

U.S. MERIT SYSTEMS PROTECTION BOARD



PLAN FOR ORDERLY SHUTDOWN DUE TO A LAPSE IN 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:	163 FTEs
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	162 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:	1 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
Summary of significant agency activities that will cease during a lapse:	
During a lapse in appropriations MSPB will cease all 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.	
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. MSPB's Acting Chairman is presidentially appointed with Senate confirmation (PAS). The position is not covered by the leave system and cannot be placed in a non-pay/non-duty status, and therefore, the position is not subject to furlough.	
MSPB has 23 employees who we have been designated as "on call" to support IT and adjudication activities. This includes personnel who may be called upon during a shutdown to perform discrete human resources, budget, and legal counsel tasks.	

Table 2. Lapse Plan Summary Overview Greater 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:	163 FTEs
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	162 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:	1 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 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 (2021), 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. The action items set forth in this plan may be modified or not implemented based on direction and/or guidance from the Administration, including direction and guidance administered by OMB and the Office of Personnel Management (OPM).

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 CEOA 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 lapse in appropriations. 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 a lapse in appropriations, 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. Except for the property-protection function, the agency does not generally perform excepted functions as defined in Section A. 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 the 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. Workdays prior to no funds (NF – number of workdays)
2. Date of no funds (NF), and
3. Workdays following no funds (NF + number of workdays).

B. TIMETABLE AND ACTIONS

DATES	ACTIONS
NF-6	The Executive Director (ED) issues notice to all employees informing them of possible lapse in funding, unless instructed by OMB or OPM to withhold communications until directed.
NF-5	Pursuant to any direction or guidance issued directly by the Administration or through OMB or OPM, and after consulting with the CEAO, 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. The CEAO submits the list of excepted functions to OMB for transmittal to Congress, if necessary.
NF-4	Office Directors and Regional Directors (RDs)/Chief Administrative Judges (CAJs) confirm emergency contact information for their staff, e.g., on wallet cards or email lists.
NF-3	The Director of Financial and Administrative Management (FAM), in consultation with Office Directors and RDs/CAJs, identifies those contracts that should be kept in place or entered into. Office Directors and RDs/CAJs require employees in a travel status to return to duty station unless travel is for purposes of shutdown activities.

NF-1	Upon clearance from OMB, the ED issues notice 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. The ED authorizes FAM/HR to prepare furlough notices for distribution to employees not being retained to perform excepted functions. 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, after which ethics guidance will not be available until after the shutdown is over.
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NF	The ED notifies Office Directors and RDs/CAJs of those employees who will not be furloughed so they can perform excepted activities. 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. FAM/HR's email reminds employees that they may perform only those functions associated with the orderly suspension of agency activities, e.g.: 1. Notify outside parties of agency status, including all courts in which the MSPB has pending litigation. 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. These activities may be performed remotely with the prior permission of a supervisor. The Office of Regional Operations (ORO), the Office of the Clerk of the Board (OCB), the Office of Appeals Counsel (OAC) and the Office of General Counsel (OGC) terminate appeal, outreach, and mediation proceedings. OGC files any necessary pleadings in pending cases in which MSPB litigators represent the agency. The Office of Policy and Evaluation (OPE) terminates studies and surveys.
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	Office Directors and RDs/CAJs remind employees to check email once per day during the shutdown. Office Directors and RDs/CAJs excuse personnel receiving furlough notices after they complete shutdown activities. Director of FAM informs all offices that no obligations can be incurred without his/her or FAM/Budget Officer's prior approval. CEAO submits list of expected function to OMB for transmittal to Congress, if necessary.
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 CEOA.
NF+29	The ED, after consulting the CEOA, authorizes FAM/HR, if necessary, to issue second furlough notices according to MSPB policies and appropriate regulations. The ED, after consulting the CEOA, authorizes the Director of FAM to issue termination notices to MSPB contractors and termination notices for contracts with vendors/contractors. Continue excepted activities as defined and authorized by the CEOA.
NF+30	Continue excepted activities as defined and authorized by the CEOA.

PART III

STATEMENT OF TOTAL NUMBER OF AGENCY EMPLOYEES AFFECTED

Approximately 170 agency employees (including the PAS Board member) are expected to be on board before implementation of this plan. MSPB personnel will be divided into three categories: (1) employees in non-work (or furlough) status, (2) employees in a non-work (or furlough) status that are on call to perform activities authorized by the CEAO, and (3) the Board member who is not subject to furlough. Employees in the non-work category will be furloughed at the time that the agency is required by law to continue only excepted activities.

MSPB currently has no employees in the following categories:

1. Their compensation is financed by a resource other than annual appropriations;
2. Necessary to perform activities expressly authorized by law;
3. They are necessary to perform activities necessarily implied by law;
4. They are necessary to protect life and property (except for 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. Ensure 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.

Orderly Shutdown

- e. Coordinates with the Communications Director to issue a press release on the status of the agency.

During lapse

- f. Consults with OMB, the ED, and the 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. Inform offices which employees will be authorized to perform excepted functions.
- e. Issues notice of general information on agency funding to all employees.
- f. Sends notice to all employees indicating that all available funds have been exhausted.
- g. Authorize 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 CEAO in determining the agency's excepted functions.
- b. Provides the CEAO 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. Consults, as necessary, with the employees' Professional Association regarding shutdown actions that may impact bargaining unit employees.
- f. Identifies all pending litigation and notifies courts that the MSPB will be unable to participate in those cases during the duration of the shutdown.
- g. Issues ethics guidance to employees prior to the furlough.

Orderly Shutdown

- h. Secures records and documents the status of cases.
- i. Submits final purchase card statement.
- j. Secures/closes office.

The Office of Financial and Administrative Management (FAM):

Before lapse

- a. Coordinates with OMB and OPM on shutdown preparations and relays any direction or guidance to the CEAO, ED, and OGC at the earliest possible time.
- b. Reviews lists of employees to be furloughed to ensure that each employee's name appears on either the furlough list or excepted list when applicable.

Orderly shutdown

- c. Ensures personnel payrolls for periods prior to funding interruption are processed.
- d. Upon authorization by 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.
- e. 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.
- f. Directs the processing of personnel records in connection with the issuance of furlough notices.
- g. 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).

- h. Issues “stop work” orders to MSPB contractors for contracts other than those deemed excepted when all funds are expended.
- i. Secures records and documents.
- j. Submits final purchase card statement.
- k. Secures/closes office.

During lapse

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

After lapse

- q. 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.
- r. 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 with IRM to update the agency website with relevant shutdown information.
- b. Notifies administrative law judges to “stop work” on pending cases and suspend related activities.
- c. Secures records and documents the status of cases.
- d. Coordinates with OGC on any pending litigation for which a certified agency record may come due in court during a shutdown.
- e. Secures/closes office.

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

Orderly shutdown

- a. Secures/closes offices.
- b. Notifies administrative judges to “stop work” on pending cases and suspend related activities.
- c. Secures records and documents the status of cases.
- d. Submits final purchase card statement.
- e. Cancel outreach activities, as well as reschedules mediations, hearings and court reporters, if as needed.
- f. As necessary, contacts parties regarding shutdown.

The Office of Information Resources Management (IRM):

Before lapse

- a. Provides instructions for changing voicemail and email out-of-office messages.
- b. Determine whether to close the e-Appeal System 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, the e-Appeal System, and the internal Portal.
- f. Secures records and documents.
- g. Secures/closes office.

During lapse

- h. Monitors security systems and alerts and maintains systems security patching as necessary.

After lapse

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

The Office of Equal Employment Opportunity and the Office of Policy and Evaluation:

Orderly Shutdown

- a. Secures records and documents.
- b. Submits final purchase card statement.
- c. Secures/closes office.