

U.S. MERIT SYSTEMS PROTECTION BOARD

SHUTDOWN PLAN

CONTINGENCY PLAN FOR PERIODS

OF

LAPSED APPROPRIATIONS

| Table 1. Lapse Plan Summary Overview Less Than 5 Days | |
|--|-------------------------------------|
| Estimated time (to nearest half day) required to complete shutdown activities: | Timetable and Actions in Part II B. |
| Total number of agency employees expected to be on board before implementation of the plan: | 228 FTEs |
| Total number of employees to be retained under the plan for each of the following categories: | |
| Compensation is financed by a resource other than annual appropriations: | 0 FTEs |
| Necessary to perform activities expressly authorized by law: | 0 FTEs |
| Necessary to perform activities necessarily implied by law: | 0 FTEs |
| Necessary to the discharge of the President's constitutional duties and powers: | 0 FTEs |
| Necessary to protect life and property: | 0 FTEs |
| | |
| Brief summary of significant agency activities that will cease during a lapse: | |
| During a lapse in appropriations MSPB will cease all of its significant agency activities: protecting the Federal merit system through case adjudication, performing merit systems studies, and reviewing significant actions of the Office of Personnel Management. | |
| Brief summary of significant agency activities that will continue during a lapse: | |
| MSPB activities would be limited to those activities necessary to preserve MSPB property, including property in the form of data. Additionally, MSPB's three Board Members, appointed by the President and confirmed by the Senate, are not covered by the leave system, cannot be placed in a non-pay/non-duty status, and are not subject to a furlough. | |

| Table 2. Lapse Plan Summary Overview Greater Than 5 Days | |
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| Estimated time (to nearest half day) required to complete shutdown activities: | Timetable and Actions in Part II B. |
| Total number of agency employees expected to be on board before implementation of the plan: | 228 FTEs |
| Total number of employees to be retained under the plan for each of the following categories: | |
| Compensation is financed by a resource other than annual appropriations: | 0 FTEs |
| Necessary to perform activities expressly authorized by law: | 0 FTEs |
| Necessary to perform activities necessarily implied by law: | 0 FTEs |
| Necessary to the discharge of the President’s constitutional duties and powers: | 0 FTEs |
| Necessary to protect life and property: | 0 FTEs |
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| Brief summary of significant agency activities that will continue during a lapse: | |
| <i>See Table 1, above.</i> | |

INTRODUCTION

COVERAGE

Pursuant to the Office of Management and Budget (OMB) Circular No. A-11 (2019), this plan and its exhibits apply to the orderly shutdown of all Merit Systems Protection Board (MSPB) functions and activities in the event of a lapse in appropriations for normal agency operations. The plan does not address other unexpected contingencies.

DEFINITIONS

- “Chief executive and administrative officer” (CEAO): Chairman, Acting Chairman, or other individual heading the agency pursuant to MSPB’s Continuity of Operations Plan (COOP).
- “Excepted activities”: Activities authorized by law to continue during a lapse in appropriations and exhaustion of funds.
- “Exhaustion of funds”: The point at which all available MSPB funds have been obligated.
- “Lapse in appropriations”: The date on which the MSPB has no new funding authority due to lack of action by Congress, generally at the beginning of a fiscal year.
- “Shutdown activities”: Those activities necessary to complete an orderly shutdown of the agency and to limit operations to excepted activities.

OVERVIEW

The MSPB is an independent quasi-judicial agency of the Federal government charged with protecting the Federal merit system through case adjudication, performing merit systems studies, and reviewing significant actions of the Office of Personnel Management. In the event of a lapse in appropriations, MSPB will cease its significant functions, and limit activities solely to the function of protecting MSPB’s own property, including property in the form of data. Unless otherwise authorized by MSPB’s CAEO in consultation with OMB, after the completion of orderly shutdown activities, MSPB employees will otherwise limit activity to checking email once per day during the shutdown.

PART I

SIGNIFICANT FUNCTIONS TO BE CEASED

- A. The Attorney General's decision of January 16, 1981 and subsequent OMB memoranda provide that only excepted functions are to be continued during any appropriations hiatus. Excepted functions are defined as those necessary to prevent a compromise to the safety of human life or the protection of property. In addition to engaging in these excepted functions during an appropriation hiatus, agencies may engage in activities necessary to "clos[e] down operations funded by accounts that have not received appropriations." OMB Memorandum M-91-02 (October 5, 1992).
- B. Protecting MSPB's own property, including property in the form of data, is the only agency function which appears to meet this definition of excepted activity.
- C. With the exception of the property-protection function, the agency does not generally perform excepted functions as defined in Section A. Accordingly, after reallocating all available funds to the extent legally permissible to forestall the funding interruption date as long as possible, MSPB will largely shut down. Significant agency activities that will cease during a lapse in appropriations include the adjudication of appeals; performing merit systems studies; reviewing significant actions of the Office of Personnel Management (OPM); litigation; responding to congressional, Freedom of Information Act, Privacy Act, or other requests from individuals or entities outside the agency; and any other functions unrelated to protecting property. Part II below describes the actions which will be required to effect such a shut down.
- D. Unless otherwise authorized by MSPB's CEO in consultation with OMB, after the completion of orderly shutdown activities, MSPB employees will limit activity to checking email. MSPB employees will be expected to check their work email once per day during the shutdown.

PART II

STEPS TO COMPLETE SHUTDOWN ACTIVITIES

A. INTRODUCTION

Actions are required prior to, during, and immediately following an exhaustion of all available MSPB funds. These actions and the time frames in which they are to be performed are set forth below. The date indicated in the checklist represents:

1. Work days prior to no funds (NF – number of work days)
2. Date of no funds (NF), and
3. Work days following no funds (NF + number of work days).

B. TIMETABLE AND ACTIONS

| DATES | ACTIONS |
|-------|---|
| NF-7 | <p>The Director of the Office of Financial and Administrative Management (FAM) determines the amount of funds remaining and the number of days the agency can possibly operate before a shutdown will be required. The Director of FAM notifies the CEAO and Executive Director (ED) of the availability of funds on a daily basis.</p> <p>If the CEAO or ED decide to consider reallocating funds to forestall the funding interruption date, they notify the Director of FAM, the General Counsel, and the Legislative Counsel within the Office of General Counsel (OGC).</p> <p>The Legislative Counsel notifies the appropriate congressional committees of potential reallocation of funds.</p> |
| NF-6 | <p>The ED issues notice to all employees (Exhibit 1) informing them of possible lapse in funding, unless instructed by OMB or OPM to withhold communications until directed.</p> |
| NF-5 | <p>After consulting with the CAEO, the ED informs offices of which staff will be authorized to perform excepted activities and which excepted activity each employee will perform when all funds are exhausted using the criteria established in Part I.</p> |
| NF-4 | <p>Office Directors and Regional Directors (RDs)/Chief Administrative Judges (CAJs) confirm emergency contact information for their staff, e.g.,</p> |

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| | on wallet cards. |
| NF-3 | <p>The Director of FAM, in consultation with Office Directors and RDs/CAJs, identifies those contracts that should be kept in place or entered into.</p> <p>OGC reminds all employees of the ethics restrictions regarding outside work and of the need to solicit any ethics guidance prior to the beginning of a lapse in appropriations, when ethics guidance will not be available.</p> <p>Office Directors and RDs/CAJs require employees in a travel status to return to duty station unless travel is for purposes of shutdown activities.</p> |
| NF-2 | The Budget Officer (FAM/BO) prepares notice of agency funding (Exhibit 2) and submits to ED for signature. |
| NF-1 | <p>The ED issues notice (Exhibit 2) to all employees informing them of the exhaustion of all available funds and the possibility employees will have to be furloughed. The notice informs employees of the steps that may be necessary for the orderly suspension of agency activities, that employees will only have up to four hours on the first business day after the lapse in funding to complete the steps, that some of the steps may be completed in anticipation of a possible shutdown, and that with the prior permission of a supervisor the steps may be performed remotely after the commencement of a shutdown.</p> <p>The ED authorizes FAM/HR to prepare furlough notices for distribution to employees not being retained to perform excepted functions (Exhibit 3).</p> |
| NF | <p>The ED notifies Office Directors and RDs/CAJs of those employees who will not be furloughed so they can perform excepted activities.</p> <p>For all other employees, FAM/HR distributes furlough notices to employees using their official agency email address requesting affirmative acknowledgement of receipt from the employee. Employee receipt may be acknowledged by reply email. Employees may receive and acknowledge the furlough notice from home.</p> <p>FAM/HR's email reminds employees that they may perform only those functions associated with the orderly suspension of agency activities, e.g.:</p> <ol style="list-style-type: none"> 1. Notify outside parties of agency status, including all courts in which the MSPB has pending litigation. |

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| | <ol style="list-style-type: none"> 2. Cancel meetings, etc. 3. Secure all files. 4. Document status of individual cases and projects. 5. Date stamp and secure all mail received but do not process further. 6. Answer telephones, but only to inform callers of our status and not to respond to new business matters unless it is of an emergency nature. 7. Place an out of office message on voicemail and email. <p>These activities may be performed remotely with the prior permission of a supervisor,</p> <p>The Office of Regional Operations (ORO), the Office of the Clerk of the Board (OCB), the Office of Appeals Counsel (OAC) and OGC terminate appeal, outreach, and mediation proceedings. The Office of Policy and Evaluation (OPE) terminates studies and surveys.</p> <p>Office Directors and RDs/CAJs remind employees to check email once per day during the shutdown.</p> <p>Office Directors and RDs/CAJs excuse personnel receiving furlough notices after they complete shutdown activities.</p> <p>Director of FAM informs all offices that no obligations can be incurred without his/her or FAM/BO's prior approval.</p> |
| NF+1 | The ED consults with OMB and OPM regarding shutdown activities. |
| NF+2 to +28 | Continue excepted activities as defined, and authorized by the CAEO. |
| NF+29 | <p>The ED, after consulting the CAEO, authorizes FAM/HR, if necessary, to issue second furlough notices according to MSPB policies and appropriate regulations (Exhibit 4).</p> <p>The ED, after consulting the CAEO, authorizes the Director of FAM to issue termination notices to MSPB contractors and termination notices for contracts with vendors/contractors.</p> <p>Continue excepted activities as defined, and authorized by the CAEO.</p> |
| NF+30 | Continue excepted activities as defined, and authorized by the CAEO. |

PART III

STATEMENT OF TOTAL NUMBER OF AGENCY EMPLOYEES AFFECTED

Approximately 228 agency employees are expected to be on board before implementation of this plan. MSPB personnel will be divided into two categories: (1) employees in non-pay, non-work (or furlough) status and (2) those in a delayed-pay work status performing excepted functions. Employees in the non-pay, non-work category will be furloughed at the time that the agency is required by law to continue only excepted activities. Employees in the delayed-pay work category will be retained, but only authorized to carry on those excepted activities as defined, and authorized by the CAEO.

The MSPB has no employees in the following categories:

1. Their compensation is financed by a resource other than annual appropriations;
2. They are necessary to perform activities expressly authorized by law;
3. They are necessary to perform activities necessarily implied by law;
4. They are necessary to the discharge of the President's constitutional duties and powers;
and,
5. They are necessary to protect life and property (with the exception of data, and only if that becomes necessary during a lapse in appropriations).

PART IV

RESPONSIBILITIES AND AUTHORITIES OF EACH COMPONENT WITHIN MSPB

Chief Executive and Administrative Officer (CEAO):

- a. Ensures execution of the Shutdown Plan.

Before lapse

- b. Determines the excepted functions of the agency.
- c. Submits the list of excepted functions to OMB for transmittal to Congress, if necessary.
- d. Approves the list of excepted employees and those to be furloughed.

During lapse

- e. Consults with OMB, ED and General Counsel regarding any additional activities that may be considered excepted.

Executive Director (ED):

Before lapse

- a. Assists the CEAO in determining the agency's excepted functions.
- b. Assists the CEAO with ensuring the implementation of the Shutdown Plan.
- c. Provides to the CEAO for approval the list of employees to perform any excepted activities.
- d. Informs offices which employees will be authorized to perform excepted functions.
- e. Issues notice of general information on agency funding to all employees (Exhibit 1).
- f. Signs notice to all employees indicating that all available funds have been exhausted (Exhibit 2).
- g. Authorizes FAM/HR to prepare and to provide furlough notices to be issued to furloughed employees.

During lapse

- h. Consults with OMB and OPM regarding shutdown activities.
- i. Authorizes FAM/HR to prepare and to provide furlough notices, where applicable, to any employees initially retained for excepted functions when their services are no longer needed.
- j. In consultation with the CEAO, and as necessary, designates employees to perform excepted functions that were not originally identified.
- k. Authorizes the Director of FAM to prepare and issue notices of extended furloughs, if shutdown exceeds 30 days.

The Office of the General Counsel (OGC):

Before lapse

- a. Assists the CAEO in determining the agency's excepted functions.
- b. Provides the CAEO and MSPB staff with legal advice pertaining to shutdown activities or matters stemming from such activities prior to and during a shutdown.
- c. Drafts legal responses relating to issues arising from an exhaustion of funds.
- d. Defends or provides legal assistance to the Department of Justice to defend the MSPB in judicial proceedings arising from a lapse in appropriations or an exhaustion of funds.
- e. As directed by the CAEO or ED, ensures the Legislative Counsel coordinates with the appropriate congressional committees to reallocate available funds as necessary in collaboration with the Director of FAM or his/her designee.
- f. Consults, as necessary, with the employees' Professional Association regarding shutdown actions that may impact bargaining unit employees.
- g. Identifies all pending litigation and notifies courts that the MSPB will be unable to participate in those cases during the duration of the shutdown.
- h. Issues ethics guidance to employees prior to the furlough.

The Office of Financial and Administrative Management (FAM):

Before lapse

- a. Determines the amount of funds available to operate at the earliest indication of funding difficulty.
- b. Advises the ED of the availability of funds.
- c. Reallocates, to the extent permitted and as directed by the CAEO or Executive Director, all available funds in order to forestall the funding interruption date as long as possible prior to initiation of orderly shutdown activities.
- d. If funds are reallocated, determines time period that the agency can operate before all available funds are exhausted.
- e. Notifies the ED when all available funds have been exhausted.
- f. Reviews lists of employees to be excepted and those to be furloughed to assure that each employee's name appears on either the excepted list or the furlough list.

Orderly shutdown

- g. Ensures personnel payrolls for periods prior to funding interruption are processed.
- h. Upon authorization of the ED, reviews and ensures issuance of furlough notices to all affected employees and any employee initially retained for excepted functions whose status subsequently changes (Exhibit 3).
- i. Advises employees to monitor email once a day and notifies employees of their obligation to report for work at the beginning of their next regular tour of duty after such notification (Exhibits 3 and 4).
- j. Directs the processing of personnel records in connection with the issuance of furlough notices.

- k. Identifies to the ED, the FAM/BO, and the Contracting Officer those contracts that should be kept in place or entered into to provide support services (e.g., data backup, telecommunications, email, and cellular device services).
- l. Issues “stop work” orders to MSPB contractors for contracts other than those deemed excepted when all funds are expended (Exhibit 7).
- m. Provides notice of agency funding (Exhibit 2), revised as necessary, to the ED for signature.

During lapse

- n. Takes necessary action to adjust allotments as appropriate during periods of lapsed appropriations.
- o. Ensures that no contractual or other financial obligations are entered into after a lapse in appropriations other than those deemed necessary to the shutdown.
- p. Ensures that funds are not disbursed.
- q. Issues termination notices to MSPB contractors for contracts other than those deemed excepted when shutdown exceeds 30 days (Exhibit 8).
- r. Issues or directs, upon authorization of the ED, extended furlough notices to appropriate personnel when shutdown exceeds 30 days (Exhibit 4).

After lapse

- s. Takes, in its discretion, additional actions using available resources (e.g., email, MSPB emergency information telephone number, MSPB website) to notify employees of funding approval, their obligation to return to duty at the beginning of their next regular tour of duty, and the availability of workplace flexibilities, if necessary, for employees that are unable to immediately return to work.
- t. Notifies contractors of the availability of funds and cancels “stop work” orders for contractors as soon as practicable.

The Office of the Clerk of the Board (OCB):

Orderly shutdown

- a. Coordinates and issues a press release on the status of the agency.
- b. Coordinates with IRM to update agency website with relevant shutdown information.
- c. Notifies administrative law judges and administrative judges to “stop work” on pending cases and suspend related activities.

The Office of Regional Operations (ORO) & Regional Directors, and the Office of Appeals Counsel (OAC):

Orderly shutdown

- a. Secures/closes offices.
- b. Secures records and documents the status of cases.

- c. Submits final purchase card statement.
- d. Cancels hearings and court reporters, mediations, and any outreach activities.
- e. As necessary, contacts parties regarding shutdown.

The Office of Information Resources Management (IRM):

Before lapse

- a. Provides instruction for changing voicemail and email out-of-office messages.
- b. Determine whether to close down e-Appeal Online during the shutdown.

Orderly shutdown

- c. Ensures computer operations/shutdown.
- d. Suspends password expirations to facilitate orderly resumption of operations.
- e. Posts the press release, adds banners to the public website, e-Appeal Online and the Extranet, and posts shutdown status on Twitter.

During lapse

- f. Monitors tape backups to ensure they are replaced at appropriate intervals to avoid potential data loss.

After lapse

- g. Ensures reactivation of idle systems in time for resumption of activities without any data loss or interruption.