



U.S. Agency for Global Media

Operations during a Lapse in Appropriations

Final

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USAGM LAPSE PLAN OVERVIEW	
Estimated time (to nearest half day) required to complete shutdown activities:	0.5
Total number of USAGM employees expected to be on board before implementation of the plan:	1076
Total number of agency employees expected to be shutdown furloughed under this plan (unduplicated count):	1035
Total number of employees to be retained under the plan for each of the following categories (unduplicated count):	
Compensation is financed by a resource other than annual appropriations:	0
Necessary to perform activities expressly authorized by law:	9
Necessary to perform activities necessarily implied by law:	5
Necessary to the discharge of the President's constitutional duties and powers:	0
Necessary to protect life and property:	27
Brief Summary of significant agency activities that will continue during a lapse: Activities necessary for the safety of human life or the protection of property, and for conducting foreign relations essential to the national security will continue during a lapse. During a lapse, the functions of USAGM's Chief Executive Officer, General Counsel and other key management staff are excepted as necessarily implied to support those excepted activities. Minimum operations necessary to keep OCB on air at significantly reduced levels will continue.	
Brief Summary of significant agency activities that will cease during a lapse: Agency support services (i.e. HR, CFO Office, Training) except any support services necessary for excepted activities will cease during a lapse including most management positions, especially support service management will cease during a lapse. No new programs or projects will be initiated.	

I. Background

The United States Constitution provides that “[n]o money shall be drawn from the Treasury, but in consequence of appropriations made by law.” U.S. Constitution, Article I, § 9, cl.7. The Anti-Deficiency Act (ADA) seeks to ensure proper implementation of this constitutional requirement by prohibiting all officers and employees of the federal government from entering into obligations in advance of an appropriation. To that end, the ADA restricts the acceptance of services from

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federal personnel, entering into contracts and executing grants, except in cases of emergencies or as otherwise authorized by law. *See* 31 U.S.C § 1341 *et seq.*

In absence of an appropriation to continue operations, the ADA would prohibit many but not all government functions. The Department of Justice Office of Legal Counsel (OLC), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) recognize various activities that are excepted from the general prohibition against incurring obligations that would otherwise apply under the ADA (hereinafter, “excepted activities”). In respect of such excepted activities, agencies may continue to incur obligations during a funding gap.

The ADA provides for the possibility of imposing significant criminal penalties for any employee or government official who knowingly and willfully violates the Act, including by continuing to incur obligations from non-excepted activities during a funding gap. These penalties may include fines of up to \$5,000 and imprisonment of up to two (2) years per violation. The Department of Justice has historically taken the position that it may seek to impose these penalties under appropriate circumstances against federal officials or employees who fail to cease applicable government functions during a funding gap (43 U.S. Op. Atty. Gen. 224, 229 (1980)). In addition to criminal penalties, the ADA also has significant administrative penalties for failure to comply.

II. Determination of Excepted Activities and Positions

A. Definition of Excepted Activities

Excepted activities that may be continued in an absence of appropriations include those activities which are (i) necessary to execute an orderly shutdown of affected operations, (ii) necessary for *the safety of human life or the protection of property*, and (iii) necessary to the discharge of the President’s constitutional duties. Employees performing excepted activities will continue to report to work and perform their duties.

Please note that the definition of an employee of the federal government only includes those individuals who are directly employed by the United States Government. The definition does not include contractors, such as purchase order vendors, stringers, and other individuals or entities who maintain contractual relationships with the U.S. Agency for Global Media (USAGM). The treatment of contractual services is covered in a later section of this guidance.

B. Excepted Activities for the Protection of Human Life and Property

To qualify as an excepted activity for the protection of human life and property, there must be some reasonable connection between the activity and the safety of human life or the protection of property. There must also be some reasonable likelihood that such safety and protection would be imminently harmed by delay in the performance of the function in question. At USAGM, this would include protecting government property, including headquarters, domestic and overseas transmitting stations, overseas bureaus, and equipment used in USAGM operations. The Office of Security and security guards will continue to protect domestic facilities and personnel in the event of a shutdown. It would also include reasonable support services related to the protection of human life and property. As many USAGM employees are stationed overseas or may be on travel status and may need to be recalled, USAGM should maintain minimal operations to protect such personnel in case emergency travel is warranted or to the extent required to recall personnel to their duty stations or to the United States.

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The chart below shows an estimate, by USAGM entity, of Government personnel that fall in this category. (An estimated 27 Government personnel.)

C. Conduct of Foreign Relations Activities Essential to the National Security

Certain of USAGM's international broadcasting activities may qualify as "foreign relations essential to the national security" and are, therefore, excepted activities which may continue during the appropriations lapse. At this time, USAGM assesses the minimum activities necessary to produce and distribute minimal Office of Cuba Broadcasting (OCB) programming are excepted, consistent with Administration priorities as reflected in NSPM-5, which assigned responsibilities to OCB.

(Approximately 9 Government personnel.)

D. Other Categories of Excepted Activities

The functions of the aforementioned USAGM personnel (CEO and 4 key management staff) are excepted as necessarily implied to substantially support other excepted functions continuing during a lapse.

III. Shutdown Preparation Activities

To prepare for a shutdown, each USAGM office should assemble a list of those activities, including personnel requirements that are essential to performance of excepted activities. Information must, at a minimum, include the number of employees expected to be on board at the implementation of the plan, minimum number of employees to be retained under the plan, specifying those employees essential for the protection of human life and property or other excepted activities.

All required information will be collected using a standard template provided by USAGM Office of Human Resources (HR). Office of Chief Financial Officer (OCFO) will consolidate and assemble the information, update shutdown plans, and submit those plans to OMB.

In the event of a potential shutdown, OCFO and HR will request the list of the names of employees who will be reporting to work in support of excepted activities in accordance with the shutdown plans.

The list should be accompanied by a certification from the USAGM CEO or Delegate indicating, "Obligations for salaries for the attached list of employees are necessary to carry out excepted activities, as outlined in USAGM's shutdown plans, in the absence of an appropriation."

Office of Human Resources will prepare employee notices.

Managers/Supervisors are responsible for ensuring they have contact information from all of their assigned personnel. Managers/Supervisors are also responsible for ensuring that the contact information of their personnel is updated regularly and provided to HR and required offices

A. Orderly Shutdown of Non-Excepted Activities

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All employees scheduled to work on the first workday following a lapse in appropriations should report to work.

Non-excepted employees (employees receiving furlough notices) should perform those tasks necessary to safeguard property, records, and information for an orderly shutdown. In addition, non-excepted personnel should take measures to secure files; make external contacts necessary to communicate the office's status, such as notifying parties of the cessation of normal business; cancel non-essential meetings, conferences, travel, and other previously arranged business; document the status of cases and projects so that they can be resumed, transferred, or otherwise appropriately handled when the Agency's operational status is regularized; complete, approve, and record time and attendance for all employees through last day before the shutdown; perform those tasks necessary to protect confidential information; and perform necessary functions to process all unpaid and due bills on hand for obligations incurred prior to the shutdown. It is anticipated that these activities will take approximately four (4) hours.

Non-excepted telework and remote workers may conduct shutdown activities remotely.

After performing the functions necessary for an orderly suspension of non-excepted operations, employees performing "non-excepted" activities will be furloughed. Managers are reminded that the United States Government cannot accept voluntary services; therefore, no employee may work if he or she is in a non-excepted status. These employees should listen to the news for information about the appropriation. USAGM will also post information about the status of the shutdown on the USAGM website, www.USAGM.gov, and provide information about when furloughed employees should report to work. USAGM has also established a phone line **(202-920-4357)** where employees may call in to determine the status of the shutdown. Furloughed personnel may continue to monitor their USAGM email accounts for up-to-date information on shutdown related matters only. If a Continuing Resolution (CR) or an appropriations bill is enacted (passed by the House and the Senate and signed by the President), employees will be directed to report back to work on their next scheduled workday, unless otherwise told to do so earlier (e.g., in rare cases recalled from furlough for excepted work).

B. Personnel

OHR staff will coordinate the electronic delivery of shutdown furlough notices to the employee's official USAGM email. Each electronic notice requests a reply of acknowledgment from the employee. Employees are authorized to use government-issued laptops and mobile devices and to monitor their USAGM email accounts for shutdown related matters only.

If the employee does not have government-issued equipment, is unable to monitor their government email, or does not acknowledge receipt of their furlough notice within a week of distribution, an email will be sent to their respective personal email for notification of furlough actions (if their personal email is available).

1. Hiring and Recruitment during the Furlough

An immediate hiring freeze will apply during a lapse in appropriations. Entry-on-duty dates for prospective employees with employment offers are suspended until the funding lapse is over. No new job offers may be made.

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***NOTE: All non-excepted personnel support activities are suspended.**

2. Foreign Service Nationals (FSNs) /Foreign National Personal Services Contracts (FS PSCs) /Locally Employed Staff (LES)

Foreign Service Nationals, Personal Service Agreements (PSAs), Foreign National Personal Services Contracts personnel, or Locally Employed Staff may, under local foreign law, be required to be paid whether or not work is performed. For these cases, the USAGM entity lead must notify the USAGM CFO and USAGM General Counsel of these cases for a resolution. FSNs, PSAs, FS PSCs, and LES employees may be authorized by USAGM to continue work if they can be supervised properly. Supervisory American staff may not be justified as “excepted” employees during a furlough solely on the basis of their supervisory role; their “excepted” status must be independently justified based on the categories of excepted activities discussed above. If supervisory staffs are not excepted and FSNs, PSAs, FS PSCs, and LES employees cannot operate without such supervision, these employees must be put on administrative leave.

3. Part-Time and Intermittent Employees

For part-time employees, time spent in non-pay, non-work status will be prorated based upon the number of hours normally worked during a pay period.

Intermittent employees are non-full-time employees without a regularly scheduled tour of duty. This group of employees may be called to work during a furlough only to perform excepted functions.

4. Employees on Detail

The detail office director will make the decision as to whether an employee on detail is needed to perform excepted work or will be furloughed and will send that information to the detailee’s supervisor of record. USAGM will not sign new detail agreements during a lapse. These procedures apply to all intra-agency and inter-agency details, except those approved under the Intergovernmental Personnel Act (IPA). Any office with an employee on an IPA detail should contact HR for guidance.

5. Rotation of Personnel

There may be instances where USAGM leadership determine will the need to have a rotation of personnel to accomplish excepted activities. Rotations are discouraged for several reasons, including that rotations may affect the eligibility of individuals for unemployment compensation, may impair continuity in USAGM functions, and may entail an unnecessary administrative workload required to bring employees in and out of furlough status. Even though rotations are discouraged, there may be the need to bring furloughed employees into excepted status and change excepted personnel to furloughed status.

Should the shutdown extend longer than a few days, VOA, OCB, TSI, or USAGM Mission Support senior management should be consulted regarding whether rotations of personnel are warranted. Any such requests will be provided in writing. These decisions will be made on a case-by-case basis. Decisions on rotations must be made based on USAGM’s needs related to the positions needed to carry out the excepted activities and the qualifications of individual employees in those positions. Any rotation of personnel decisions will be made by the USAGM CEO, VOA Director, OCB Director, TSI Director, Chief Management Officer, or their designated

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representatives and will be based solely on the requirement for providing continuing services of USAGM.

Additionally, USAGM Offices should submit excepted/furlough status changes using the provided template to OCFO and HR. Templates will be used to update the master employee status list.

C. Time and Attendance Reporting

During a lapse of funding, appropriations are not available for the payment of any obligation, including payroll.

Accurate time and attendance records should be maintained for all excepted employees utilizing processes in place in each office to record time worked and each excepted employee must badge in and out of the building. This includes the requirement that excepted employees continue the normal time and attendance documentation process, to include recording their time in SLDCADA.

Additional guidance for timekeepers will be transmitted to the CFO Timekeepers group email distribution.

1. Telework

During a lapse in funding resulting in a government shutdown, the Agency's Telework Policy remains in effect for excepted employees, including a supervisor's authority to deny requests for situational telework, and require excepted employees to report to the office when their physical presence is necessary. To be eligible for situational telework, an employee must complete telework training, have a supervisor-approved Situational Telework Agreement, and submit a telework request. Situational telework should only be used for extreme circumstances, such as when the government is closed for weather.

2. Remote work

During a lapse in funding resulting in a government shutdown, the Agency's Remote Work Policy under the Return to Office (RTO) plan remains in effect. Remote work under the RTO plan applies to employees with approved telework or remote work arrangements through reasonable accommodations or other legal agreements. Remote employees are expected to follow the Agency's return-to-office plans, as applicable. Supervisors may adjust remote work arrangements based on operational needs, including requiring employees to report to the office if necessary.

3. Pay for the Furlough Period

The Government Employee Fair Treatment Act of 2019 [P.L. 116-1, January 16, 2019], provides retroactive pay for Federal Employees affected by the lapse in appropriations as soon as possible after the lapse in appropriations ends, regardless of scheduled pay dates, and subject to the enactment of appropriations Acts ending the lapse. 31 U.S.C. § 1341(c)(2). Pursuant to the Act, each furloughed employee shall be paid for the period of lapse in appropriations, and each excepted employee shall be paid for work performed at the employee's standard rate of pay. Therefore, allowances, differentials, and other payments will be paid only if those payments are part of the

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employee's established schedule. Sunday Premium Pay may only be paid to eligible employees who are scheduled to work during Sunday and actually worked on that day.

4. Reporting Hours during the Furlough Period

Normal hours worked during the furlough period by excepted employees should be reported as regular duty hours. Employees who work overtime, weekends, or nights should include premium pay codes when reporting their time and attendance. Furloughed employees will be placed in a furlough status. Furloughed employees cannot be in a paid leave status (i.e., annual leave, sick leave, other paid leave, or compensatory time off) even if previously approved during that period, unless stated in OMB or OPM updated guidance. Similarly, a lapse in appropriations cancels an excepted employee's previously approved paid leave, except where requested pursuant to 31 U.S.C. § 1341(c)(3). Excepted employees who are required to perform work are entitled to use leave pursuant to applicable law governing the use of leave, which shall be paid at the earliest date possible after the lapse in appropriations ends. 31 U.S.C. § 1341(c)(3). An excepted employee who was directed to perform work but failed to report to duty may be placed in an AWOL status for missed work hours, in accordance with USAGM policy. In cases of employees who were scheduled to be on leave without pay, the already-in-place period of non-pay status overrides the furlough status.

5. Reporting Time for the First Workday of a Lapse and Subsequent Days with a Lapse in Appropriations

Special attention should be paid to reporting time and attendance for employees for the first workday of a lapse since the shutdown may occur during the workday and non-excepted employees may have worked varying periods of time before departing on furlough. A determination should be made on the amount of time each non-excepted employee worked on the first furlough day. The remaining period in the employee's duty day would then be considered furlough time and must be reported as furlough time (for timekeepers: hour type code "KE"), even if the employee had been previously scheduled to take paid leave later in the day.

D. Contracts

The following guidance provides a framework for consistent treatment of contractual commitments by USAGM during a shutdown that will minimize ultimate costs and disruptions.

1. Previously awarded contracts that continue in performance during a lapse in appropriations and have adequate funding previously obligated to permit continued performance during a shutdown period should generally be permitted to continue unless adequate oversight of contractor performance during a shutdown period cannot be accomplished or the goods or services are not deemed necessary during a shutdown. If adequate monitoring of contractor performance cannot be provided, suspension or reduction in performance of non-excepted services should be considered if authorized by the terms of the contract or if the contractor will negotiate such a suspension or reduction. Care should be taken not to incur unnecessary costs or jeopardize USAGM's future contractual rights by unilateral stop work orders or directions to reduce the scope of work that are not authorized by the terms of the contract or that will cause the contractor to incur costs that could subsequently be charged to the government. In conjunction with the

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respective Contracting Officer, offices should review contracts to determine whether suspension or reduction in performance of non-excepted services is authorized by the terms of the contract. Contracting Officers should coordinate any such adjustments to the contracts, as appropriate.

2. For previously awarded contracts and leases that (in the absence of funding) require renewal or modification during a lapse in appropriations, obligation of additional funds for continued performance may be authorized only if necessary to support excepted activities authorized for continuance under USAGM's shutdown plan. The necessity for such renewals or modifications must be certified to the Contracting Officer by the USAGM CEO or Delegate, VOA Director, OCB Director, TSI Director, or Chief Management Officer, as appropriate, and authorized on a case-by-case basis by the CFO. Requests must be accompanied by a written statement/justification of the basis for such necessity as well as the statement signed by the appropriate Director: "The obligation is necessary to carryout excepted activities in the absence of an appropriation." Incurring unfunded obligations for such services during a funding gap does not violate the ADA, but payment of such unfunded obligations must be deferred until appropriations are provided by the Congress. Unfunded contractual commitments should be kept to the minimum cost and duration that will meet the essential need.
3. New contractual commitments during a lapse in appropriations may be made only if necessary to support excepted activities authorized for continuance under USAGM's shutdown plan. The necessity for such renewals or modifications must be certified to the Contracting Officer by the USAGM CEO or Delegate, USAGM Chief of Staff, VOA Director, TSI Director, OCB Director, or Chief Management Officer, as appropriate, and authorized on a case-by-case basis by the CFO. Requests must be accompanied by a written statement/justification of the basis for such necessity as well as the statement signed by the appropriate Director: "The obligation is necessary to carryout excepted activities in the absence of an appropriation." Unfunded contractual commitments should be kept to the minimum cost and duration that will meet the essential need.
4. No new grants or cooperative agreements may be entered into during the period of a lapse in appropriations. This includes travel grants.
5. Foreign national personnel with personal services contracts/agreements should be treated in the same manner as FSN direct hires, where local labor law necessitates. Any Personal Services Contractors should be treated in a similar manner as similarly situated civil service or Foreign Service employees, retaining only if necessary to perform an excepted activity.

E. Obligations and Disbursements

No obligations, or adjustments to existing obligations, may be incurred against USAGM annual accounts during any lapse of appropriations unless authorized by law (31 U.S.C. § 1341(c)(3)). However, during a funding lapse, obligations may continue to be incurred for excepted activities only and must only be incurred for the minimum amounts necessary. All USAGM personnel must operate under strict constraints that ensure USAGM complies with GAO, OMB, and OPM guidelines.

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While USAGM has legal authority to incur obligations to continue excepted activities during a lapse in appropriations, obligations cannot be formally recorded in Momentum (USAGM Financial System of Record), as there are no funds against which to record the obligations. Such obligations **must be kept to a minimum** and must be manually tracked and immediately recorded in Momentum when USAGM appropriations are received. All paper documents are official records and must be scanned and attached to the financial transaction in the financial management system when appropriations are received.

Unless authorized by law (31 U.S.C. § 1341(c)(3)), all obligations, adjustments to obligations, and obligating documents issued during the lapse period must be approved by the USAGM CEO or Delegate, VOA Director, TSI Director, OCB Director, Chief Management Officer, or CFO, as appropriate, and have the following statement affixed and signed by the appropriate Director: **“This obligation is necessary to carry out excepted activities in the absence of an appropriation.”** This should be accompanied by a written justification on how the transaction qualifies under the “excepted” activities. All paper documents are official records and must be scanned and attached to the financial transaction in the financial management system when appropriations are received. These excepted activities will be documented on the template provided by the OCFO. Each excepted activity document will have the entity leader, or designated representative signature, an approval signature from the USAGM OGC, and an approval signature from the CFO, Deputy CFO, or Budget Director. Without these approval signatures, this activity **WILL NOT** be considered excepted activities and will not proceed. The template for these transactions can be obtained from the USAGM CFO Office Budget Division.

F. Travel

Travel should be limited to that which is necessary for emergencies involving the safety of human life or the protection of property or other excepted activities. All other travel plans (non- excepted activities) should be suspended.

All travel authorizations must be approved by the CEO or Delegate, VOA Director, OCB Director, TSI Director, Chief Management Officer, or CFO, as appropriate. The template for these transactions can be obtained from the USAGM CFO Budget Division.

Travel should not be initiated unless clearly in support of an excepted activity. If personnel are in travel status overseas at the time of the lapse but are not performing excepted activities, they should stop work and await further instructions. Because funding for overseas travel is obligated when the travel commences or when any cost is incurred for the travel (i.e., prior to the lapse), managers should not instruct personnel in non-excepted travel status abroad to return to their home duty stations, unless otherwise directed. If such personnel are not performing excepted activities, they should be furloughed.

Personnel in domestic travel status who are not performing excepted functions should return to their duty station city as soon as practicable. Personnel in domestic travel status who are performing excepted functions may continue.

*NOTE: During a lapse in appropriations, it is anticipated that United States Department of State Passport and Visa operations will be suspended, except for emergency reasons.

G. Training

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In accordance with the shutdown plan, employees enrolled in training should not attend class. This applies to all training, whether conducted by USAGM employees or contractors.

Those domestic personnel in training who are designated as necessary to perform “excepted functions” should return to their positions; those not so designated will be furloughed.

H. Representation Events

It is important to consider the perception of a representation event during a government shutdown.

1. **Domestic Representation** - Generally, no domestic representation events should be held during the shutdown period. Events already scheduled should be cancelled and no new events planned until the shutdown is over. The USAGM CEO or Delegate, or CFO may authorize a domestic representation event only if it is necessary to support excepted activities. Any such request for representation funds must be previously approved by the VOA Director, TSI Director, OCB Director, or Chief Management Officer, as appropriate.
2. **Overseas Representation** - Generally, no overseas representation events should be held during a shutdown period. The USAGM CEO or Delegate, or CFO may authorize a representation event abroad only if it is necessary to support excepted activities. Any such request for representation funds must be previously approved by the VOA Director, TSI Director, OCB Director, or Chief Management Officer, as appropriate.

I. Communications

If there is no resolution of the budget situation on the last day before a lapse in appropriations and as directed by Office of Management and Budget, a house announcement will be issued via e-mail and a notice will be placed on **www.USAGM.gov** with an update. If a government shutdown is ordered at midnight, all employees must report to work on the first regularly scheduled workday to ensure an orderly closure of non-excepted activities.

Non-excepted employees will perform only those tasks necessary such as:

- Completing and submitting timesheet for work performed through the current pay period;
- Safeguarding property, records, and information;
- Securing files; making external contacts necessary to communicate the office's status, such as notifying parties of the cessation of normal business;
- Cancelling non-essential meetings, conferences, and other previously arranged business and travel;
- Documenting the status of cases and projects so that they can be resumed, transferred, or otherwise appropriately handled when the Agency’s operational status is regularized;

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- Performing those tasks necessary to protect confidential information;
- Approving and processing all timesheets;
- Processing contractual stop work orders as needed;
- Processing all unpaid and due bills on hand for obligations incurred prior to the shutdown, and
- Setting up out of office voice/email messages.

These activities are expected to take no longer than four (4) hours.

Those who work atypical schedules, such as Saturdays/Sundays or weekday hours outside the period of 8:15 AM to 5:00 PM, should confer with their first-line supervisors to obtain a shutdown notice and carry out shutdown activities.

A contractor may continue to work provided that the contract or order has sufficient funds, and that an excepted employee is available to accept the supplies or services that are required by the contract or order and they have not been notified by the office of contracts to stop work.

After performing the functions necessary for an orderly suspension of non-excepted operations, employees designated as non-excepted will be furloughed. Managers are reminded that the United States Government cannot accept voluntary services; therefore, work cannot be accepted from any non-excepted employees during a furlough. The Agency will create a standard out-of-office message for use on the e-mail accounts of all furloughed employees. Furloughed personnel may continue to monitor their USAGM email accounts for up-to-date information on shutdown related matters only.