

GENERAL SERVICES ADMINISTRATION
Washington, DC 20405

ADM 4220.1K
July 31, 2017

GSA ORDER

SUBJECT: Operations in the Absence of Appropriations

1. Purpose. This Order updates the GSA plan for conducting an orderly shutdown in the event of the absence of appropriations.
2. Cancellation. ADM 4220.1J is cancelled.
3. Background.
 - a. The language and legislative history of the Antideficiency Act unambiguously prohibit agency officials from incurring obligations in the absence of appropriations. This is supported by opinions from the United States Attorney General and the Office of Legal Counsel of the Department of Justice (DOJ).
 - b. 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. Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but funds may not be disbursed.
 - c. To ensure compliance with these directives, Office of Management and Budget (OMB) Circular No. A-11, Section 124, "Agency Operations in the Absence of Appropriations," requires all Agency heads to develop and maintain plans for an orderly shutdown in the event of the absence of appropriations.
 - d. The Chief Financial Officer, Office of Budget (BB) is responsible for maintaining and updating this Order, coordinating activities to ensure proper implementation of this policy, and reporting plans and activities to the Administrator and to OMB. BB will work with OMB to resolve funding questions and concerns in the absence of appropriations.
4. Summary of agency activities under a lapse in appropriations.
 - a. GSA was established to provide facilities and services to Federal agencies government-wide to enable them to better focus on their core missions and improve economies and efficiencies by leveraging the buying power of the government. (See Title 40, U.S. Code §501 et seq.) GSA is the Federal agency responsible for managing

assets of the United States, including acquisition, operation, and disposal of real and personal property, and providing government-wide policy guidance and information to citizens;

b. GSA provides workspace for over one million Federal employees through over 1,500 Federal buildings and over 8,000 leases, and maintains a variety of personal property, including over 200,000 Federal motor vehicles. GSA provides over 12 million products and services necessary for other agencies to perform their missions. GSA's role as an aggregator of large numbers of government assets and a supplier of critical tools, equipment, and supplies to other Federal agencies requires that GSA retain adequate staffing under a lapse in appropriations in order to protect Federal property under GSA's custody and control and to continue to provide critical support to other Federal agencies' exempt and excepted activities necessary for the protection of life and Federal property.

c. In the absence of appropriations, GSA owned and leased buildings will remain open and operate in "weekend mode." Maintenance and janitorial services, telephone service, lighting, and power will continue so that tenant agencies can continue to provide vital services and perform essential missions. These services will be provided to the extent necessary and may be reduced from regular service levels. The Federal Protective Service will continue to provide building security.

d. Because GSA is the government's property manager, GSA personnel will be responsible for maintaining, protecting, and preserving that property to a greater extent than many other agencies that are not responsible for property and asset management government-wide. Excepted GSA employees will be responsible for protecting life and/or Federal property and providing necessary support to other government agencies to enable them to perform excepted activities.

5. Implementing action. All GSA units will follow procedures in the plan. It goes into effect only when directed by the Administrator.

6. Signature.

/S/
TIMOTHY O. HORNE
Acting Administrator

OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

1. Funds control in the absence of appropriations. If appropriations lapse, the following authorities and directives will govern operations. They reflect laws and regulations enacted by Congress, OMB, the Office of Personnel Management, and other authorities.

a. Under the Antideficiency Act, it is a felony to obligate the U.S. Government in advance of appropriations unless this is otherwise authorized by law (31 U.S.C. 1341), except for emergencies involving the safety of human life or the protection of property (31 U.S.C. 1342 and - 1515(b)(1)(B)).

b. The Attorney General's opinion "Applicability of the Antideficiency Act Upon a Lapse in an Agency's Appropriations" (1980) held that, under a lapse in appropriations, agencies could not incur any obligation that was not legally funded from prior appropriations or otherwise authorized by law. The opinion also held that authority may be inferred from the Antideficiency Act for Federal officers to incur those minimal obligations necessary for terminating operations.

c. The subsequent Attorney General opinion, "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations" (1981), provided more detail on possible exceptions, including those authorized as emergencies involving the safety of human life or the protection of property. Generally, there must be a reasonable connection between the function and the safety of human life or the protection of property; second, there must be a reasonable likelihood that the safety of human life or protection of property would be compromised by delay in performance of the function.

d. Sec. 13213(b) of the Omnibus Budget and Reconciliation Act of 1990, Pub. L. 101-508 (title 13 is also known as the Budget Enforcement Act of 1990), amended 31 U.S.C. 1342.

(1) It added a sentence to clarify that "...the term 'emergencies involving the safety of human life or the protection of property' does not include ongoing, regular functions of government the suspension of which would not imminently threaten the safety of human life or the protection of property."

(2) As explained in the conference report on the bill, this action was taken to 'guard against what the conferees believe might be an overly broad interpretation of an opinion of the Attorney General...regarding the authority for the continuance of Government functions during the temporary lapse of appropriations, and affirm that the constitutional power of the purse resides with Congress.'

e. In an August 16, 1995, memorandum to the Director of OMB, the DOJ Office of Legal Counsel reaffirmed the validity of previous legal opinions and interpretations and provided two clarifications.

(1) In determining excepted functions for the safety of life or the protection of property, there must be some reasonable likelihood that the safety of human life or the protection of property would be compromised "in some significant degree" by delay in the performance of the function.

(2) The use of the word "imminent" in the 1990 amendment serves "to emphasize and reinforce the requirement that there be a threat to human life or property of such a nature that immediate action is a necessary response to the situation."

f. Based on the Attorney General's 1980 and 1981 opinions, and reaffirmed by the 1995 DOJ opinion, OMB has cited the following as primary examples of activities authorized to continue during a funding lapse: providing for the national security; providing benefit payments and performing contract obligations under no-year, multi-year, or other funds remaining available for these purposes; and conducting activities that protect life and property. The list includes:

- (1) Providing medical care of inpatient and emergency outpatient care;
- (2) Ensuring continued public health and safety, including safe use of food, drugs, and hazardous materials;
- (3) Continuing air traffic control and other transportation safety functions and protecting transportation property;
- (4) Continuing border and coastal protection and surveillance;
- (5) Protecting Federal lands, buildings, waterways, equipment, and other U.S. property;
- (6) Caring for prisoners and other persons in U.S. custody;
- (7) Pursuing law enforcement and criminal investigations;
- (8) Providing emergency and disaster assistance;
- (9) Preserving the essential elements of the U.S. money and banking system, including Treasury borrowing and tax collection activities;
- (10) Ensuring production of power and maintaining the power distribution system; and
- (11) Protecting research property.

- g. Within these guidelines, the Administrator may determine which activities are excepted to operate during a lapse in appropriations.
- h. Usually, activities and employees directly supported in full by permanent or no-year appropriations and revolving funds are exempted if funds are available for obligation in the accounts, and at levels required to accomplish valid customer orders. However, the Federal Buildings Fund receives most of its current obligational authority in annual appropriations acts, so its activities and employees are more limited during an appropriations lapse than other revolving fund activities.
- i. Under GSA's current-year accounts, excepted activities are protecting life and Federal property, performing contract obligations under no-year, multi-year, or other funds remaining available for these purposes, and supporting, providing services to, or otherwise enabling others to perform excepted functions. Reimbursable personnel or services may or may not be affected, depending on the status of the ordering components' funding sources. Excepted personnel may assist with "mission critical" exempt activities only to the extent that failing to do so would prevent an exempt activity from accomplishing its core mission and cause serious harm to the mission.
- j. For non-excepted activities, obligations may be incurred only for suspending normal agency operations. Once appropriations are no longer available, it is illegal for non-excepted employees to do regular work. It also violates the Antideficiency Act to accept voluntary services of employees for non-excepted activities (31 U.S.C. 1342).
- k. Although obligations are incurred for excepted activities and for shutting down operations, expenditures cannot be made against lapsed appropriations; new appropriations must be enacted to liquidate the obligations. Obligations incurred against exempt accounts not affected by the lapse may be liquidated, however. If doing so requires action by excepted employees, those employees may liquidate the obligations only to the extent that failing to do so would prevent an exempt organization from accomplishing its core mission and cause serious harm to the mission.
- l. "Excepted" is not the same as "essential". Employees may be essential for conducting regular operations, and may even be required to report to work during hazardous weather conditions, but they are not necessarily excepted when those regular operations cease under a funding lapse. To be designated as excepted, personnel must be performing the specific functions allowed by law and defined in this Order.
- m. It is a principle within GSA to minimize the number of executive, management, and supervisory personnel designated as excepted, concentrating instead on employees delivering excepted services to Federal customers. Unless an office is excepted in its entirety, the general policy is that either the Director or the Deputy may be designated as excepted, but not both, unless so specified in par. 3. This applies equally to Services, Staff Offices and Regions.

2. Implementation plan.

a. Number of employees¹ expected to be on-board before implementation of the plan: 11,596. Number of employees expected to be on-board before implementation of the plan, excluding the Office of the Inspector General: 11,285.

b. GSA employees generally require ½ day or less to complete a shutdown. However, some employees will have activities that require more time to complete. In addition, the organizations funded through the Acquisition Services Fund (ASF), Transportation Audits Fund, and Working Capital Fund (WCF) may perform phased shutdowns through administrative furloughs due to their status as exempt funding sources (see 40 USC Sec. 321).

c. Total number of employees to be retained under the plan because (1) they are engaged in military, law enforcement, or direct provision of health care activities: 0, or (2) their compensation is financed by a resource other than annual appropriations: 5,138; 1,960 employees for the WCF and 3,178 employees for the ASF and Transportation Audits.

d. Additional employees who may be exempt based on available carryover and agency determination: 5,666 PBS employees.

e. Number of employees funded through other sources not otherwise exempt, to be retained to protect life and property: 54.

f. If a lapse occurs during an election year, number of employees to be retained to support the Presidential Transition, including employees otherwise exempt and employees not otherwise exempt: 74.

3. The following is the general framework for responding to a temporary lapse in appropriations. Although "temporary" is defined as 30 consecutive days or less for adverse employee actions, in this part it means only the relatively short period, often only a few days or less, normally required for Congress to provide funds. If a lapse is extended or an activity is terminated, additional instructions will be issued.

a. Unless notified otherwise, all employees should report to work on the first business day of a temporary lapse. Once all employees have completed shut down operations, personnel are released from duty, except for those required for excepted functions. Paragraph 3 of this Order identifies excepted functions.

(1) Heads of Services and Staff Offices must identify the employees who are to perform excepted functions and compile a list of names on an annual basis. The list must be kept current and is sent to the Office of Human Resource Management (OHRM).

¹ Data source for all employee count information is the June 2017 Employment Report produced by the Office of Budget.

(2) The number of excepted employees will vary with local conditions. Heads of Services and Staff Offices must determine the minimum number of personnel required to support the excepted function within the limits provided in paragraph 3.

b. Released non-excepted employees are placed in non-duty, non-pay status by use of furlough under the adverse plan procedures in title 5 of the Code of Federal Regulation (CFR) part 752.

(1) All employees will be provided with written notice of their status as excepted or non-excepted employees. If there is no time for written notice, oral notice is acceptable (5 CFR 752.404 (d)(2)), with later written notice to confirm the action. All personnel actions must be documented by the OHRM. This notice will include when the employee is expected to return to work, if that date is known.

(2) If possible, labor unions will be notified before implementing furloughs. The Labor Relations Division (CPL), OHRM, notifies national unions, American Federation of Government Employees and National Federation of Federal Employees, and each region is responsible for notifying regional and local unions under this policy and any collective bargaining agreements. Additional guidance will be provided by OHRM.

(3) Furloughed career Senior Executive Service (SES) employees are entitled to the procedures in 5 CFR part 359, subpart H. OHRM can explain furlough procedures for career SES, non-Presidential appointees, schedule C, temporary, and non-career SES employees.

c. Employees who perform excepted activities must report for duty as directed. During an appropriations lapse, they are still in a paid status, but are working for delayed pay; they are not rendering gratuitous services and must report to work.

d. Non-excepted employees will report for duty on the first business day after the lapse in appropriations. They will be provided notice of furlough, additional instructions, and will be released from duty no later than 12 PM that day. Once released, non-excepted employees should monitor the media to determine when the lapse is over, and when they should return to duty.

e. During a lapse in appropriations, annual or sick leave may not be used by employees in place of furlough.

(1) Since 1985, GSA policy and labor agreements have stated that employees may be on paid leave during a furlough when the leave had been approved before the furlough began. While this position was based on guidance from the Office of Personnel Management (OPM), that agency has now determined that, in its legal opinion, use of paid leave during a furlough would constitute a violation of the Antideficiency Act and that, in the case of a furlough due to the lapse of appropriations, "leave is automatically cancelled because the necessity to furlough supersedes leave rights."

(2) In the case of an appropriations lapse, annual, sick, court, bone marrow, and organ donation leave is cancelled. Military leave will continue to be charged even though furlough days are considered non-work days. Employees serving as witnesses or jurors would be able to retain all moneys received from the court.

(3) Cancelled or interrupted annual or sick leave is not forfeited, but can be used later.

f. Persons on official travel when funds lapse are handled case-by-case.

(1) Travelers performing excepted functions, or supported by funds not affected by the lapse, remain on duty.

(2) Non-excepted employees are placed on furlough. Although some obligations for travel costs are incurred before a funding lapse, the employees must be recalled to their duty station because there is no authority to incur new per diem obligations. Decisions will be made on a case-by-case basis as determined by the appropriate Heads of Services and Staff Offices to incur obligations necessary for orderly termination of functions.

g. Goods and services may not be purchased under lapsed appropriations except when required to support excepted activities or when purchased with funds that are exempt from a lapse in appropriations.

(1) New contracts may not be awarded except in support of excepted activities or when using an exempt funding source. Contract options for additional quantities or to extend the term of the contract may not be exercised unless it is determined that the additional goods or services are needed to continue or support excepted activities or if the options may be exercised without an obligation of funds or if funded by an exempt funding source. Contracting personnel should consult with program and legal personnel before making a final decision not to exercise an option, when this could expose the Government to financial liability or other damages.

(2) If a contract is fully obligated before the lapse in appropriations and the goods or services are still required, the contract is in full force and effect and no additional actions are required. However, if the contract is for recurring services, contracting personnel must verify whether the goods and services are needed at the same levels during a shutdown of government operations and may, if applicable, issue a stop work Order or termination for convenience (full or partial). Contract terminations must be reviewed by the Office of General Counsel prior to issuance.

h. Each Services and Staff Office must establish procedures to notify released employees when to return to duty. The recall system will be used when the lapse is over or when other circumstances require changed instructions. Once funding is restored, exempt and excepted managers will use local Continuity of Operations

telephone alert rosters to instruct furloughed employees to return to work. Furloughed employees will return to work on their next regular duty day after the lapse is over.

4. Excepted activities. The following defines excepted functions and personnel levels that continue during a lapse in appropriations. Activities not discussed are not excepted within the meaning of the law. If there are organizational changes, these instructions apply to the organizational unit that has been newly assigned the functions.

a. Office of the Administrator/Regional Administrators (A). Excepted Central Office personnel are the Administrator and the minimum necessary additional employees. In each region, the Regional Administrator and the minimum necessary additional employees will remain on duty to provide essential management and direction to activities that protect, preserve, and manage government property and assets and to support customer agencies engaged in exempt and excepted activities.

b. Office of the Chief Financial Officer (B). This office is completely funded through the Working Capital Fund, which is an exempt funding source. The office may initiate a phased shutdown based on available resources.

c. Office of Human Resource Management (C). This office is completely funded through the Working Capital Fund, which is an exempt funding source. The office may initiate a phased shutdown based on available resources.

d. Office of Mission Assurance (D). Employees funded through the Working Capital Fund are exempt. These employees may be included in any phased shutdown. For positions funded through the appropriation, the minimum number of employees are excepted to ensure that GSA maintains a constant state of readiness to perform its essential functions.

e. Office of Small Business Utilization (E). This office is completely funded through the Working Capital Fund, which is an exempt funding source. The office may initiate a phased shutdown based on available resources.

f. Civilian Board of Contract Appeals (G). Excepted personnel are the Chairman, Vice Chairman, and the Board's Clerk and the minimum necessary additional employees to support exempt activities, including the support of the independent IT network of the Board of Contract Appeals.

g. Office of Administrative Services (H). This office is completely funded through the Working Capital Fund, which is an exempt funding source. The office may initiate a phased shutdown based on available resources.

h. Office of GSA IT (I). This office is completely funded through the Working Capital Fund, which is an exempt funding source. The office may initiate a phased shutdown based on available resources.

i. Office of Inspector General (J). Excepted personnel are the Inspector General, Deputy Inspector General, and any other personnel designated by the Inspector General or the Deputy Inspector General who may be needed to conduct essential activities to protect life and/or property, including pursuing or directly supporting law enforcement and criminal investigations or other legal proceedings that cannot be deferred. Specific details, including the number of excepted employees, are maintained in the Office of Inspector General's shutdown plan.

j. Office of General Counsel (L). This office is completely funded through the Working Capital Fund, which is an exempt funding source. The office may initiate a phased shutdown based on available resources.

k. Office of Government-wide Policy (M). For activities funded through the appropriation, excepted personnel are the Associate Administrator, the Chief Acquisition Officer, and the minimum necessary employees to continue excepted activities. Excepted functions are as follows:

(1) Carrying out government-wide policy and travel related issues necessary to enable employees government-wide to perform excepted activities.

(2) Supporting contracting activities of excepted and exempted activities, government-wide.

(3) Providing acquisition support, including compliance, ethics, and integrity in contracting in order to protect the government's interests in excepted contracting activities during the lapse in appropriations.

The Office of Executive Councils is funded through collections from participating agencies that are available for Executive Council use in the year of collection and the following fiscal year. Management may decide based on the availability of previous collections to continue full operations for programs funded through these collections for some length of time after a lapse of appropriations. Programs funded through these collections include the Office of Unified Shared Service Management and the Federal Permitting Improvement Steering Council.

l. Public Buildings Service (P). The Federal Buildings Fund depends on enactment of new obligational (spending) authority in annual appropriations acts, and is affected by a lapse in funding authority in a similar manner as annually appropriated accounts. Management may decide based on the availability of previously enacted budget authority to continue full operations for some length of time after a lapse of appropriations². However, to the extent PBS is conducting operations that are necessary for the protection, maintenance, and preservation of government property as set forth in paragraph 4, these functions are excepted and will continue regardless of the availability of previously enacted budget authority. For activities that are funded

² 1 The availability of previously enacted budget authority may be subject to certain restrictions, including Congressional notification for transfers between the Building Operations budget activities.

through payments obtained for services, space, or other facilities furnished on a reimbursable basis to Federal customer agencies unaffected by the lapse in appropriations, and for certain PBS programs or deposits to the Fund that by statute are not dependent upon annual appropriations acts for spending authority, including carryover resources, the number of employees to be retained is based on the amount and availability of these funds. To the extent that carryover resources are used to support ongoing operations, the program may initiate a phased shutdown. In the event that carryover resources are either not available to continue operations or management decides not to use this authority during a shutdown, life safety and/or property protection activities, including related contracting and communications, should circumstances warrant, will continue and are considered excepted activities. Other excepted activities include:

(1) Protecting the Government's interests in the continued performance of design and construction contracts funded from prior-year resources and performed by private contractors, and to avoid unacceptable costs which would result from termination of those contracts. A minimum level of personnel is excepted to support these activities.

(2) Activities funded through valid reimbursable work authorizations (RWAs) are excepted and employees may remain on duty at the minimum level needed to meet customer requirements, provided that the requesting agencies certify in writing continued fund availability.

(3) Activities funded through statutory authority not dependent upon enactment of an annual appropriations act appropriating funds from the FBF (for example, energy management programs funded under 40 U.S.C. 592(d)(4), recycling-related programs under 40 U.S.C. 592(e); support of the Cooperative Use out-lease function funded by revenues under 40 U.S.C. 581(h)(3); and historic preservation activities that are funded pursuant to 16 U.S.C. 470h-3) must consult with the Office of the Chief Financial Officer (B) and the Office of the General Counsel (L) to determine if their positions can be funded as an overhead expense payable from the program revenues or must be considered a GSA direct salary expense for which the lapse of appropriations applies.

m. Federal Acquisition Service (Q). The Acquisition Services Fund (ASF) is an exempt funding source not immediately affected by a lapse in appropriations.

(1) Transportation Audit activities, which are funded through a permanent authority, not the ASF, are also exempt.

(2) Personal Property utilization and donation activities that are funded by an annual appropriation are subject to a shutdown furlough. Employees will be excepted only to the extent necessary to support excepted activities relating to the disposal of excess or surplus inventories. Property sales, funded by the ASF, will retain property disposal specialists (marketing) to support customer inquiries and completion of previously scheduled sales.

(3) Activities of the Office of Products and Programs in the Technology Transformation Services (TTS) are funded by an annual appropriation, the Federal Citizen Services Fund, and are subject to a shutdown furlough. Excepted personnel are the minimum number necessary to support excepted activities through the national call centers and USA.gov.

(4) Activities in the TTS funded through the Working Capital Fund are exempt. These employees may be included in any phased shutdown.

n. Office of Congressional and Intergovernmental Affairs (S). The minimum necessary employees will remain on duty to monitor progress of appropriations enactment and to provide support to the Congress as required.

o. Office of Strategic Communication (Z). Employees funded through the Working Capital Fund are exempt. These employees may be included in any phased shutdown. For positions funded through the appropriation, including the Associate Administrator, the minimum number of employees are excepted to continue necessary office functions.

p. Office of Civil Rights (AK). This office is completely funded through the Working Capital Fund, which is an exempt funding source. The office may initiate a phased shutdown based on available resources.

q. Presidential Transition. GSA is required to support the incoming and outgoing President and Vice President due to a change of Administration. If a lapse in appropriations occurs in an election year, the following employees will remain on duty and are excepted if not otherwise excepted:

(1) A senior career executive and two support staff to oversee the program in support of the transition.

(2) Incoming Transition Support Team. The team leader and up to 40 staff members to ensure that the full suite of services are provided to the President-Elect and Vice-President Elect, and to meet requirements for the Transition Directory and Appointee Orientation, as designated by the senior career executive.

(3) Inaugural Support Team. The team leader and up to 13 staff members to carry out various activities in support of the Presidential Inaugural Committee (PIC), the Armed Forces Inaugural Committee (AFIC), and other Federal agencies during a Presidential Inauguration, as designated by the senior career executive.

(4) Outgoing Transition Support Team. The team leader and up to 12 staff members to ensure that the full suite of services is provided to the outgoing President and Vice-President, as designated by the senior career executive.

(5) Internal Transition Support Team. The team leader and up to 2 support staff to ensure that GSA has appropriate procedures, policies, and other materials in place to

ensure a smooth transition of GSA's internal leadership, as designated by the senior career executive.