

SECTION 124—AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

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Summary of Changes

Clarifies that OMB's communication with agencies one week before a potential lapse in appropriations may be in a form other than telephonic (section [124.3](#)).

Establishes a routine timeframe to communicate employee status notifications before a potential lapse in appropriations (section [124.3](#)).

124.1 What types of actions may my agency conduct during a lapse in appropriations?

(a) *Background.*

The Attorney General issued two opinions in the early 1980s holding 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 Department of Justice's Office of Legal Counsel 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 the Congress fails to enact regular appropriations, a continuing resolution, or needed supplemental appropriations, resulting in a lapse of appropriations.

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; and
- 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 a lapse in appropriations. 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 lapse in appropriations?

Agency heads, in consultation with their general counsels, must develop and maintain plans for an orderly shutdown in the event of a lapse in 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 updated plan to OMB for review that reflects this change. In updating their plans, agencies also should note any changes made to their plans in light of their experiences during any recent lapse in appropriations. At a minimum, agencies should submit updated plans to OMB for review every two years, starting August 1, 2015. Plans should be submitted to your OMB examiner and with a copy to the following e-mail address:

Section124Plans@omb.eop.gov.

Given that the duration of a lapse in appropriations is inherently uncertain, your plan should describe agency actions to be taken during a short lapse (1-5 days). It also should identify anticipated changes if the lapse 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 lapse in appropriations 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 a lapse in appropriations.
- 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.

To the extent that any of the information described above is expected to change should a lapse in appropriations extend for a prolonged period of time (i.e., longer than 5 days), the plan should explicitly describe these changes. In particular, the plan should indicate any points in time when the furlough status of employees may change, how many employees would be affected, and the legal basis for such changes. Agencies should consult with an OMB representative at such points in time during a lapse in appropriations to make OMB aware of any such changes. In addition, during a lapse in appropriations agencies should make an OMB representative aware of any instances where actions deviate from what is set forth in the plan.

Agency plans should also describe the actions that will be necessary to resume orderly operations once appropriations are restored, including:

- ▶ Methods for notifying employees that the shutdown furlough has ended and that they are to return to work on a specified day (normally the employee's next scheduled workday after the furlough has ended);
- ▶ Flexibilities available to supervisors if employees have problems returning to work on the day specified by the agency, including the use of accrued annual leave, compensatory time off, or credit hours;
- ▶ Procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds.

At the time they are given furlough notices, agencies should provide employees as much information as possible regarding how the agency will go about resuming operations after the furlough has ended.

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 lapse in appropriations might occur, you should review your shutdown plans, and, if revisions are required, promptly submit the revised plan to OMB. When agencies submit their plans, they should also provide OMB with information on agency personnel that would serve as a point of contact in the event of a lapse. While agencies are ultimately responsible for preparing and implementing orderly shutdown plans, all changes to the plans must be submitted to OMB for review in advance of implementing the plan.

One week prior to the expiration of appropriations bills, regardless of whether the enactment of appropriations appears imminent, OMB will communicate with agency senior officials to remind agencies of their responsibilities to review and update orderly shutdown plans, and will share a draft communication template to notify employees of the status of appropriations. OMB will hold follow-up communications on a periodic basis until such time as appropriations are enacted or a lapse in appropriations has occurred. Two business days before a potential lapse in appropriations, in coordination with OMB, agencies should

notify employees of the status of funding and inform employees of their work and pay status under a lapse in appropriations.

After OMB has identified a lapse in appropriations and all available funds (including reallocated/reallocated funds) are exhausted, OMB will provide guidance to agencies directing the initiation of 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 a lapse in appropriations, agencies should only engage in activities consistent with the principles set forth in their shutdown plan.

Agencies must 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. Agencies should also establish clear protocols for how employees will be provided with furlough notices, contacted to be recalled to work following the end of the lapse in appropriations or should their furlough status change in accordance with the agency's plan, and informed of pertinent pay and leave information during the lapse. Where appropriate, agencies should seek to utilize available technology to allow employees maximum flexibility in returning to work.

OMB will notify you when the lapse in appropriations has ended and you can begin implementing your plan to orderly resume agency activities.