscal year end closeout.

- How will the shutdown impact the timing of the blackout period, for example, would it be extended?

The FBMS blackout period for the final implementation of Deployment 8 and the CGE blackout period are not expected to be impacted by the partial government shutdown.

- If the government is shutdown after FBMS reopens, what are the procedures for ensuring the appropriate lines of accounting are used, for example carryover funding rather than new budget authority?

The completion of the FY13 year-end process, which includes establishing carryover amounts, loading the FY14 budget, and making any changes to lines of accounting and carryover, are the responsibility of the individual bureaus. If any bureau is unable to complete the FY13 year-end process, DOI will also be unable to complete the annual financial audit and preparation of the Agency Financial Report.

What is the procedure for processing allowable travel during a shutdown?

Based on preapproved travel and vouchering travel that is completed prior to the shutdown, the FBMS system will not be available to process documents due to the fiscal year closeout period.

If travel may be made during a government shutdown, please refer to the ***FAQ – Travel during a Government Shutdown (2014)***. Because the types of appropriations vary and few employees are designated as "essential" or using non-lapsing appropriation, the answer varies as well.

Will the GOVTRIP system be operational?

As of September 20, 2013, with the exception of BOR employees, GovTrip should not be used by DOI employees. DOI is transitioning from GovTrip to CGE, which will go live on October 8. On August 16, 2013, the CGE blackout period was announced. As noted in the CGE blackout memorandum, if employees who are required to travel during the blackout period, they must call the new travel management center provider, Duluth Travel.

Two bureaus, BSEE and BOEM, are currently using CGE as part of a pilot program. BOR goes lives on CGE in conjunction with their deployment to FBMS on November 7. These deployment schedules are not expected to be impacted by the partial government shut-down. Based on available funding, travel charges will be posted through the CGE-FBMS interface.

Will credit card charges go through?

For charge card transactions associated with travel, please refer to the ***FAQ – Travel during a Government Shutdown (2014).***

Based on available funding, charge card invoices will be received through an automated interface with JP Morgan Chase and posted to FBMS. This interface is not expected to be impacted by the partial government shut-down.

Should conferences paid for with exempted funds be cancelled?

If the conference attendees or organizers are paid from lapsing appropriation, it is advisable to cancel the conference even though the conference costs itself is paid from exempt funds. As a violation of the Anti-Deficiency Act, DOI cannot assume any compensatory obligations for employees who may attend a conference as part of their official duties.

Will Interior websites be operational?

For employees who are on-call, are they allowed to communicate on work issues via their work laptops, iphones, ipads or blackberries, or would they be required to come into the building to provide assistance?

Background Information on Shutdown

Privileged Deliberative
Communication

What causes a shutdown?

A shutdown occurs when there is a lapse in appropriations. The lapse has an impact on those agencies, and those programs/activities, that were funded by the appropriation which lapsed.

Thus, if an agency has other separate, pre-existing appropriations, these other appropriations continue to remain available to support the activities which they fund. Examples are indefinite appropriation (e.g., the permanent law that provides for the payment of Social Security retirement benefits) and carryover balances from a multi-year appropriation in a prior fiscal year.

History of shutdowns.

Prior to FY 1996, there were short shutdowns in 1981, 1982, 1983, 1984, 1986, 1987 and 1990. These ranged from several hours to three days (and, in several cases, entirely on a weekend). In FY 1996, there were two shutdowns, neither of which was government-wide. The first affected many agencies and lasted for five days, beginning with the CR's lapse on November 14, 1995, and ending on November 19, 1995, with the enactment of another CR. According to a CRS report, an estimated 800,000 federal employees had been furloughed. A few weeks later, there was a second shutdown, affecting fewer agencies. This shutdown ran for 21 days, beginning with the CR's lapse on December 16, 1995, and ending on January 6, 1996, with the enactment of another CR (funding for some activities had been provided on December 22 and January 4). According to CRS, an estimated 284,000 federal employees were furloughed as of January 2, with another 475,000 employees continuing to work on "excepted" activities.

Agency "shutdown plans," which are based on DOJ opinions and OMB guidance.

During a shutdown, a Federal agency operates under its "shutdown plan." OMB has required agencies to maintain such plans since 1980. An agency prepares its plan by applying, to its programs and activities, the general principles outlined in DOJ opinions and OMB guidance.

- The key DOJ opinions are:
  - OLC opinion of August 16, 1995, *Government Operations in the Event of a Lapse of Appropriations*
  - AG opinion of January 16, 1981, *Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations* (Civiletti opinion)
- The key OMB guidance documents are:
  - Circular A-11, Section 124, *Agency Operations in the Absence of Appropriations*
  - Memorandum of November 17, 1981, *Agency Operations in the Absence of Appropriations*

- OMB Bulletin 80-04 of August 28, 1980, *Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations*

The Antideficiency Act; "excepted" activities versus "non-excepted" activities

The key statute is the Antideficiency Act (ADA, 31 U.S.C. 1342), which provides that:

> "An officer or employee of the United States Government or of the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law except for emergencies involving the safety of human life or the protection of property. . . . As used in this section, the term "emergencies involving the safety of human life or the protection of property" does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."

Those Federal activities that are authorized to continue, during a funding lapse, are "excepted" activities. Those activities which may not continue are "non-excepted."

Agency employees that perform "non-excepted" activities may not perform any services, except for those involved in the "orderly shutdown" of non-excepted activities at the beginning of the funding lapse (under Circular A-11, if an agency estimates that "more than one-half day would be needed to complete a shutdown," the agency must "submit policy statements and legal opinions supporting those estimates"). In addition, agencies may not permit the voluntary performance of non-excepted activities.

In the case of "excepted" activities, an agency may enter into an obligation for the activity to be carried out, but the agency may not expend funds during the shutdown in order to liquidate the obligation. The obligation can be paid only when an appropriation has been enacted.

> Example: In the case of "excepted" activities, the agency may continue to have agency employees perform the "excepted" work. Thus, the agency may continue to incur the obligation to pay the employees for the "excepted" work. However, the agency cannot pay the employees for that "excepted" work until an appropriation is enacted. (Thus, whether employees would miss a paycheck would depend on the length of the shutdown.)

What are "excepted" activities under the ADA?

There are two main categories of "excepted activities": activities that are "authorized by law" and those involving "the safety of human life or the protection of property." Below are OLC's descriptions of these activities from its opinion of August 16, 1995.

1. Activities "authorized by law."

A. Express authorization: contract authority and borrowing authority.

"Congress provides express authority for agencies to enter into contracts or to borrow funds to accomplish some of their functions. An example is the 'food and forage' authority given to the Department of Defense, which authorizes contracting for necessary clothing, subsistence, forage, supplies, etc. without an appropriation. In such cases, obligating funds or contracting can continue, because the Antideficiency Act does not bar such activities when they are authorized by law. As the 1981 Opinion emphasized, the simple authorization or even direction to perform a certain action that standardly can be found in agencies' enabling or organic legislation is insufficient to support a finding of express authorization or necessary implication . . ., standing alone. There must be some additional indication of an evident intention to have the activity continue despite an appropriations lapse."

B. Necessary implications: authority to obligate that is necessarily implied by statute.

"The 1981 Opinion concluded that the Antideficiency Act contemplates that a limited number of government functions funded through annual appropriations must otherwise continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions will continue as well.

"Examples include the check writing and distributing functions necessary to disburse the social security benefits that operate under indefinite appropriations.

"Further examples include contracting for the materials essential to the performance of the emergency services that continue under that separate exception.

"In addition, in a 1980 opinion, Attorney General Civiletti opined that agencies are by necessary implication authorized 'to incur those minimal obligations necessary to closing [the] agency.' The 1981 opinion reiterated this conclusion and consistent practice since that time has provided for the orderly termination of those functions that may not continue during a period of lapsed appropriations."

C. Obligations necessary to discharge of the President's constitutional duties and powers.

"Efforts should be made to interpret a general statute such as the Antideficiency Act to avoid the significant constitutional questions that would arise were the Act read to critically impair the exercise of constitutional functions assigned to the executive. In this regard, the 1981 Opinion noted that when dealing with functions instrumental in the discharge of the President's constitutional powers, the 'President's obligational authority . . . will be further buttressed in connection with any initiative that is consistent with statutes -- and thus with the exercise of legislative power in an area of concurrent authority -- that are more narrowly drawn than the Antideficiency Act and that would otherwise authorize the President to carry out his constitutionally assigned tasks in the manner he contemplates.' 1981 Opinion, at 6-7."

Note: In its opinion of September 15, 1995 (*Authority to Employ the Services of White House Employees During an Appropriations Lapse*), OLC concluded that the White House Office could employ individuals on a non-salaried (voluntary) basis to perform "non-excepted" activities during a lapse in the White House appropriation.

2. "Emergencies involving the safety of human life or the protection of property."

As noted above, an agency may incur obligations (but may not expend funds) in order to address "emergencies involving the safety of human life or the protection of property."

In 1990, Congress addressed the "emergency" category by adding the following sentence to the ADA:

> "As used in this section, the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."

In its 1995 opinion, OLC concluded that the 1990 amendment "prohibits overly expansive interpretations of the 'emergency' exception." In 1995, OLC reviewed the test that had been set forth in the 1981 AG opinion – for identifying "life and property" emergencies – in light of the 1990 amendment. OLC concluded that the 1981 test should be revised by replacing "in some degree" with "in some significant degree," so that it would read as follows:

> "First, there must be some reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property. Second, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised, in some significant degree, by delay in the performance of the function in question."

As OLC explained, the 1990 amendment "emphasize[s] and reinforce[s] the requirement that there be a threat to human life or property of such a nature that immediate action is a necessary response to the situation." To illustrate the point, OLC provided an example:

> "The brief delay of routine maintenance on government vehicles ought not to constitute an 'emergency,' for example, and yet it is quite possible to conclude that the failure to maintain vehicles properly may 'compromise, to some degree' the safety of the human life of the occupants or the protection of the vehicles, which are government property. We believe that the revised articulation [requiring 'some significant degree'] clarifies that the emergencies exception applies only to cases of threat to human life or property where the threat can be reasonably said to the near at hand and demanding of immediate response."

Under Circular A-11, if an agency estimates that "the number of employees to be retained to protect life and property would exceed five percent of the number of employees on-board at the 5%

beginning of a hiatus less those exempt," the agency must "submit policy statements and legal opinions supporting those estimates."

Should an agency assume that the private economy will continue operating?

In its 1995 opinion, OLC addressed the question of "whether the emergency status of government functions should be determined on the assumption that the private economy will continue operating during a lapse in appropriations, or whether the proper assumption is that the private economy will be interrupted. As an example of the difference this might make, consider that air traffic controllers perform emergency functions if aircraft continue to take off and land, but would not do so if aircraft were grounded." OLC explained that, "with respect to any short lapse in appropriations, the practice of past administrations has been to assume the continued operation of the private economy, and so air traffic controllers, meat inspectors, and other similarly situated personnel have been considered to be within the emergency exception of § 1342." OLC, though, further explained that "[t]he correct assumption in the context of an anticipated long period of lapsed appropriations, where it might be possible to phase in some alternatives to the government activity in question, and thus over time to suspend the government function without thereby imminently threatening human life or property, is not entirely clear."

Examples of "excepted" activities that may continue during a funding lapse.

Based on the above principles, OLC and OMB have outlined several examples of "excepted" activities that may continue during a funding lapse.

In its 1995 opinion, OLC stated that it "is an entirely inaccurate description" to refer to a funding lapse as "shutting down the government." To illustrate this point, OLC outlined a number of Federal activities that are not required to cease but rather may continue during a funding lapse:

> "Were the federal government actually to shut down, air traffic controllers would not staff FAA air control facilities, with the consequence that the nation's airports would be closed and commercial air travel and transport would be brought to a standstill.
>
> "Were the federal government to shut down, the FBI, DEA, ATF and Customs Service would stop interdicting and investigating criminal activities of great varieties, including drug smuggling, fraud, machine gun and explosives sales, and kidnapping.
>
> "The country's borders would not be patrolled by the border patrol, with an extraordinary increase in illegal immigration as a predictable result.
>
> "In the absence of government supervision, the stock markets, commodities and futures exchanges would be unable to operate.
>
> "Meat and poultry would go uninspected by federal meat inspectors, and therefore could not be marketed.

"Were the federal government to shut down, medicare payments for vital operations and medical services would cease. VA hospitals would abandon patients and close their doors."

Again, as noted above, OLC offered these as examples of Federal activities that may continue.

In addition, in its November 1981 memorandum to agencies, OMB provided the following list of activities that may continue:

1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.

2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.

3. Conduct essential activities to the extent that they protect life and property, including:

a. Medical care of inpatients and emergency outpatient care;

b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous material;

c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;

d. Border and coastal protection and surveillance;

e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;

f. Care of prisoners and other persons in the custody of the United States;

g. Law enforcement and criminal investigations;

h. Emergency and disaster assistance;

i. Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;

j. Activities that ensure production of power and maintenance of the power distribution system; and

k. Activities necessary to maintain protection of research property.

FY 14 Office of Acquisition and Property Management
Government Shutdown Questions and Answers

Contracting Before, During and After the Shutdown; Systems and Reporting; Charge Card; Financial Assistance; Suspension and Debarment; Fleet

CONTRACTING
BEFORE THE SHUTDOWN

1. What generally happens in the event of a lapse in appropriations and shutdown and what are key exceptions?

In general, federal government activities that are not essential (i.e., necessary for the safety or human life and the protection of property or otherwise authorized by law) must cease. That means employees, contractors and cooperators:

- cannot work,
- cannot create new obligations,
- cannot make payments for funded obligations,
- cannot volunteer (employees, contractors, or cooperators, etc.)

That is, unless "authorized by law," the Anti-Deficiency Act prohibits the federal government from obligating funds before an appropriations measure has been enacted and also from accepting "voluntary services." See 31 U.S.C. §§ 1341 and 1342. In addition to prohibiting contract work from continuing after a shutdown, if federal staff members continue working when it is unclear that there will be an appropriation covering their salaries, this also could violate the prohibition.

The Act provides an exception for "emergencies involving the safety of human life or the protection of property." However, "emergencies involving the safety of human life and the protection of property" do not "include the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property." See 31 U.S.C. § 1342.

Also, a shutdown generally does not apply to activities funded by obligations validly incurred in an earlier fiscal year or by multi-year or indefinite appropriations. Accordingly, contracts that were previously funded by prior enacted appropriations may continue.

2. What are some general guidelines?

Here are a few guidelines to consider:

- If a contract or payment is needed to support an essential program like medicare or earthquake hazard monitoring, then supporting staff (e.g., contracting officer, COR/COTR, finance staff) are essential. They may or may not be needed on a full-time basis.
- If a contract is already funded, such as a construction contract, then:
    1. The COR/COTR/ Inspector may be called in intermittently to monitor the contractor's progress
    2. The CO may be called in intermittently to issue necessary contract modifications, which may include a suspension of work order if staff to monitor the contractor's progress cannot be made available
    3. Bureaus should combine as many of these duties as possible to a small number of people
    4. Invoices for these contracts will not be processed until appropriations are available to fund the administrative support
- If a contract supports an activity that is not funded by prior appropriations and not essential, such as a NPS maintenance or repair contract, then the staff who support the contract are not essential.
- Processing payments/authorizing drawdowns for grants or cooperative agreements is not an essential activity.

3. What actions should a contracting officer take if there is a shutdown?

Contracting Officers (COs) should review all of their contracts to ensure that they include the following Federal Acquisition Regulation (FAR) clauses:

- **Termination for the Convenience of the Government** clause in FAR 52.249-1 through 5, as appropriate; **and** either
- **Suspension of Work** clause in FAR 52.242-14 (mandatory in fixed price construction and architect-engineering contracts); **or**
- **Stop-Work Order** clause in FAR 52.242-15 (optional in contracts for supplies, services, or research and development)

Terminations for convenience, stop-work orders, and suspension orders may be issued only if the contracts contain the appropriate clause. When appropriate, stop-work and suspension orders are preferable to terminations because they keep the contract active and avoid termination costs as well as the need for a re-procurement action.

If the above clauses are not already included in the contract, then the contracts should be modified on a bilateral basis to incorporate the appropriate clause(s). This should be done as a precaution to protect the Government's interests regardless of whether the contract supports an essential activity.

COs may draft stop-work and suspension of work templates in advance for possible use in contracts that are not already funded or do not support essential activities. For example, a stop-work order may need to be issued for non-essential contractor support services that will be suspended if a government facility is shut down and its federal employees are furloughed.

4. What must a contracting activity do in order to shutdown?

Bureau Contingency Plans must designate shutdown personnel, who will facilitate orderly shutdown of the contracting activities, including drafting and issuing of stop-work orders and other steps outlined in this guidance. Once the services of these employees are no longer required, they will be furloughed. The Office of Management and Budget may place a time limit on shutdown activities. Bureau Contingency Plans must identify essential activities and functions of the bureau that must continue during a lapse in appropriations, and identify contracts supporting those activities and functions. Work on those contracts can continue during the shutdown, and the bureau must identify any essential personnel, such as warranted COs and/or contracting officer's representatives, required during the shutdown in order to administer those contracts.

Work on contracts that are not funded by a lapsing appropriation (such as the fiscal year 2014 continuing resolution), such as projects that are fully funded, may continue, provided government oversight is not necessary to facilitate performance during the shutdown.

Contracting activity shutdown personnel must issue Stop Work or Suspension of Work orders on, or Terminate for the Convenience of the Government, all non-essential contracts funded by the 2014 continuing resolution, in accordance with FAR procedures. Once this work is completed, if the employees do not have responsibility for other essential work, they must cease work until recalled.

5. What communications with contractors are allowed?

Contractors may inquire about the status of their contracts prior to the shutdown. Contractors should be told that they will be notified in writing whether their contracts are affected by the shutdown.

If a determination is made that work must cease on a non-essential contract, then you may not suggest that the contractor continue to work, allow them to volunteer their services, or suggest that if they continue working they will be paid retroactively.

CONTRACTING
DURING THE SHUTDOWN

6. **Do federal and agency policies and guidance (such as FAR, DIAR, DIAPRs, DIGs) apply to contracting during shutdown?**

   Yes.

7. **Who has contracting authority during a shutdown?**

   Only warranted contracting officers have authority to sign contract actions.

8. **Can I award new contracts?**

   A contract may be awarded during a lapse in appropriation **ONLY** if it is for goods and services that are deemed essential in accordance with your Bureau Contingency Plan for a Possible Lapse in Appropriations. Under authority of the Anti-Deficiency Act, contracting officers may obligate the Government for shutdown and essential activities even in the absence of an appropriation. However, contractors may not be paid until appropriations are enacted if processing of the payment requires government input.

   That is, as noted, the Anti-Deficiency Act, 31 U.S.C. § 1342, provides that officers and employees of the federal government may accept voluntary services where there is (1) a reasonable and articulable connection between the function to be performed and the safety of human life or the protection of property, and (2) some reasonable likelihood that the safety of human life or the protection of property would be compromised in some significant degree by delay in the performance of the function in question. See Memorandum to Alice Rivlin, Director, Office of Management and Budget, from Assistant Attorney General, Office of Legal Counsel, Re Government Operations in the Event of a Lapse in Appropriations (August 6, 1995); http://www.opm.gov/furlough/furlough.asp#Appendix%20A-1

   Multi-year or other contracts that require newly obligated funds cannot be awarded. Contracts obligated with previous years' funds are unaffected by a lapse in appropriations because they do not require a new obligation. Contract extensions, exercise of renewal options, or any other new contract may not be executed unless supporting essential activities or functions.

   For solicitations where a bid/proposal acceptance period is impacted, COs should issue a bilateral amendment with the vendor(s) involved to reestablish a new acceptance period to ensure further contract award evaluation is possible after appropriations are authorized.

9. **What about inspection/acceptance and receipt of deliverables?**

During the shutdown, Federal government offices are closed. Only employees designated by their bureau/office to perform essential services or those funded by non-lapsing appropriations will report to work. Therefore regular deliveries of supplies and services shall be suspended until the conclusion of the shutdown. Contractors should be informed of the shutdown and instructed not deliver goods or services until the conclusion of the shutdown. As with all correspondence, the contract files should document the telephone calls and emails between the contracting officer and the contractor. If a shutdown occurs, larger or more sensitive contracts should be modified to revise the delivery schedule for non-essential goods and services.

Inspection and acceptance should be completed if at all possible before the shutdown occurs. If this cannot be accomplished, contractors should be informed of the shutdown circumstance and informed that the inspection/acceptance procedures will be continued only after appropriations are enacted but will be extended by the additional number of days that the shutdown continues. Extended inspection and acceptance periods beyond the terms of the contract may not relieve the government of its prompt pay responsibilities.

10. What if there is an emergency during the shutdown that requires contracting support?

Bureau contingency plans must cover the possibility that an emergency could occur during the shutdown that requires contracting support, such as a fire or other natural disaster. Bureau plans must designate contracting personnel, such as contacting officers and contracting officer's representatives, to be in on-call status in case they are needed to come to work during the shutdown to provide support in an emergency.

11. How will contractors communicate with Interior during the shutdown?

Only employees identified by their bureaus to perform essential services will be on hand to communicate with contractors during a government shutdown involving a lapse in appropriations. Each bureau must have a list of otherwise-essential personnel that contractors may contact in its Bureau Contingency Plan. Contracting staff may not be deemed essential only for purposes of providing this communications point of contact.

CONTRACTING AFTER THE SHUTDOWN

12. What happens after the shutdown, when Interior resumes operations?

Contracting Officers must cancel stop-work and suspension of work orders, and modify contracts, as appropriate, to provide available funds. Additionally, COs should follow the

appropriate settlement procedures in FAR Part 49 for contracts terminated in whole or partially for the convenience of the Government.

SYSTEMS AND REPORTING

Contract Action Reporting (FPDS: Federal Procurement Data System – Next Generation)

13. Must I report contract actions during the shutdown?

Yes. If you award an action to support an essential activity you must report contract actions to the FPDS in accordance with FAR 4.6, and DIAPR 2008-08.

14. Will FPDS Support be available during the shutdown?

Yes. If you have issues reporting contract actions to FPDS you may contact the FPDS Support desk at 703-390-5360, or via email at fpdssupport@gcefederal.com.

Other Acquisition Systems

15. Will SAM, FBO, ESRS, FSRS, FBO, PPIRS, CPARS, be available during the shutdown?

Yes, those government-wide systems will be available to support essential activities. If you need assistance with SAM, eSRS, FBO, or FSRS there are several ways you can get help. Please visit https://www.fsd.gov/app/about to choose the way you would prefer to get assistance. If you need assistance with PPIRS you should visit their websites for additional information. Links to all of these systems can be found at https://www.acquisition.gov/.

16. Must I use these systems during the shutdown?

Yes, If you are identified as essential and supporting essential activities during the shutdown, FAR and other Federal and Departmental policy will still apply as it relates to the procurement process, and the use of these systems.

CHARGE CARD

17. Will the GSA SmartPay Card function during a shutdown?

The purchase, travel, fleet, integrated and cardless products will all continue to operate normally and that the banks will continue to provide service in accordance with the GSA

SmartPay 2 Master Contract. A/OPCs should remind cardholders that during a lapse in appropriations, GSA SmartPay cards may only be used to support essential functions or activities that are not funded by lapsed appropriations.

18. Will the travel charge cards still function, too?

Yes. The travel card will still function and vehicles can still be fueled using the fleet card, so no one will be "marooned" due to a non-functioning card. Travelers are required to pay their charge card bills whether or not their travel voucher has been paid.

19. What about automatic payments?

Cardholders should pay particular attention to "automatic" payments they have established with vendors using their purchase cards. In order to prevent purchases that are not proper under a shutdown from occurring, A/OPCs and cardholders may need to review these scheduled payments and take action to halt them, if appropriate.

20. Where can I find additional information about Charge Card during a shutdown?

GSA will be posting FAQs on its SmartPay website: https://smartpay.gsa.gov/blogs/Program-Updates.

FINANCIAL ASSISTANCE

21. How does a Federal government shutdown impact discretionary financial assistance programs?

For financial assistance programs that are funded through annual appropriations, a Federal shutdown will cause a funding gap and a curtailment of bureau/office activities and services. During a lapse in appropriations, new program announcements shall not be posted on Grants.gov, new grant or cooperative awards may not be issued, the execution of new agreements may not be conducted, no renewals or amendments to add funds to a program/project are allowed, and staff may not obligate funds. All new discretionary activities must cease until a new appropriation is enacted by Congress.

The Anti-Deficiency Act prohibits Federal staff from obligating funds before an appropriations measure has been enacted, except as authorized by law.

The Act provides an exception for "emergencies involving the safety of human life or the protection of property." However, "emergencies involving the safety of human life and the protection of property" do not "include the ongoing, regular functions of government, the suspension of which would not imminently threaten the safety of human life or the protection of property." See 31 U.S.C. § 1342.

Federal financial assistance programs that were previously funded by the American Recovery and Reinvestment Act, Hurricane Sandy relief funding, or prior enacted appropriations may continue.

22. How does a lapse in appropriations impact mandatory or earmark spending programs?

Programs funded by non-lapsing appropriations may or may not be impacted by a Federal government shut-down caused by a lapse in appropriations. For example, although the funds needed to make disbursements to beneficiaries may be available automatically through electronic payment systems, pursuant to permanent appropriations, the payments may be processed by employees who are paid with funds provided in annual appropriations. In such a situation, the function of the mandatory program would cease until appropriations were enacted to the salaries of administering employees. Staff administrative planning and oversight of Federal financial assistance programs would cease unless the activities were determined to meet emergency activities and receive management approval.

The program activity for the recipients of mandatory or earmark spending programs that have permanent monies and are funded by laws other than annual appropriations would continue their implementation.

23. Are there financial assistance activities where staff and support services are necessary to continue financial assistance essential services that may involve staff oversight and/or cooperative agreement substantial involvement (e.g. considered essential to protect the safety of human life and property)?

There may be, but bureaus must identify such activities and related personnel and determine that the emergency threshold is met. A non-exclusive list of examples of financial assistance functions to conduct essential activities to the extent that they protect life and property include:

(i) Activities essential to ensure public health and safety, including safe use of food, drugs, and safe use of hazardous materials;
(ii) Protection of Federal lands, buildings, waterways, equipment and other property owned by the Unites States government;
(iii) Law enforcement;
(iv) Emergency and disaster assistance;
(v) Activities that ensure the production of power and maintenance of the power distribution system; and

(vi) Activities necessary to maintain the protection of research property.

24. If a financial assistance program does not meet the threshold for protection of life and property, should substantial involvement in the project activities (i.e., cooperative agreements) by employees continue?

Federal involvement and technical assistance activities must cease during the furlough of employees during a Federal shutdown. When the Federal government resumes business upon enactment of appropriations, agency involvement may resume and the agency may negotiate with recipient(s) for a no cost extension to revise the implementation timeline of the project.

SUSPENSION AND DEBARMENT

25. For any Federal procurement or nonprocurement award activities which may be carried out during a Federal shutdown, must the provisions of FAR 9.4 and 2 CFR Part 180 still be followed?

Yes. Any new awards that are made to support essential activities must only be made to responsible vendors or recipients.

FLEET

26. What happens in the event of a government shutdown for non-essential fleet management operations? i.e., non-law enforcement, security and emergency response.

In the event of a government shutdown, all non-essential fleet management operations and uses of Departmental, both owned and GSA-leased, vehicles must cease until such time as the government commences operations and funding. Immediately upon notification of a lapse of appropriations, employees using government vehicles for non-essential operations should return all DOI provided vehicles to a government provided parking facility. Additionally, employees should return all government provided fleet cards and keys to a secure government location for the duration of the shutdown.

27. What happens if I am using a government provided vehicle for travel during a shutdown?

DOI employees on TDY travel must follow the guidance provided by the Office of Financial Management regarding official travel. As it relates to the government provided vehicle, if the travel is non-essential, the employee must return the vehicle, keys, and fleet card to the appropriate government facility until the government shutdown ends. Only travel for essential activities will be allowed during a shutdown.

28. What if I have authorization for home-to-work use during a shutdown?

In the event of a government shutdown, all non-essential home-to-work authorizations are suspended. The authorizations will immediately go back into effect after the shutdown ends.

29. Can I use the Government Fleet card during a shutdown?

Government provided fleet cards are only to be used for essential fleet management operations as determined in advance by your bureau/office, such as law enforcement, security, and emergency response. Uses for non-essential operation are not permitted during a shutdown, with the exception of using the fleet card to return vehicles to a government facility immediately upon notification of a lapse of appropriations.

Frequently Asked Questions

Travel during a Government Shutdown (2014)

DRAFT

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DRAFT

Frequently Asked Questions

Travel during a Government Shutdown (2014)

1 TDY Travel Question

1.1 What if I am funded by permanent funding or carryover funding and my function is continued in the case of a shut down. Can I travel?

Yes. You can continue your travel if your salary and the travel expenses are funded by a non-lapsing appropriation. (b) (5) [redacted]

1.2 What if I am an essential employee? Can I travel?

You may continue to travel if the purpose of the travel is to perform essential duties (b) (5) [redacted] the protection of life and property. If the purpose of your travel is not for such essential duties, you must return home before a lapse in appropriations, if possible.

1.3 What if I am Traveling on Reimbursable/No Year Money? Do I still have to return home?

If your salary is paid from a lapsing appropriation but your travel is being paid from a non-lapsing appropriation, you will still be expected to return home unless your travel is for an essential activity that is authorized to continue notwithstanding a lapse of appropriations. Your supervisor will direct you to make arrangements with the Department travel management center (TMC) (b) (5) [redacted] to return back to your official duty station prior to a lapse in appropriations, if possible. (b) (5) [redacted].

1.4 What if my travel is being paid by another Federal Agency's appropriated funding? Do I still have to return home?

If your salary is paid from a lapsing appropriation but your travel is being paid from a non-lapsing appropriation, you will still be expected to return home unless your travel is for an essential activity that is authorized to continue notwithstanding a lapse of appropriations. Your supervisor will direct you to make arrangements with the Department TMC (b) (5) [redacted] to return back to your official duty station prior to a lapse in appropriations, if possible. (b) (5) [redacted]

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(b) (5) [redacted]

1.5 Am I allowed to stay at my TDY location for a day or so, in case the shutdown is resolved quickly and it would cost more in airfare for me to return?

No. It is a violation of the Anti-Deficiency Act to work when there is no appropriated funding available. By remaining on TDY you are acting in an official capacity. You must return immediately if the Federal Government is shutdown. (b) (5) [redacted]

1.6 Will I still be paid per diem if my travel day is the Saturday after a lapse in appropriations?

No. Travel expenses may not be paid for periods of time that are not covered by appropriated funding. You should return to your official duty station no later than the (b) (5) [redacted] lapse. (b) (5) [redacted]

1.7 What if I already purchased a non-refundable ticket for the week of the shutdown? Should I just document the cancellation on my charge card statement? How do I re-book the unused portion in the future?

If your purchase of non-refundable airfare was approved by your supervisor on your authorization, you would have to cancel the ticket as you would not be able to travel during a government shutdown. On your charge card statement, you would show that the trip was cancelled, (b) (5) [redacted] due to the government shutdown. (b) (5) [redacted] detail the dates of the work stoppage and the dates of your official trip.

(b) (5) [redacted] will be applied to your government charge card for canceling the ticket. The same explanation should be furnished (b) (5) [redacted]

If you are making travel arrangements during any future continuing resolutions, you should use fully refundable (b) (5) [redacted].

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(b) (5) [redacted].

1.8 If I am on TDY travel and the government shuts down, will I be immediately returned home, or can I continue to receive per diem during the shutdown?

You must immediately return home. [redacted] you may not receive per diem during a government shutdown. Return travel arrangements should be made directly with (b) (5) [redacted] SATO (b) (5) [redacted].

1.9 Do I need to be categorized as an "essential employee" in order to continue to receive per diem during the shutdown?

Non-essential employees may not travel during a government shutdown. (b) (5) [redacted] return to their official duty station as they may not be compensated without a continuing resolution or an appropriation in place.

Essential employees, who must travel, in order to perform essential duties, may do so if approved by their supervisor.

1.10 If the government shuts down and I cannot leave for TDY but I have already ticketed my travel, will I be refunded for airline tickets and lodging?

All official travel reservations for non-essential personnel should be cancelled if a government shutdown is announced. (b) (5) [redacted].

Travelers should (b) (5) [redacted] cancel their lodging reservations if there is a government shutdown. (b) (5) [redacted].

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(b) (5) [redacted]

1.11 For conferences and foreign travel previously approved by the Department, will they be cancelled or curtailed by the Department if (b) (5) [redacted] during the shutdown period?

Travelers attending conferences and performing foreign travel should be directed to return to their official duty station immediately in the event of a government shutdown. (b) (5) [redacted] return travel arrangement will be made through (b) (5) [redacted] SATO (b) (5) [redacted]

1.12 Are non-employee invitational travelers by definition "non-essential personnel" or can the bureau designate them essential personnel if, for example, they are leading a seminar?

It is highly unlikely that any invitational travelers will be deemed "essential." Any such determination will be made on a case-by-case basis as far (b) (5) [redacted] of the appropriations lapse, as possible. All non-essential travelers should be directed to return to their official duty station or residence in the event of a government shutdown. (b) (5) [redacted]

1.13 (b) (5) [redacted]

[redacted]

Frequently Asked Questions

Travel during a Government Shutdown (2014)

1.14 Do I have to come home on the next available flight if a shutdown is announced?

In case of a (b) (5) lapse of funding, you must make arrangements to return (b) (5). (b) (5) [redacted]

1.15 What if the next available flight is scheduled to fly on Saturday, will I get paid for my travel time (i.e. salary) on Saturday?

No. Salary or comp time can (b) be earned during a lapse of appropriations for non-essential employees. All (b) (5) travel should be made in the days (b) to the event of a Government shutdown. Any travel made afterwards, is not eligible for salary compensation.

1.16 If I am on extended TDY, what shall I do in the event of a Government shutdown?

You should make all arrangements to return to your official duty station (b) (5) [redacted] before a lapse in appropriations.

1.17 Should I be arranging official travel for dates after a potential lapse in appropriations?

You should delay making arrangements for official travel (b) (5) [redacted] after a potential lapse in appropriations. (b) (5) [redacted]

1.18 Can we continue to make travel reservations?

You should avoid making travel reservations during this time. If a continuing resolution or an appropriation is passed, you may then book travel, as needed. If you are making travel arrangements during any future continuing resolutions, you should use fully refundable (b) (5) [redacted] fares (b) (5) [redacted].

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1.19 What if I am traveling or supervise someone who has traveled to a remote area without access to communications equipment? What are employees who are in this type of travel situation to do?

(b) (5) [redacted] Messages should be left at the predetermined locations (b) (5) [redacted] the individual to cease travel, if they are designated as non-essential personnel.

2 PCS Questions

2.1 (b) (5) [redacted] employee perform en route travel during a (b) (5) [redacted] shutdown?

No, an employee (b) (5) [redacted] will not be able to perform en route travel during a government shutdown as the [redacted] would not be eligible for the reimbursement of hours [redacted] during an official en route trip.

2.2 Would employees currently in temporary quarters still be entitled (b) (5) [redacted]?

If you are currently in (b) (5) [redacted], at either your old or new duty station, you will be eligible for per diem if your relocation expenses are already obligated, (b) (5) [redacted]

2.3 Can an employee's household goods be picked up and/or delivered during this time?

Yes. The pick up or delivery of household goods is not dependent upon compensating the employee for time as employees are not eligible for reimbursement of hours spent while they oversee the packing and unpacking of their household goods.

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2.4 **If the Government shuts down during my PCS move, does anything (like house hunting trip, en route travel, and temporary quarters) get curtailed? Can I be kicked out of temporary quarters?**

Employees who are authorized relocation expenses must delay any en route travel or house hunting trips until there is appropriated funding available to reimburse hours (b) (5) [redacted] during their trips.

(b) (5) [redacted] Employees are eligible for temporary quarters reimbursement as the payment of temporary quarters is not contingent upon (b) (5) [redacted] the employee for hours worked (b) (5) [redacted].

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Changes to OPM Guidance for Shutdown Furloughs
October 8, 2013

Guidance on Various Topics

The changes below are included in the October 8, 2013, update to OPM's Guidance for Shutdown Furloughs.

Holidays

In Section G (Holidays), we are revising the entire section as follows:

1. **Will an employee "exempt" from furlough be paid for a holiday that occurs during a shutdown?**

   A. Employees are "exempt" from furlough if they are not affected by a lapse in appropriations. As such, an "exempt" employee will be paid for a holiday according to the normal rules governing holidays.

2. **Will furloughed employees be paid for a holiday that occurs during a shutdown furlough?**

   A. Furloughed employees will not receive pay for a holiday that occurs during a shutdown furlough unless authorized by subsequent legislation.

3. **What is the status of an "excepted" employee who does not perform work on a holiday that occurs during a shutdown furlough?**

   A. An "excepted" employee who does not perform work on a holiday must be placed in a furlough status for the holiday and must be provided written notice of the agency's decision to furlough in accordance with the guidance in section P. Procedures. This is because during a lapse of appropriations all affected employees must be (1) at work performing excepted activities or (2) furloughed. This applies with respect to any period of time that is part of an affected employee's regularly scheduled administrative workweek, including a holiday.

4. **Will an "excepted" employee who does not work on a holiday that occurs during a shutdown furlough be paid for the holiday?**

   A. No. An "excepted" employee who does not work on a holiday will be placed in a furlough status for the holiday and will not receive pay for a holiday that occurs during a shutdown furlough unless authorized by subsequent legislation.

5. **Can an "excepted" employee voluntarily report to work on the holiday?**

A. No. Each agency must determine which excepted activities must be performed on a holiday, and which employees are needed to perform those functions. Employees who are not otherwise needed to perform excepted functions on the holiday must be placed in furlough status for that day.

6. **Can "excepted" employees be required to perform work on a holiday that occurs during a shutdown furlough?**

A. Yes. Each agency is responsible for determining which excepted activities must be performed on a holiday in order to carry out functions related to such excepted activities. Failure to report to duty on a holiday is no different than failure to report to work on any other day (see Question F.2).

7. **What pay entitlements will accrue to an "excepted" employee who performs work on a holiday during a shutdown furlough?**

A. The Federal Government will be obligated to pay an excepted employee who performs work on a holiday according to the normal rules governing pay for work on a holiday. For example, under 5 U.S.C. 5546(b), a covered employee would receive his or her rate of basic pay, plus holiday premium pay at a rate equal to the employee's rate of basic pay. In addition, if such an employee performs officially ordered or approved overtime work on a holiday (i.e., work in excess of his or her basic non-overtime work requirement for that day), the employee would receive overtime pay (or compensatory time off) for that work. Of course, an excepted employee cannot receive payment for working on a holiday until an appropriations act or a continuing resolution is enacted.

8. **How do the "in lieu of" holiday rules apply during a shutdown furlough?**

A. When a shutdown furlough is not in effect, all full-time employees, including those on flexible or compressed work schedules, are entitled to an "in lieu of" holiday when a holiday falls on a nonworkday. OPM guidance on "in lieu of" holidays can be found here http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/holidays-work-schedules-and-pay/.

During a shutdown furlough, generally—

- The normal "in lieu of" holiday rules apply to employees "exempt" from furlough.
- The "in lieu of" holiday rules do not apply to furloughed employees (i.e., employees do not receive an "in lieu of" holiday if they are in a furlough status on a holiday).
- When scheduling holidays for "excepted" employees, the normal "in lieu of" holiday rules apply. However, as explained in Questions G.4., G.5., and G.6., otherwise excepted employees must be furloughed on the "in lieu of" holidays unless they are working.

Employee Assistance

In Section I (Employee Assistance), we are revising Question I.1. by adding a link to the U.S. Department of Labor list of Federal Identification Codes as follows:

1. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Employees" at http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp.) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor's website provides links to individual State offices at http://www.servicelocator.org/OWSLinks.asp. A list of Federal Identification Codes (FIC) needed for unemployment compensation applications can be found here http://www.dol.gov/dol/shutdown/FIC_chart.pdf.

Labor Management Relations Implications

In Section Q (Labor Management Relations Implications), we are revising Question Q.4. to replace "i.e." in the second parenthetical with "e.g." as follows:

4. Can union officials perform representational work on "official time" during a shutdown?

A. Exempted employees (i.e. paid by non-appropriated funds) serving as union officials may continue to be granted official time to the same extent and in the same manner as they would under non-shutdown conditions. Other employees serving as union officials may work on official time during a shutdown if such activities fall within the Anti-Deficiency Act's exceptions. The exercise of a union's statutory and/or contractual rights triggered by an excepted management action taken during a shutdown would constitute an excepted activity. Therefore, if an agency has determined that a management action taken during a shutdown is permissible because it is an excepted activity, and such action triggers union representational rights under the collective bargaining agreement or 5 USC chapter 71 (e.g., a formal discussion, a Weingarten interview, or the representation of an employee in connection with an adverse personnel action), official time should be granted to employees to perform representational duties related to that action. With this in mind, agency officials should consult with their General Counsel to evaluate whether contemplated management actions will trigger statutorily or contractually guaranteed representation rights.

Lapse of Appropriation
Human Resource Furlough Questions and Answers

The answers to these questions generally apply to a situation where the Agency implements a shutdown or emergency furlough due to a temporary lapse in appropriations. These questions and answers augment those provided in the Office of Personnel Management's (OPM) Guidance and Information on Furloughs, which can be found at:
http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough

GENERAL ADMINISTRATION

1. What is a furlough?

A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. Under what authority is a furlough taken?

There are three legal authorities under which a furlough can be taken. Furloughs of 30 calendar days or less are covered under adverse action procedures found in Subpart D of 5 CFR 752. Furloughs of more than 30 calendar days are covered under reduction in force procedures found in Subpart B of 5 CFR 351. Furloughs for Senior Executive Service (SES) members are covered Subpart H of 5 CFR Part 359. Furloughs may also be taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, 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) and in accordance with 5 CFR 359.806 (a) for SES Career appointees.

3. What happens to time limited appointments that expired during a furlough?

Furloughs do not extend the time limits for temporary (5 CFR 316.401(c)) and term (5 CFR 316.301(a)) appointments. If you intend to extend the time limited appointment, it may be

extended prior to the furlough or, the individual may be reappointed after the furlough in accordance with 5 CFR 316.401(c) or 5 CFR 316.302(b) (7).

4. How come some employees continue working when the agency implements a furlough.

Under guidance provided the Office of Management and Budget and the Office of Personnel Management, when an agency implements a furlough due to a temporary lapse in appropriations an agency may be required to maintain some level of operations in order to carry out activities required by law and activities to protect safety of human life or protection of property. These essential activities are referred to as excepted activities and require personnel to carry out the business of the agency.

5. Will I receive advance written notice of a furlough?

Not necessarily. While an employee must ultimately receive a written notice of decision to furlough, it is not required that written notice be given before the furlough starts. OPM does say prior written notice is "preferable," but when it is not possible, then any reasonable notice - such as a phone call or verbal communications - is allowed.

6. Who is excepted from a furlough?

In the context of a shutdown furlough, "excepted employees" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.

An excepted employee is not the same as an "**emergency employee,**" which refers to those employees who must report for work in emergency situations, such as severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or which require agencies to close all or part of their activities.

7. Can I take another job while furloughed?

Even while on furlough, you are still a government employee and must still abide by standards of ethical conduct and other rules regarding outside employment. In addition, there are specific statutes which prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

8. Are Presidential appointees subject to a furlough?

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Appointees are NOT subject to furlough by virtue of their status per 5 U.S.C. 6301 (2)(x) or (xi) and 5 CFR 630.211. There is an exception - Former career Senior Executive Service appointees who took appointments at level V of the Executive Schedule or higher and elected to retain SES leave benefits under 5 U.S.C. 3392(c), are subject to furlough at the discretion of the agency.

Presidential appointees, certain IPA assignments, and employees on reimbursable details to other agencies are excluded from furlough action.

9. If I am on a detail or assigned outside my agency, am I subject to a furlough?

Employees on a reimbursable detail from the agency would not be subject to furlough due to lack of funds if full reimbursement continued. If reimbursement were reduced or eliminated, the employee would be subject to furlough. Federal employees assigned to non-federal organizations who are on leave without pay from their federal positions may continue working.

LEAVE

10. If an employee who received a furlough notice had previously scheduled annual or sick leave, what happens to the scheduled leave?

Upon furlough, all scheduled leave is canceled (annual leave, sick leave, military leave, court leave or other). Absences during the furlough may not be charged to leave. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

11. May employees who were designated as excepted from the furlough be granted paid leave?

No. If an excepted employee is unavailable to be at work and perform the duties determined by the employing agency to be allowable activities, then the employee must be furloughed.

12. If an employee who would be furloughed is on approved leave without pay (LWOP) must the LWOP be terminated and the employee furloughed?

No. The status of employees in LWOP is not disturbed unless there is indication that the employee may return from the LWOP during the furlough.

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PAY

13. Will I receive back pay for the period of time I am subject to a furlough ?

Congress would have to pass legislation granting federal employees the pay they missed while they were furloughed. This is what has happened in the past, but there is no guarantee it will happen again.

14. Can I volunteer to work unpaid during a furlough?

No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual.

15. Are contractors located on site also required to not report to work? Or are they allowed to continue their tasks, albeit, without government oversight or monitoring?

Contractors should not "volunteer" their services to an agency during a shutdown if they want to be paid for those services. If, for example, an agency were to suggest to a contractor that they continue working during a shutdown and "we'll figure out how to pay you later," the contractor is at risk of not being able to recover compensation for those services. Agencies may not displace the services of furloughed federal workers by using "volunteer" contractors.

Contractors should also keep in mind that they may not be able to access their work sites if there are no federal employees present to open the building. These are generalities, and details will vary by agency and contract. The best rule of thumb is to discuss these issues with the appropriate agency contracting officer if a shutdown appears to be imminent.

16. How an employee is treated who performs National Guard or Reserve duty while furloughed? Is it a dual compensation situation?

It is not a dual compensation situation because furloughed employees are not in a pay status. They will be compensated by the military and continued to be carried in a LWOP-US status.

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BENEFITS

Federal Employees Health Benefits (FEHB)

17. To what extent does non-pay status affect Federal Employee Health Benefits (FEHB) coverage?

The employee's FEHB coverage will continue even if an agency does not make the premium payments on time. Since the employee will be in a non-pay status, the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.

18. What happens if I want to cancel my Federal Employee Health Benefits coverage while in a non-pay status in order to avoid the expense?

Unlike other types of non-pay status, employees in a non-pay status due to a lapse of appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage. The employee will remain covered; the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.

19. Will an employee continue to be covered under the FEHB program if the agency is unable to make its premium payments on time?

Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

Federal Employees Group Life Insurance (FEGLI)

20. To what extent does non-pay status affect Federal Employees Group Live Insurance coverage?

Life insurance coverage continues for 12 consecutive months while in a non-pay status without cost to the employee or the agency. Neither the employee nor the agency incurs a debt during this period of nonpay

Thrift Savings Plan (TSP)

21. To what extent does non-pay status affect Thrift Savings Plan (TSP) coverage?

Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Thrift Savings Plan (TSP) premium(s). Employees cannot contribute to their TSP account while on furlough. Employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation. The fact sheet can be found at:
https://www.tsp.gov/PDF/formspubs/oc95-4.pdf

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22. Can I obtain a loan from my TSP account while in a non-pay status?

Employees may not obtain a loan from their TSP account while on furlough. For employees with existing TSP Loans, the Internal Revenue Service (IRS) allows your TSP loan payments to be suspended for up to one year of the non-pay period if proper documentation is provided. Interest will accrue while payments are suspended. Employees can make direct payments on their loan from their personal funds while on furlough. For more information on TSP Loans, employees should refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation. The link can be found in Question 22 of this FAQ.

Flexible Spending Account (FSA)

23. To what extent does non-pay status affect Flexible Spending Account (FSA) coverage?

Payroll deductions will cease for any employee that does not receive pay. The employee remains enrolled in FSAFEDS, but eligible health care claims incurred during a non-pay status will not be reimbursed until the employee returns to a pay status and allotments are successfully restarted. The remaining allotments are recalculated over the remaining pay periods to match the participant's election amount. Eligible dependent care expenses incurred during a non-pay status may be reimbursed up to whatever balance is in the employee's dependent care account—as long as the expense incurred during the non-pay status allows the employee (or spouse if married) to work, look for work or attend school full-time. Visit the website, www.fsafeds.com for more information.

Long Term Care (LTC)

24. To what extent does non-pay status affect Long Term Care (LTC) coverage?

Deductions cease when the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue Long Term Care (LTC) coverage, the employee must make payments while in a non-pay status.

Federal Employees Dental and Vision Insurance Plan (FEDVIP)

25. To what extent does non-pay status affect Federal Employees Dental and Vision Insurance Plan (FEDVIP) coverage?

Deductions cease when the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue FEDVIP coverage, the employee must make payments while in a non-pay status.
http://www.opm.gov/healthcare-insurance/dental-vision/

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Retirement Coverage

26. To what extent does non-pay status affect retirement coverage?

Retirement coverage continues for up to 6 months for periods of where federal employees are normally in a non-pay status per calendar year.

UNEMPLOYMENT COMPENSATION (UC)

27. If I am furloughed am I eligible to receive unemployment compensation benefits. Is the UC claim based on the state where you live, or where you work?

It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Employees" at http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp.) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office.

28. Are Human Resources Offices required to provide furloughed Federal employees with an SF-8, Notice to Federal Employee about Unemployment Compensation Insurance? (UC)

Federal agencies are required to provide employees with an SF-8 if they will be in a non-duty status for seven or more days.

29. Is information available as to what the states require before processing a claim for unemployment because of a furlough?

Yes. The list below gives Web sites or instructions for each state when filing an initial claim for unemployment; different procedures often apply when filing claims for additional benefits. You should also note that Kentucky has a Web site – at http://www.oet.ky.gov/des/ui/staterefguide.asp - that lists state Web sites, plus telephone numbers, for about 40 states.

Alabama – http://dir.alabama.gov/uc/Claims/default.aspx
Alaska – http://www.labor.state.ak.us/esd_unemployment_insurance/biff-splash.htm
Arizona – https://www.azdes.gov/esa/pdf/UIB-1015APAMNA.pdf
Arkansas –
http://www.accessarkansas.org/esd/WorkersUnempBenefits/pdf/PDF501_BLANK.pdf
California – https://eapply4ui.edd.ca.gov/
Colorado –
https://wwws.coworkforce.com/ucontinuedclaims/default.asp?ci=0&ps=0&er=0&li=e

Connecticut – https://iic.ctdol.state.ct.us/
Delaware – file through personal application only. Information is at http://www.delawareworks.com/Unemployment/forms/ui_guide-ver0307.pdf
District of Columbia – https://does.dcnetworks.org/InitialClaims/
Florida – https://www2.myflorida.com/apps/uc/fluid/
Georgia – http://www.dol.state.ga.us/js/unemployment_benefits_individuals.htm
Hawaii – file by phone only, by calling 808 643-5555. Information is at http://hawaii.gov/labor/ui/pdf/STEP-BY-STEPS/claimant_process.pdf
Idaho – http://cl.idaho.gov/IW/UIClaim/Main.asp?strMenu=FILECLAIM
Illinois – http://www.ides.state.il.us/individual/certify/default.asp
Indiana – https://uplink.in.gov/CSS
Iowa – http://www.iowaworkforce.org/ui/file1.htm#1
Kansas – https://www.uibenefits.dol.ks.gov/default.asp
Kentucky – http://www.kewes.ky.gov/
Louisiana – https://laors.laworks.net/laclaims/website/
Maine – https://portalxw.bisoex.state.me.us/mics/
Maryland – electronic filing not permitted if employee worked for the Federal government in the past 18 months. File by phone at 410 949-0022 in the Baltimore area, or 1 800 827-4839 outside the Baltimore area. Information is at http://www.dllr.state.md.us/employment/ui/index.html
Massachusetts – initial claim by phone or in person only. File by phone at 1 877 626-6800 from Massachusetts, 617 626-6800 outside Massachusetts. Information is at http://www.mass.gov/?pageID=dlwdconstituent&L=2&L0=Home&L1=Claimants&sid=Edwd
Michigan – http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html
Minnesota – http://www.uimn.org/ui/webclaim.htm
Mississippi – http://mdes.ms.gov/wps/PA_1_0_CH/docs/UnemploymentInsurance/UI-501.pdf - form must then be brought in person to a Mississippi Job Center
Missouri – https://www.ui.dolir.mo.gov/som/
Montana – https://app.mt.gov/ui4u/index
Nebraska – https://uibenefits.nwd.ne.gov/BPSWeb/jsp/BPSClaimantWelcome.jsp
Nevada – http://www.ui.nvdetr.org/UI_Agreement.html
New Hampshire – https://claims.nhes.state.nh.us/weblogic/Welcome
New Jersey – https://wnjpin.state.nj.us/cont/index.html
New Mexico – http://www.dws.state.nm.us/
New York – https://ui.labor.state.ny.us/UBC/home.do?FF_LOCALE=1
North Carolina – https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp
North Dakota – https://secure.apps.state.nd.us/jsnd/uiiaclaims/login.htm
Ohio – http://unemployment.ohio.gov/
Oklahoma – https://unemployment.state.ok.us/instructions.asp?x=n
Oregon – https://ssl6.emp.state.or.us/ocs4/ic/begin.cfm?u=20071204A073631B24227692.2816&lang=E
Pennsylvania – https://www.paclaims.state.pa.us/UCEN/
Puerto Rico – file by phone only, by calling 1-888-238-8889
Rhode Island – https://uiclaims.state.ri.us/RI-ICS/Intro/index.aspx?AC=yes
South Carolina – http://www.sces.org/ui/claimant/index.htm

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South Dakota –
https://www.state.sd.us/Applications/LD70UIbp/Secure/LD70initialClaims/MainICI.asp
Tennessee – https://www.tennesseeanytime.org/labor/uib/index.html
Texas – http://www.twc.state.tx.us/ui/uiclaim.html
Utah – http://jobs.utah.gov/ui/WebInitialCubs/Welcome.aspx
Vermont – file by phone only, by calling 1-877-214-3330. Information is at http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx
Virginia – http://www.vec.virginia.gov/vecportal/seeker/jslogin.cfm
Virgin Islands – file in person only. Contact information is listed at http://www.vidol.gov/OP/Contact.htm
Washington – http://www.wa.gov/esd/ui/icapp/_starticappen.htm
West Virginia – http://www.wvuc.org/
Wisconsin – https://ucclaim-wi.org/InternetInitialClaims/InfoBasicRequirements.asp
Wyoming – http://wyui.doe.state.wy.us/

30. I heard that employees who are lower than a Grade 9 Step 5 would not be required to pay back UC benefits if they are later paid for the furlough period. Is this correct?

No. The decision on whether or not employees would have to pay back UC benefits would be decided by each state agency based on their UC law.

31. Can excepted employees file a UC claim, since they are not getting paid?

No. Excepted employees cannot file a UC claim, since they are not unemployed. In addition, in order to receive UC benefits, you must be able and available to accept work. Excepted employees would not meet this requirement since they are already working.

INJURY COMPENSATION

32. If an employee was in receipt of Federal Employee Compensation Act (FECA) wage-loss compensation and was then furloughed, what effect would the furlough have on his/her compensation?

None. FECA wage-loss compensation is not considered wages and, therefore, is not affected by a lack of funding at the employing agency.

33. If an employee sustains a traumatic injury at work and begins to receive Continuation Of Pay (COP) what happens to the COP when he is furloughed?

The Department of Labor's Office of Workers' Compensation Programs which administers the Federal Employees' Compensation Act (FECA) advises that, in the event of a Government shutdown, an employee who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the agency does not have monies available to pay the salary of that employee. If the agency does not have monies to pay salary during the shutdown but the

agency's budget is subsequently restored in such a way as to allow for retroactive payment of salary during the shutdown period, the employee should receive COP for any period of disability that occurs within the shutdown. In the event an agency is legally unable to pay COP to an employee because of a lapse in appropriations, the employee may file a claim for regular FECA wage loss compensation for that period.

EMPLOYEE RELATIONS

34. What information should be included in the notice of decision when no advance notice is issued?

The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations. The notice must include a statement of applicable appeal and grievance rights. If a copy of the Merit Systems Protection Board appeal form is not attached to the decision notice, the notice should include information on how to obtain a copy of the form.

35. What appeal rights do I have if I am furloughed?

Eligible employees may be able to appeal to the MSPB or through a negotiated grievance process if the employee is a member of a bargaining unit, but not both.

DRAFT

To: All Employees:

From: Designated Management Official:

Subject: Notice of Furlough Due to Lapse of Appropriations:

Please be advised that in the absence of either an FY 2014 appropriation or a Continuing Resolution for the Department of the Interior, no further financial obligations may be incurred by DOI, except for those related to the orderly suspension of DOI operations or performance of excepted activities as defined in the Office of Management and Budget memorandum for Heads of Executive Departments and Agencies M-11-13 dated April 7, 2011. Employees whose services are not considered to be excepted or who are not funded by non-lapsing funds will be placed in a furlough status effective the first regular duty date following September 30, 2013. Thus, if you have been identified as a non-excepted employee, this letter serves to inform you of your furlough status effective not earlier than 12:00 am October 1, 2013, if an appropriation is not enacted.

In the event of a furlough, you are to report to duty on your first scheduled work day for information on the activities necessary to ensure an orderly suspension of operations. **If you are subject to furlough, you will receive an individual furlough notice informing you of the final decision.** This furlough is not expected to exceed 30 days. Therefore, this furlough notice would expire no later than October 31, 2013. You should monitor public broadcasts, news media, the internet and other means for further updates. Upon notification that a continuing resolution or a FY 2014 appropriation for DOI has been approved, you will be expected to return to work on your next regular duty day. You will be paid for any hours worked after an appropriation for DOI has been approved.

Employees designated as excepted, as defined in OMB Memorandum M-11-13 dated April 7, 2011, are required to report for duty as scheduled. If you are designated as an excepted employee, you are performing one of the excepted activities defined in the OMB or DOI memorandum. Employees whose activities are supported by alternative revenue sources (not subject to lapse) are not affected by this furlough notice and should continue operations. You will be individually notified of your status. Any questions concerning your specific status should be addressed to your immediate supervisor.

In exigent circumstances furloughed employees may be on call and required to report during this period as needed to perform excepted activities. All employees are encouraged to provide current contact information to their immediate supervisor. Employees who are required to report will be contacted by the appropriate management official and will be advised as to when they will need to report.

The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404 (d) (2) and in accordance with 5 CFR 359.806(a) for SES career appointees. This action may be taken by various means of communication including paper, electronic, or verbal notification based on time constraints or other reasonable/applicable means to ensure the orderly suspension of Government operations.

During the furlough period, non-excepted employees will be in a nonpaid, non-duty status and will not be permitted to serve as an unpaid volunteer, and must remain away from their work place unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period will be canceled. Alternative Work Schedules (AWS) will be canceled for all DOI employees during the furlough period.

In the event of a furlough, you may file an appeal with the Merit Systems Protection Board (MSPB). You must be an "employee" as defined in accordance with 5 U.S.C. 7511 and 5 C.F.R. Part 752 as summarized in relevant part below:

> (a) If you have completed your probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment, you may appeal this action to the MSPB.
>
> (b) If you are in the excepted service and have veteran's preference, you may appeal to the MSPB if you have completed one year of current continuous service in the same or similar position as the one that you now hold.
>
> (c) If you are in the excepted service but do not have veteran's preference and are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service, you may appeal to the MSPB if you have completed two years of current continuous service in the same or similar position in an Executive agency under other than a temporary appointment that is limited to two years or less.
>
> (d) The SES career appointees adversely affected may also appeal this furlough action to the MSPB.

If you have the right of appeal to the 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 can find the appropriate regulations and the address of the MSPB Regional Office having jurisdiction on the MSPB website, www.mspb.gov. You may file an appeal electronically at https://e-appeal.mspb.gov/ If you do not want to utilize the electronic filing feature, you may file a paper appeal by using the following link: https://e-appeal.mspb.gov/PDFTemplate/MspbAppealForm.pdf. If either link is not functioning, please

contact your servicing Human Resources Office for information or additional instructions.

Bargaining unit employees may file a grievance concerning this action in accordance with the applicable negotiated collective bargaining agreement or may appeal to MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact your local union official or your bureau/office's servicing Human Resources office. DOI's administrative grievance procedures specifically exclude matters appealable to the MSPB. For specific information, contact your bureau/office servicing Human Resources Office.

To: Name of Employees

From:

Subject: Furlough Decision Notice

Position/location [optional]

Please be advised that in the absence of either an FY 2014 appropriation, or a Continuing Resolution for the Department of the Interior (DOI), no further financial obligations may be incurred by DOI except for those related to the orderly suspension of DOI operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) memorandum for Heads of Executive Departments and Agencies M-11-13 dated April 7, 2011. Because the work you perform does not meet the criteria to be continued during a lapse of appropriation, you are hereby notified that you are placed in a furlough status effective one minute past midnight on Oct 1, 2013.

This furlough, e.g., nonpay, nonworking status, is not expected to exceed 30 days. Therefore, this furlough notice expires no later than October 30, 2013. You should monitor public broadcasts, news media, the internet, and other means for further updates. Upon notification that a Continuing Resolution or a FY 2014 appropriation for DOI has been approved, you will be expected to return to work on your next regular duty day.

In exigent circumstances, you may be required to be on call to report for duty and required to work during this period as needed to perform excepted activities. You are encouraged to provide current contact information to your immediate supervisor. If you are required to report, you will be contacted by an appropriate management official and you will be advised as to when and where your services are needed.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, 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). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived. This decision notice is being sent to employees through various forms of communication, including email, facsimile and hand delivery.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will

not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. Alternative Work Schedules (AWS) are canceled for all DOI employees during the furlough period.

You may be able to file an appeal of this action with the Merit Systems Protection Board (MSPB). You must be an "employee" as defined in accordance with 5 U.S.C. 7511 and 5 C.F.R. Part 752 as summarized in relevant part below:

> (a) If you have completed your probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment, you may appeal this action to the MSPB.
>
> (b) If you are in the excepted service and have veteran's preference, you may appeal to the MSPB if you have completed one year of current continuous service in the same or similar position as the one that you now hold.
>
> (c) If you are in the excepted service but do not have veteran's preference and are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service, you may appeal to the MSPB if you have completed two years of current continuous service in the same or similar position in an Executive agency under other than a temporary appointment that is limited to two years or less.
>
> (d) The SES career appointees adversely affected may also appeal this furlough action to the MSPB.

If you have the right of appeal to the 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 about the appeals process and a copy of the appeals form from the MSPB website at http://www.mspb.gov/appeals/appeals.htm. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is **[identify appropriate regional office].** MSPB also offers the option of electronic filing at https://e-appeal.mspb.gov/. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

Bargaining unit employees may file a grievance concerning this action in accordance with the applicable negotiated collective bargaining agreement [**Provide negotiated agreement citation**] or may appeal to MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact your local union official or your bureau/office's servicing Human Resources Office. The DOI's administrative grievance procedures specifically exclude matters appealable to the MSPB. For specific information, contact your bureau/office servicing Human Resources Office.

_____ _____

Deciding Official Date

[Each bureau may decide whether to request acknowledgment. Please edit accordingly]
I acknowledge receipt of this decision. *[optional]*

_____ _____

Employee's Signature Date

FREQUENTLY ASKED QUESTIONS CONCERNING CONTINGENCY PLANNING FOR LAPSE IN APPROPRIATIONS - BUILDING SECURITY AND FACILITIES MANAGEMENT
FOR THE MAIN AND SOUTH INTERIOR BUILDINGS

The FAQs below are designed to respond to questions posed by agency personnel concerning building access and available facility and administrative services at DOI headquarters. Only the minimum level of services to address the basic needs of essential personnel will be provided. :

A. Access to the Buildings / Security

Q1: How do you gain entry into the Main or South Interior Buildings?

A1: As is normal practice, the security guards will be checking access badges at all entrances. Additionally, the guards will be verifying that each person entering the MIB or SIB is on a list that contains "excepted" employees. If an employee's name is not on the list, they will not be permitted to enter the building. Based on changes made in early 2013 for the SIB, if access is required after 8:00 p.m. on government workdays, the employee must be escorted to the SIB by a security guard.

Q2: Will the Main and South Interior Buildings be open to the public?

A2: No, the public will not be able to access our facilities. If an employee at the MIB or SIB is conducting a meeting with an outside guest, the guest must be signed-in by the employee at the C or E Street entrance lobby and be escorted by the employee to and from the meeting. Credit Union customers will be escorted to the credit union by security.

B: Building and Administrative Services

Q1: What utilities and building systems will be in service?

A1: All utilities (electricity, steam, and water) will be provided. Restrooms, water fountains and the heating, ventilation and air conditioning systems will be in service for occupied areas of the Main and South Interior Buildings.

Q2: What custodial services will be provided?

A2: Basic services (e.g., daily kitchenette cleaning, weekly trash and recyclables pick-up, office and restroom cleaning) will be provided to occupied areas of the Main and South Interior Buildings. Cyclical work such as floor maintenance will not be performed.

Q3: Will building maintenance and repairs be performed?

A3: Yes, but service will be limited and response times may increase. Service will only be provided in occupied areas or on equipment or systems affecting occupied areas.

Q4: Will parking be provided for personnel at the Main and South Interior Buildings?

A4: Yes. Existing permit holders for the MIB/SIB and the Federal Reserve should park in the areas they are normally assigned. Parking Ramp G will be closed.

Q5: What food/beverage concessions will be available?

A5: The Bison Bistro and Watering Hole will be closed. The snack bar on the 4th floor of the MIB will be open and the vending machines throughout the complex will be available. Employees are encouraged to bring lunch and snacks to work; especially, if they have special dietary needs.

Q6: Will mail and messenger service be provided?

A6: Yes, mail services will be provided including delivery of FedEx , UPS and priority mail.

Q7: Will the MIB ramp D loading dock be open?

A7: Yes. The loading dock will be open to receive deliveries and staff will be available for delivery to final destinations in the building.

Q8: Will staff be available to reserve conference rooms?

A8: Yes, staff will be available to assist will reserving conference rooms; however, there may be delays in securing audio-visual and telecommunications support.

Q9: Will the bureau shuttle services be in operation?

A9: No, shuttle services will not be available.

Q10: What should I do if there is an emergency?

A10: If it is related to a medical emergency, call 911. If there is a fire or security-related emergency, call the Security Command Center at 202-208-5803. If there is a building emergency (e.g., flood, plumbing problem, power outage), call the Office of Facilities and Administrative (OFAS) Service Desk at 202-208-2222.

Q11: Will the Child Care Center be open?

A11: No. The Child Care Center will be closed.

Q12: Will the Interior Federal Credit Union be open?

A12: Yes. The Credit Open, located in the basement of the MIB, will be open 9:00 a.m. – 4:00 p.m. daily.

Q13: Will the IDRA Fitness Center, Store, Hair Salon and Post Office be open?

A13: No. These services will be closed.

Q14: Will the Indian Craft Shop be open?

A14: No. The Indian Craft Shop will be closed.

Q15: Which building and administrative services will NOT be provided or available during the shutdown?

A15:
- Transit Subsidy
- Personal Property
- Moving Services
- Printing and Graphics
- Interior Library
- Space Management Services
- Office Alteration Services (e.g., picture hanging, door and desk signs, etc.)
- Alcohol Waivers

September 16, 2013