THE NATIONAL SCIENCE FOUNDATION PLAN FOR OPERATIONS DURING A FUNDING HIATUS
April 7, 2011

BACKGROUND

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981) requires all agencies to maintain contingency plans to deal with a possible lapse in appropriations. The Bulletin requires agency plans to be consistent with the January 16, 1981 opinion of the Attorney General on this subject. The Office of Legal Counsel of the Department of Justice issued an update to the opinion dated August 16, 1995. The essential elements of the Attorney General's opinion are:

In the absence of new appropriations, Federal officers may incur no financial obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.

Under authority of the Anti-Deficiency Act, Federal officers may incur obligations as necessary for the orderly termination of an agency's functions and for activities that protect life and property, but no funds may be disbursed for payment of those new obligations.

Under its enforcement responsibilities, the Department of Justice may apply the criminal provisions of the Anti-Deficiency Act against alleged violators.

SCOPE AND APPLICABILITY

These shutdown requirements are applicable to the National Science Foundation (NSF) when the agency's appropriations lapse (regular, contingency, or supplemental).

DEFINITIONS

The following terms are defined because of their special significance to the processes authorized under these circumstances:

Excepted Activities – Activities which are authorized to continue in the absence of appropriation authority; obligations for excepted activities may be incurred but not paid until an appropriation is made.

Non-excepted Activities – Activities which are not authorized to continue in the absences of available funds; no obligations can be incurred for these activities and they will be discontinued until an appropriation is made.

Shutdown Activities – Activities which are necessary to transition from a fully operational mode to a mode which only supports excepted activities.

Funding Hiatus – That period of time during which appropriations are not available and only shutdown or excepted activities can be carried out.

Excepted Employees – Staff that are permitted to continue to perform their duties during a funding hiatus because those duties are necessary to accomplish excepted activities.

PLAN FOR OPERATIONS UNDER A SHUTDOWN

Shutdown Notice to Staff (and on-site awardees)

In anticipation of a funding hiatus, steps will be taken to assure that the Foundation is in a position to limit its activities, first to those directly related to an orderly shutdown, and then to excepted activities. It is anticipated that shutdown activities will require a half day.

Upon submission of NSF's shutdown plan to OMB, the agency will issue a notice to staff advising them of the Foundation's general approach to the possible funding hiatus and address questions they may have. Upon a funding hiatus, the Director will issue a special bulletin to staff to begin the shutdown. The bulletin will also identify the excepted activities; employees who must continue to work during the funding hiatus will be notified. NSF notes that prior to implementation of the shutdown plan, there are approximately 2,000 employees including NSF staff, detailees, assignees pursuant to the Intergovernmental Personnel Act, and on-site contractors. No more than 30 federal FTEs will be retained to protect life and property and for excepted activities. None of these employees is engaged in military, law enforcement, or the direct provision of health care activities; nor are they compensated by a resource other than annual appropriations.

Notice to Funded Contractors

Contractors may be directed by the NSF Contracting Officer to work under those contracts that are in support of excepted activities and/or excepted employees where funding has been obligated from prior year funds or in limited circumstances where multiple-year or no-year appropriation funding is available for obligation. Additionally, contract activities with obligated prior year funding may continue where ongoing Federal monitoring and the use of NSF facilities is not required.

Notice to Awardees

As part of the shutdown activity, a notice will be sent to the Foundation's off-site awardees informing them that work may continue on all awards to the extent that they do not require federal staff intervention. The notice will inform awardees that NSF will not continue to provide cash for previously funded awards.

NSF-Identified Excepted Activities

New obligations during the funding hiatus will be limited to those needed to shutdown the Foundation and maintain the excepted activities necessary to: (1) protect life and property, (2) process the necessary personnel actions, and (3) process the payroll for the period prior to the funding hiatus, and (4) process payments associated with excepted activities. <u>No payment for obligations incurred during the funding hiatus for shutdown activities or for excepted activities will be made without an appropriation.</u>

1. *Protecting Life and Property*
   NSF will maintain effective security for its Headquarters building and warehouse facility in Virginia. The guards will protect the assets of the Foundation and will limit access to those employees and contractors required to perform excepted activities.

   Awardee-operated facilities with government-owned property will continue normal operations to the extent that funding was previously obligated. As those funds are exhausted, at a minimum, awardee-operated facilities with government-owned property and property acquired in whole or in part under federally sponsored awards will be required to protect life and property and provide for an orderly shutdown.

   NSF designates the Office of Polar Programs' support of the Antarctic and Arctic programs as an excepted activity in order to maintain communications with individuals "on the ice" to assist in responding to emergency situations that might arise.

2. *Processing Necessary Personnel Actions*
   Necessary personnel actions will be taken to release employees in accordance with applicable law and Office of Personnel Management regulations. Preparation of employee notices related to the funding hiatus and processing of personnel actions in connection with furlough actions or separation from Federal service are excepted activities.

3. *Process the Payroll for Period Prior to the Funding Hiatus*
   The payroll will be processed by the Department of Interior for those days worked prior to the funding hiatus. In addition, the payroll records will be maintained to record the furlough status of non-excepted employees and the on-duty status of excepted employees. The records associated with health benefits and other benefits that remain in effect for all employees during the funding hiatus will also be maintained. No payments for payroll earned or benefit costs incurred during the funding hiatus will be made until a new appropriation is in effect.

Plan for Performance of Excepted Activities

All activities defined above as excepted may be performed on-site or off-site by individuals designated as excepted by NSF management. All other agency functions are non-excepted.