

U.S. MERIT SYSTEMS PROTECTION BOARD

SHUTDOWN PLAN

CONTINGENCY PLAN FOR PERIODS

OF

LAPSED APPROPRIATIONS

U.S. Merit Systems Protection Board

Shutdown Plan: Contingency Plan for Periods of Lapsed Appropriations (Shutdown Plan)

COVERAGE

The sole purpose of this document, including its exhibits is to provide guidance and instructions for suspending excepted (in context to furloughs) agency activities should the Congress fail to appropriate funds for normal agency operations. The plan does not address other unexpected contingencies.

OBJECTIVES

To identify essential functions that will continue, despite a lack of funds for normal agency operations being appropriated by Congress and to provide guidance as to how, and by whom, the essential functions will be carried out.

To provide guidance for the orderly suspension of excepted functions when Congress has not appropriated funds for normal agency operations.

RESPONSIBILITIES AND AUTHORITIES

The Office of the Chairman or Designee:

- a. Ensures execution of the Shutdown Plan.
- b. Determines the essential functions of the agency.
- c. Submits the list of essential functions to OMB for transmittal to Congress, if necessary.

The Office of the General Counsel (OGC):

- a. Assists the Chairman or his/her designee in determining the agency's essential functions.
- b. Provides the Chairman or her/his designee and MSPB staff with legal advice pertaining to shutdown activities or matters stemming from such activities prior to and during a shutdown during the period of lapsed appropriations.
- 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. Ensures the Congressional Liaison Officer coordinates with the appropriate Congressional committees to reallocate available funds as necessary at the earliest

indication of lapses in appropriations in collaboration with the Director of FAM or his/her designee.

- f. Consults with the employees' Professional Association regarding shutdown actions that may impact bargaining unit employees.

The Office of the Executive Director (ED):

- a. Assists the Chairman in determining the agency's essential functions.
- b. Assists the Chairman with ensuring the implementation of the Shutdown Plan.
- c. Informs offices of targeted office strength to perform essential functions.
- d. Approves the list of employees to be furloughed and those to be retained when all available funds are exhausted.
- e. Issues notice of general information on agency funding to all employees. (See Exhibit 1)
- f. Signs notice to all employees indicating that all available funds have been exhausted. (See Exhibit 2)
- g. Authorizes the Director of Financial and Administrative Management (FAM) to prepare and to provide to the appropriate supervisors furlough notices to excepted employees and, where applicable, to any employees retained for essential functions when their services are no longer needed.
- h. Reviews and adjusts, if necessary, the lists of employees to be retained or furloughed when all available funds are exhausted and transmits lists to the Director of FAM so that he/she may take appropriate steps to notify such employees of any change in their status.
- i. Authorizes the Director of FAM to prepare and issue notices of extended furloughs, if shutdown exceeds 30 days.
- j. Authorizes the Director of FAM to notify the Office of Management and Budget (OMB), the Office of Personnel Management (OPM), the Department of the Treasury (Treasury), the United States Department of Agriculture, the National Finance Center (NFC), the United States Department of Agriculture, the Animal and Plant Health Inspection Services (USDA-APHIS) and the General Services Administration (GSA), if operations have to be permanently suspended.
- k. Authorizes the General Counsel to disseminate information to the media regarding the status of the agency.

The Office of Financial and Administrative Management:

- a. Determines the amount of funds available to operate at the earliest indication of funding difficulty.
- b. Advises the Executive Director of the availability of funds on a daily basis.
- c. Reallocates, to the extent permitted, all available funds in order to forestall the fund-interruption date as long as possible prior to initiation of orderly shutdown activities.

- d. Determines time period that the agency can operate before all available funds are exhausted.
- e. Notifies the Executive Director when all available funds have been exhausted.
- f. Ensures personnel payrolls for periods prior to fund interruption are processed.
- g. Establishes records of deferred payment for personnel retained during shutdown.
- h. Takes necessary action to adjust allotments as appropriate during periods of lapsed appropriations.
- i. Ensures that no contractual or other financial obligations are entered into after a lapse in appropriations other than those deemed essential to the shutdown.
- j. Ensures that funds are not disbursed.
- k. Provides notice of agency funding (see Exhibit 2), revised as necessary, to the Executive Director for signature.
- l. Reviews lists of employees to be retained and those to be furloughed to assure that each employee's name appears on either the retention list or furlough list.
- m. Upon authorization of the Executive Director, reviews and ensures issuance of furlough notices to all excepted employees and any employee retained for essential functions whose status changes to excepted. (See Exhibit 3).
- n. Directs the processing of personnel records in connection with the issuance of furlough notices.
- o. Issues "stop work" orders to MSPB contractors for contracts other than those deemed essential when all funds are expended. (See Exhibit 7)
- p. Issues termination notices to MSPB contractors for contracts other than those deemed essential when shutdown exceeds 30 days. (See Exhibit 8)
- q. Issues or directs, upon authorization of the Executive Director, extended furlough notices to appropriate personnel when shutdown exceeds 30 days. (See Exhibit 4).
- r. Identifies to the Executive Director, the Budget Officer and the Contracting Officer those contracts that should be kept in place or entered into to provide support services (i.e. telecommunications, email and blackberry services).
- s. Ensures the inventory and transfer of all personal and real property to GSA (See Exhibit 6) if agency operations have to be permanently suspended.

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

- a. Disseminates information to the media to announce status of the agency.
- b. Notifies appellants of the status of their appeals during the agency shutdown and provides appellants with information regarding any actions they should take.
- c. Ensures the transfer of agency records to the National Archives and Records Administration (NARA) (See Exhibit 5) if agency operations have to be permanently suspended.

- d. 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:

- a. Secures/closes offices.
- b. Secures records.
- c. Submits final purchase card statement.
- d. Cancels hearings and court reporters.
- e. Contacts appellants regarding closure.

The Office of Information Resources Management (IRM):

- a. Ensures computer operations/shutdown and reactivation.
- b. Maintains email and telephone systems for notice to employees.

DEFINITIONS (For Purposes of this Plan)

- “Lapse in Appropriation” – the date on which MSPB has no new funding authority due to lack of action by Congress, generally the beginning of a fiscal year.
- “Exhaustion of Funds” – the point at which all available MSPB monies have been obligated.
- “Shutdown Activities” – those activities necessary to be accomplished to limit operations to essential functions.

BASIC REQUIREMENTS

This Plan and its exhibits apply throughout the MSPB.

Part I

INTRODUCTION

A. MSPB Funding

In the absence of appropriations for the new fiscal year, MSPB may incur no obligations that cannot lawfully be funded from prior year appropriations, unless such obligations are otherwise authorized by law.

B. MSPB Employee Rights, Obligations and Benefits

MSPB employees' rights, benefits and obligations may be affected when MSPB exhausts all of its available funds. 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 essential functions. Employees in the non-pay, non-work category will be furloughed at the time that the agency is required by law to maintain only minimum essential functions. Employees in the delayed-pay work category will be retained to carry on those minimum essential activities. MSPB employees engaged in shutdown activities are required to report for work to perform shutdown activities, as necessary. The following paragraphs summarize actions that could occur and employees' rights relating to these actions if all available MSPB funds are exhausted. Please keep in mind, however, that the information may change as more guidance is received from the Office of Personnel Management and/or the Office of Management and Budget (OMB).

1. Pay

- a. Employees who are in a delayed-pay work status performing essential duties after all MSPB funds are exhausted will be paid for those hours worked when funds are appropriated. However, no monies can be disbursed during the period when all MSPB funds are exhausted and additional funds have not been appropriated. Therefore, MSPB employees performing essential duties will be working for delayed pay.
- b. Employees who are furloughed will receive no pay because no work was performed. (Exception - If Congress takes action to provide retroactive pay during the period covered by the furlough employees may be paid).
- c. Employees will be paid for the period worked prior to the beginning of shutdown activities.

2. Furloughs

- a. Less than 30 days

- i. Employees who are furloughed for 30 days or less will be furloughed in accordance with 5 C.F.R. 1201.13, and the Time and Attendance Manual, and the collective bargaining agreement.
- ii. Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment, if furloughed for 30 days or less, may appeal the agency's action under the provision of 5 C.F.R. 1201.13.
- iii. Employees in the excepted service who have veterans preference may appeal the agency's action under the provision of 5 C.F.R. 1201.13 or under the provisions of the agency collective bargaining agreement grievance procedures, but not both.
- iv. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal, under the provision of 5 C.F.R. 1201.13, if they have completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less or under the provisions of the agency collective bargaining agreement grievance procedures, but not both.
- v. Career SES appointees (except reemployed annuitants) who believe requirements of 5 C.F.R. 359, subpart H have not been correctly applied may also appeal under the provisions of 5 C.F.R. 1201.13.

b. Greater than 30 days

- i. If furloughs exceed 30 days, employees in furlough status will have those furloughs continue in accordance with OPM reduction-in-force provisions and the MSPB Reduction in Force procedures.
- ii. Furloughed employees may appeal application of OPM and MSPB regulations under the provisions of 5 C.F.R. 1201.13.

c. Service Computation

A furlough does not constitute a break in service. The employee is in a non-pay, non-duty status for those days/hours. However, an extended furlough may affect the calculation of creditable service for certain purposes. Employees would need to consult and obtain guidance from HR regarding specific situations. *See* OPM's Guidance for Shutdown Furloughs, dated October 11, 2013.

3. Annual or Sick Leave Status

a. Annual

- i. Annual leave may not be granted during an exhaustion of funds. As a result, managers may not grant annual leave to employees who would otherwise be furloughed because of exhaustion of all available funds.
- ii. All scheduled and approved annual leave during a furlough will be canceled because the necessity to furlough supersedes leave rights. 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, all scheduled and approved leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

b. Sick

- i. Managers may not grant sick leave to an employee on furlough because of an exhaustion of all available funds.
- ii. All scheduled and approved sick leave during a furlough will be canceled because the necessity to furlough supersedes leave rights. 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 sick leave creates a debt to the Government that is not authorized by the Act. Therefore, all scheduled and approved sick leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

4. Annual and Sick Leave Accrual

- a. Persons in a delayed pay status will be credited annual and/or sick leave retroactively on a pro rata basis.
- b. An employee does not accrue annual or sick leave during any pay period in which the employee is in a furlough status for the entire pay period.

5. Benefits

a. Retirement

- i. Retirement coverage continues for all employees (furloughed or retained) providing the agency is still in existence. Length of service creditable toward retirement is granted if the furlough period does not exceed an aggregate of six months in one calendar year.

b. Life Insurance

Regular or Optional Life Insurance coverage continues up to 12 months for all employees (furloughed or retained) without cost to the employee.

c. Health Insurance

Enrollment for employees who are furloughed continues for no more than 365 days. The government contribution continues while employees are in a nonpay status. The government also is responsible for advancing from salary the employee share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulated and withheld from his or her pay until returning to duty. *See OPM's Guidance for Shutdown Furloughs*, dated October 11, 2013.

d. Retroactive Payment of Benefits

If funds are appropriated retroactively, total employee contributions for health and life insurance benefits will be withheld from retroactive pay of employees in a deferred pay status.

PART II

ESSENTIAL FUNCTIONS TO BE CONTINUED

- A. The Attorney General's decision of January 16, 1981 and subsequent OMB memoranda provide that only essential functions are to be continued during any appropriations hiatus. Essential 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 essential 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. MSPB does not perform essential functions as defined above – that is, those that protect life or property. Accordingly, MSPB will be required to shut down in the event of an appropriations hiatus. The following actions will be required to effect such a shut down:
- a. To the extent legally permissible, reallocate all available funds to forestall the fund interruption date as long as possible.
 - b. Limit operations to minimum services required to preserve and secure MSPB property once spending authority ceases, or all funds are exhausted.
 - c. Provide support services necessary to continue these minimum required services.
 - d. Process necessary personnel actions and records.
 - e. Conduct shutdown activities when all available funds are exhausted.
- C. Thus, with the exception of employees whose activities are funded by accounts not affected by an appropriation hiatus, MSPB will maintain only sufficient support staff (clerical/administrative) to facilitate shutdown and to support minimum required services.

PART III

CHECKLIST AND TIMETABLE FOR ACTIONS REQUIRED DURING SHUTDOWN

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

Date of lapse	The Director of 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 Chairman or Executive Director (ED) of the availability of funds on a daily basis.
NF-10	<p>The Director of FAM notifies the Chairman or ED and the General Counsel (Congressional Affairs Liaison) of potential reallocation of funds to forestall the fund interruption date.</p> <p>The General Counsel (Congressional Affairs Liaison) notifies the appropriate Congressional Committees of potential reallocation of funds.</p> <p>The ED issues notice to all employees (Exhibit 1) informing them of possible lapse in funding.</p>
NF-8	The ED informs offices of their targeted office strength to perform essential activities when all funds are exhausted using the criteria established in Part II.
NF-7	<p>Office Directors and Regional Directors/CAJs submit to the ED in writing, the connection between the function to be performed to maintain adequate support staff (clerical/administrative) to facilitate orderly agency shutdown and to support essential activities.</p> <p>Office Directors and Regional Directors/CAJs prepare lists of employees to be retained and furloughed by name, social security number, grade, job</p>

title and office. For those employees being retained, identify the essential function that each employee will perform. These lists are to be developed using the criteria established in Part II and guidance from the ED.

NF-4 Office Directors and Regional Directors/CAJs review and revise as necessary lists of employees to be furloughed. *(This may not be necessary if the Chairman or ED decides which employees are essential.)*

Office Directors and Regional Directors/CAJs transmit list of employees to be furloughed to the ED. *(This may not be necessary if the Chairman or ED decides which employees are essential.)*

Office Directors and Regional Directors/CAJs identify those contracts that should be kept in place or entered into.

NF-2 The ED approves lists of employees to be furloughed and submits it to the Human Resources Director (FAM/HR) for processing.

The Budget Officer (FAM/BO) prepares notice of agency funding (Exhibit 2) and submits to ED for signature.

NF-1 The ED issues notice (Exhibit 2) to all employees informing them of the exhaustion of all available funds and the possibility that employees will have to be furloughed.

NF-0 Office Directors and Regional Directors/CAJs inform essential employees to continue activities that are deemed essential. Excepted employees upon reporting for work are instructed to perform only those functions associated with the orderly suspension of agency activities, i.e.

1. Notify outside parties of agency status.
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.

Office Directors and Regional Directors/CAJs notify employees who will be retained for essential activities.

The ED authorizes FAM/HR to issue furlough notices to employees not being retained to perform essential functions in accordance with agency policies. (Exhibit 3)

Office Directors and Regional Directors/CAJs require employees in a travel status to return to duty station unless travel is for the protection of public health and safety or for purposes of shutdown activities.

ORO, OCB, and OAC terminate appeal, outreach and MAP proceedings. OPE terminates studies and surveys.

Office Directors and Regional Directors/CAJs inform employees to listen to radio stations that handle weather emergencies for the status of the agency.

Office Directors and Regional Directors/CAJs excuse personnel receiving furlough notices.

Director of FAM informs all offices that no obligations can be incurred without his/her or FAM/BO prior approval.

NF+1

The ED authorizes the Director of FAM to furlough any additional employees who have completed shutdown activities.

The ED consults with the OMB and OPM, if required, regarding shutdown activities.

Office Directors and Regional Directors/CAJs or designees take whatever administrative actions necessary to ensure protection and security of MSPB property and personnel.

NF +2 - 28

Continue minimum required activities

NF + 29

The ED authorizes FAM/HR, if necessary, to issue second furlough notices according to MSPB policies. (Exhibit 4)

Director FAM issues termination notices to MSPB contractors and termination notices for contracts with vendors/contractors.

Continue minimum required activities

NF + 30

Continue minimum required activities.