

SECTION 124—AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

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**Summary of Changes**

Updates the summary information required at the beginning of each agency lapse plan to clarify that lapse plans should report the number of employees retained under the plan by number of individual employees, rather than number of FTEs, and include the total number of employees who will be furloughed under the plan (section [124.2](#)).

**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.

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 on August 1. The most recent biennial update was in 2019. Plans should be submitted to your OMB examiner and with a copy to the following e-mail address: [Section124Plans@omb.eop.gov](mailto:Section124Plans@omb.eop.gov). Agencies may also contact this e-mail address with questions.

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 at the beginning of your plan, using the template below:

<b>Lapse Plan Summary Overview</b>	
Estimated time (to nearest half day) required to complete shutdown activities:	<i># days</i>
Total number of agency employees expected to be on board before implementation of the plan:	<i># employees</i>
Total number of agency employees expected to be furloughed under the plan (unduplicated count):	<i># employees</i>
<b>Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):</b>	
Compensation is financed by a resource other than annual appropriations:	<i># employees</i>
Necessary to perform activities expressly authorized by law:	<i># employees</i>
Necessary to perform activities necessarily implied by law:	<i># employees</i>
Necessary to the discharge of the President's constitutional duties and powers:	<i># employees</i>
Necessary to protect life and property:	<i># employees</i>

**Brief summary of significant agency activities that will continue during a lapse:**

**Brief summary of significant agency activities that will cease during a lapse:**

The plan should then proceed to describe in detail, for each component within your agency, the following:

- ▶ 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;
- ▶ The total number of employees in the component to be on-board before implementation of the plan;
- ▶ The total number of employees in the component expected to be furloughed under 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 carryover funds or an appropriation provided by permanent law, 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). If an employee fits in more than one category, they may be reflected in the count for all applicable categories (i.e., count may be duplicated), in order to ensure the best estimate of the number of employees within each category; 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 and post the revised plan on your agency website. When agencies submit their plans to OMB, they should provide OMB with information on the 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. Approximately two business days before a potential lapse in appropriations, in coordination with OMB, agencies should notify employees of the status of funding using the OMB-provided employee notification.

After OMB has communicated that appropriations have lapsed, 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. Agencies must notify individual employees of their status under a lapse at this time. 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 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.

### **124.4 How may my agency receive lapse communications updates from OMB?**

Executive Branch agencies may receive updates on the status of appropriations at the [OMB Communications Regarding a Lapse in Appropriations](#) page. Additional resources are provided on this page and all agencies are encouraged to visit the page one week prior to the expiration of annual appropriations Acts, regardless of whether the enactment of appropriations appears imminent.

To receive lapse updates via e-mail, agency employees must join the group by following instructions on the page. Receiving email updates is optional; all updates will be provided on the [OMB Communications Regarding a Lapse in Appropriations](#) page.