



U.S. Agency for Global Media

Operations During a Lapse in Appropriations

Final

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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 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 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 for *conducting foreign relations essential to the national security*. 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 U.S. Government. The definition does not include contractors, such as purchase order vendors, stringers, and other individuals or entities who maintain contractual relationships with the USAGM. The treatment of contractual services is covered in a later section of this guidance.

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

To qualify as an essential 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 compromised to some degree by delay in the performance of the function in question. At the U.S. Agency for Global Media (USAGM), this would include the protection of all 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 shut down. 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.

The chart below shows an estimate by USAGM entity of Government personnel that fall in this category. (Approximately 1.45% of the USAGM workforce or an estimated 21).

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

The USAGM Office of General Counsel (OGC) has issued a memorandum establishing that there is a sufficient legal basis for the USAGM Board's determination that United States international broadcasting activities of the USAGM qualify as "foreign relations essential to the national security" and are, therefore, excepted activities which may continue during the appropriations lapse. These excepted activities represent the minimum activities necessary to produce and distribute Voice of America (VOA) and Office of Cuba Broadcasting (OCB) programming and to distribute programming of the USAGM. Federal employees who are covered by this exception include the minimum VOA, OCB, Technology, Services, and Innovation (TSI), and International Broadcasting Bureau (IBB) employees required to produce and distribute relevant programming.

Similarly, the USAGM OGC has determined that the non-Federal Grantees (Radio Free Asia (RFA), Radio Free Europe/Radio Liberty (RFE/RL), and Middle East Broadcasting Network, Inc. (MBN) also engage in core broadcasting activities for the Agency that qualify as "foreign relations essential to the national security" and are, therefore, excepted activities which may continue during the appropriations lapse. Accordingly, the Agency may incur obligations in support of the grantees' core broadcasting activities.

The scope of this excepted activity is based on the following programming assumptions:

- Minimum operations necessary to keep the USAGM global distribution network operational;
- Current programming schedule remains, with minimum operations necessary to stay on the air;
- Highest priority news programs continue;

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- Breaking news is covered;
- No new programs or projects are initiated;
- Evergreen and pre-recorded material will be used to the highest extent possible;
- Internet and new media operations continue as appropriate; and
- Excepted employees are those essential to produce and distribute these programs.

Activities that fall under this category (Approximately 66% of the USAGM workforce or an estimated 960 staff).

D. Other Categories of Excepted Activities

The USAGM is not planning on and does not maintain any activities that engage in military law enforcement or health care. In addition, the USAGM is not requesting an exemption to continue operations for employees whose compensation is financed by resources other than the annual appropriation. As such, no USAGM employees fall into this category.

Table 1. Approximate USAGM Staffing Categories

USAGM ENTITIES	FURLOUGHED		EXCEPTED				TOTAL STAFF
			Human Life		Foreign Relations		
	COUNT	PERCENT	COUNT	PERCENT	COUNT	PERCENT	
IBB	130	76.47%	2	1.18%	38	22.35%	170
OCB	20	17.70%			93	82.30%	113
TSI	69	44.52%	19	12.26%	67	43.23%	155
VOA	245	24.33%			762	75.67%	1007
GRAND TOTALS	464	32.11%	21	1.45%	960	66.44%	1445

III. Shutdown Preparation Activities

To prepare for a shutdown, each USAGM office should assemble a list of those activities, inclusive of 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, segregated by those employees essential for the protection of human life and property and those employees necessary to the conduct of foreign relations essential to the national.

All required information will be collected using a standard template provided by the 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.

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In the event of an actual shutdown, the 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, USAGM Chief of Staff, VOA Director, OCB Director, TSI Director, IBB Director of Management Services, or CFO as appropriate, indicating, “Obligations for salaries for the attached list of employees are necessary to carry out excepted activities, as outlined in the USAGM shutdown plans, in the absence of an appropriation.”

Office of Human Resources (OHR) 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

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 employees who are not scheduled to work on the first workday following a lapse in appropriations (e.g., Saturdays or Sundays) should contact their first-line supervisors immediately to obtain instructions on receiving their furlough notice.

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 Federal 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. The USAGM will post information about the status of the shutdown in the USAGM (formerly BBG) website, www.USAGM.gov, and provide information about when furloughed employees should report to work. The USAGM has also established a phone line (**202-382-8222**) where employees may call in to determine the status of the shutdown. If another

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continuing resolution or an appropriation 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

HR will distribute furlough notices to USAGM offices. The notices should be given to individual furloughed employees as quickly as possible on the first work day of the shutdown. If a shutdown occurs, managers are responsible for forwarding a copy of the furlough letter to non-excepted domestic employees who are not at work. Managers should also distribute furlough notices to affected overseas employees and are requested to advise HR of the names of those non-excepted employees on leave or travel in the U.S. who are not expected back within the following two weeks. Managers should confirm that each non-excepted employee has received a furlough notification letter. Employees are required to sign the furlough notice to indicate receipt and return it to the Manager. Managers are responsible for returning the signed copies to HR. If there is difficulty in delivering furlough notices, managers should notify HR and request assistance in delivering the notices and getting acknowledgement of receipt. Managers should cite this guidance in support of their respective requests.

For non-excepted employees who are unreachable within two (2) weeks due to lack of a contact address, managers should advise HR of those employees and their expected date of return to the Agency or duty station. HR will try to locate these employees, if possible.

The CFO will examine the text of any subsequent appropriation or continuing resolution to determine if Congress has authorized retroactive pay for employees.

1. Furlough Decision Notice Due to Lapse of Appropriations (5 CFR PART 752)

The text of the notice of furlough appears below:

In the absence of either a Fiscal Year (FY) 2019 appropriation, or a continuing resolution for the U.S. Agency for Global Media (USAGM) (formerly the Broadcasting Board of Governors), no further financial obligations may be incurred by USAGM, except for those related to the orderly suspension of USAGM operations or performance of excepted activities as defined in the Office of Management and Budget memorandum for Heads of Executive Departments and Agencies dated November 17, 1981 and subsequent guidance. Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective four (4) hours after the beginning of your first daily tour of duty beginning on or after December 22, 2018. This furlough, i.e., non-duty, non-pay status, is not expected to exceed 30 calendar days. Therefore, this furlough notice expires on January 20, 2019. You should monitor public broadcasts and the Internet for further information. When you hear that a continuing resolution or a Fiscal Year 2019 appropriation that covers USAGM has been approved, you will be expected to return to work at the beginning of your daily tour of duty on your next regular duty workday.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period

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and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) has been waived due to a sudden emergency requiring curtailment of activities.

If employees are being retained in your competitive level or competitive area, they are retained because their services are required during the orderly suspension of agency operations or because they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a non-pay, non-duty status and you may not work at your workplace or any alternative worksite unless and until recalled. You are not permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is hereby cancelled.

Attached is the SF-8, Notice to Federal Employee about Unemployment Insurance. Additional information about unemployment insurance is available at <http://www.servicelocator.org/OWSLinks.asp>.

FILING WITH THE MERIT SYSTEMS PROTECTION BOARD

Employees in the competitive service who have completed a probationary or trial period or one (1) year of current continuous employment in the competitive service under other than a temporary appointment limited to one (1) year or less may appeal this action to the Merit Systems Protection Board (MSPB). GS Employees in the excepted service who have veteran's preference may appeal to the MSPB if they have completed one (1) year of current continuous service in the same or similar positions as the one now held. GS Employees in the excepted service who do not have veteran's preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two (2) years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two (2) years or less.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action in the Office of Human Resources.

NOTICE OF APPEAL RIGHTS

The following is provided regarding your rights to appeal this decision. You may file an appeal with one of the following: the U.S. Merit Systems Protection Board (MSPB), the Office of Special Counsel, the Equal Employment Opportunity Commission or if your position is within either the AFGC, Local 1812 or AFSCME, Local 1418 bargaining units, you may file a grievance under the negotiated grievance procedure contained in the Negotiated Labor Management Agreement (NLMA) between your exclusive representative (i.e., union) and this Agency. (See information below if your position is within the AFSA bargaining unit.)

You have the right to appeal this action to the U.S. Merit Systems Protection Board (MSPB). If you elect to appeal to MSPB, your appeal must be filed in writing no later than thirty (30) calendar days after the effective date of this action. You may obtain information about the appeals process and a copy of the MSPB Appeal Form (MSPB Form 185) from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. Your appeal should give the reasons for contesting the action, along with any offer of proof and pertinent documents that you are able to submit. Filing may

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be made by mail, facsimile, commercial overnight delivery, or personal delivery to the following address if your duty station is located:

in Washington, D.C., North Carolina or elsewhere not listed below:

*U.S. Merit Systems Protection Board
Washington, DC Regional Office
1901 S. Bell Street, Suite 950
Arlington, VA 22202
Fax: (703) 756-7112*

or in Illinois to:

*U.S. Merit Systems Protection Board
Central Regional Office
230 South Dearborn Street
31st Floor
Chicago, IL 60604-1669
Fax: (312) 886-4231*

or in Florida to:

*U.S. Merit Systems Protection Board
Atlanta Regional Office
401 W Peachtree Street, NW
10th Floor
Atlanta, GA 30308-3519
Fax: (404) 730-2767*

or in New York to:

*U.S. Merit Systems Protection Board
New York Field Office
26 Federal Plaza
Room 3137-A
New York, NY 10278-0022
Fax: (212) 264-1417*

or in Los Angeles or Pacific overseas to:

*U.S. Merit Systems Protection Board
Western Regional Office
1301 Clay Street, Suite 1380N
Oakland, CA 94612-5217
Fax: (510) 273-7136*

You may file an appeal electronically through the MSPB website (<https://e-appeal.mspb.gov/>). If you opt to file in this manner, you should follow the link to e-Appeal. The date of filing shall be determined by the date the appeal is postmarked, the date of the facsimile transmission, the date it is delivered to a commercial overnight delivery service, the date you send it electronically, or the date of receipt, if you deliver it personally. If you are unable to access this information through the internet, please contact the Office of Human Resources, at (202) 382-7500, and arrangements will be made to provide you with

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this information.

You may seek corrective action before the Office of Special Counsel (OSC), www.osc.gov. If you choose to seek corrective action concerning whistleblowing activities directly with the OSC and not as affirmative defense to a MSPB appeal, OSC will notify you of its decision, including providing any appeal rights to the MSPB you may have at that time. Any appeal to the MSPB at that time must be filed within 60 days of notification that OSC has terminated its investigation or 120 days after seeking corrective action and OSC has not notified you that it shall seek corrective action on your behalf. If you appeal to the MSPB after first going to the OSC, the MSPB may only consider whether the Agency's action was taken against you in retaliation for making prohibited whistleblowing disclosures. You are prohibited from raising other affirmative defenses in this corrective action appeal.

You have the right to contact the Agency's Office of Civil Rights to initiate a complaint within forty-five (45) calendar days from the date of receipt of this letter if you believe that the Agency is taking this action because of your race, color, religion, sex, national origin, disability, age, genetic information, or in retaliation for your previous participation in the EEO process. You may either pursue discrimination allegations through the EEO process or you may raise discrimination based upon race, color, religion, sex, national origin, disability, age, genetic information, or retaliation for your previous participation in the EEO process as a defense in the MSPB appeal, but not both.

If you are a bargaining unit employee covered either by the AGFE, Local 1812 or the AFSCME, Local 1418 Negotiated Labor Management Agreement (NLMA), you may file a grievance regarding this action under the applicable grievance procedures of the NLMA between your exclusive representative and this Agency or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. You may contact your AFGE or AFSCME Local officials for more information on filing a grievance under the negotiated grievance procedure.

Filing a grievance will not extend the time limit for filing an appeal with the Board. These rights are described in the Code of Federal Regulations, 5 C.F.R. § 1201.21. If you are an AFSA bargaining unit member, you may use the grievance procedures under 3 FAM 4400.

If you are an AFGE, Local 1812 bargaining unit member, selection of the Negotiated Grievance Procedure does not prejudice your right to request MSPB review of the final decision pursuant to 5 U.S.C. § 7702. If you are an AFSCME bargaining unit member and you allege that this action is based on discrimination as discussed above, you must appeal to either the MSPB or the EEOC.

Any communication from the MSPB, including the Acknowledgement Order and a copy of the appeal, should be sent to:

*Office of the General Counsel
U.S. Agency for Global Media
330 Independence Ave., S.W., Suite 3349
Washington, DC 20237
202-203-4550
202-203-4585 (fax)*

Employees have a right to representation in this matter by their union, an attorney or other person of their choosing.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available.

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Other information

If you have questions about any of the information in this notice, you should contact the Office of Human Resources at (202) 382-7500.

Deciding Official

Date

I acknowledge receipt of this decision

Employee's Signature

Date

Attachment: SF-8

2. 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.

All non-excepted personnel support activities are suspended.

3. Foreign Service Nationals/Foreign National Personal Services Contracts

Foreign Service Nationals (FSNs), Personal Service Agreements (PSAs), or Foreign National Personal Services Contracts personnel (FS PSCs) may, under local foreign law, be required to be paid whether or not work is performed. FSNs, PSAs, and FS PSCs may 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, and FS PSCs cannot operate without such supervision, these employees must be put on administrative leave.

4. 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.

5. Rotation of Personnel

In the past, shutdowns of the Agency based on a lapse of appropriations have been of a short

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duration. Therefore, the USAGM does not foresee the necessity for the rotation of personnel. In addition, 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.

Should the shutdown extend longer than a few days, USAGM VOA, OCB, TSI, or IBB senior management should be consulted regarding whether rotations of personnel are warranted. Any such requests should be provided in writing. These decisions will be made on a case-by-case basis. Decisions on rotations must be made on the basis of the 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, USAGM Chief of Staff, VOA Director, OCB Director, TSI Director, or IBB Director of Management Services and will be based solely on the requirement for providing continuing services of the USAGM.

Personnel rotated into and out of furlough status require the processing of two (2) SF-52 forms, Request for Personnel Actions: an **SF-52 Furlough** action to take the employee out of pay status and an **SF-52 Return to Duty** action to enable the employee to return to an excepted function. Offices are responsible for producing SF-52 forms, obtaining authorizing signatures, and submitting these forms to the Office of Human Resources each time an employee is rotated into or out of furlough status. HR will provide a copy of the SF-52 to OCFO. Additionally, USAGM Offices should submit excepted/furlough status changes using provided template to OCFO and HR. Templates and SF-52s 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. A subsequent continuing resolution or the FY 2019 appropriations bill must contain a provision that authorizes payments for payroll obligations incurred during the shutdown period. Until the appropriation is passed, the exact terms of the provision, including retroactive compensation for furloughed employees, remain unknown.

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 WebTA.

The following guidance should be utilized only if a subsequent continuing resolution or the FY 2019 appropriations bill contains provisions for retroactive compensation for furloughed employees. Additional guidance will be provided if no appropriations bill or continuing resolution is passed to provide retroactive compensation.

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

Telework

During a lapse in funding resulting in a government shutdown, supervisors may need to limit employees' ability to telework due to changes in employee work assignments, changed needs for in-office staff coverage, or other unique circumstances. In the event of a shutdown, the Agency's Telework Policy still governs telework by excepted employees, including a supervisor's discretion to cancel scheduled telework days, a supervisor's discretion to deny requests for situational telework, and an employee's responsibility to report to the office whenever the supervisor informs the employee that his/her physical presence is required. Provided that changed circumstances do not affect an excepted employee's ability to telework, Excepted employees with regular telework schedules *may* be allowed to telework on the days specified in their telework agreements. Excepted employees with telework agreements that include situational telework *may* be allowed to telework situationally, provided: 1) the excepted employee's supervisor/manager has approved the request to situationally telework, 2) there is a need to be absent from the employee's official worksite, and 3) the employee has enough portable work to fill the employee's work day. Supervisors of excepted employees who are also teleworkers should discuss telework during a shutdown with their employees as soon as possible, including who will approve situational telework if the supervisor is furloughed.

Pay for the Furlough Period

For the furlough period, employees must receive the same compensation they would have received had they performed their normal duties. Once new legislation is enacted, we will inform you whether to implement this guidance. Therefore, allowances, differentials, and other payments will be paid as if an employee actually continued to work. Unless the new legislation overrides existing statutes and regulations, the only exception to this rule would be Sunday Premium Pay, which is only paid to eligible employees who are scheduled to work during Sunday and actually worked on that day.

Reporting Hours During the Furlough Period

During the lapse in appropriations, employees must be either (1) at work performing excepted activities, or (2) furloughed. They, therefore, cannot be in a paid leave status (i.e., annual leave, sick leave, other paid leave, or compensatory time off) during that period. Normal hours worked during the furlough period by excepted employees should be reported as regular duty hours. Except as provided below, absences resulting from the furlough of non-excepted employees should be reported as administrative leave. These absences should not be charged to regular duty hours or any form of paid leave

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(i.e., annual leave, sick leave, other paid leave, or compensatory time off). If an excepted

employee had an emergency which precluded them from working, the absence should be reported as time in a furlough status. In the case of employees who were on approved leave without pay during the lapse of appropriations, these absences must continue to be charged to leave without pay.

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 of time 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

As the GAO has long recognized, funding gaps due to lapses in appropriations raise particularly thorny issues in the area of contractual commitments, where generally applicable ADA requirements may be in apparent conflict with orderly shutdown activities and with continuation of excepted functions.

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 the 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 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.

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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 the USAGM's shutdown plan. The necessity for such renewals or modifications must be certified to the Contracting Officer by the USAGM CEO, USAGM Chief of Staff, VOA Director, OCB Director, TSI Director, or IBB Director of Management Services, 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 the USAGM's shutdown plan. The necessity for such renewals or modifications must be certified to the Contracting Officer by the USAGM CEO, USAGM Chief of Staff, VOA Director, TSI Director, OCB Director, or IBB Director of Management Services, 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 the same 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. 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 the USAGM is in compliance with GAO and OMB guidelines.

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While the USAGM has legal authority to incur obligations to continue excepted activities during a lapse in appropriations, obligations cannot be formally recorded in our accounting system, as there are no appropriations to record the obligations against. Such obligations must be kept to a minimum and must be manually tracked and immediately recorded in the financial management system when Agency 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.

Payments will not be processed or disbursed during the lapse period, as the Treasury will be suspending all payment transactions.

All obligations, adjustments to obligations, and obligating documents issued during the lapse period must be approved by the USAGM CEO, USAGM Chief of Staff, VOA Director, TSI Director, OCB Director, IBB Director of Management Services, 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.

F. Travel

Travel should be limited to that absolutely necessary for emergencies involving the safety of human life or the protection of property or that considered absolutely necessary for the creation, production or distribution of USAGM programming which has been deemed to constitute the conduct of foreign relations essential to the national security. All other travel plans (non- excepted activities) should be suspended.

All travel authorizations must be approved by the USAGM CEO, USAGM Chief of Staff, VOA Director, OCB Director, TSI Director, IBB Director of Management Services, or CFO, as appropriate.

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), and because it is likely that any hiatus in funding will be temporary, 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 make arrangements to return to their duty station city as soon as practicable. Personnel in domestic travel status who are performing excepted functions may continue.

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

G. Training

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** - As a general rule, 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, USAGM Chief of Staff, 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 IBB Director of Management Services, as appropriate.
2. **Overseas Representation** - As a general rule, no overseas representation events should be held during a shutdown period. The USAGM CEO, USAGM Chief of Staff, 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 IBB Director of Management Services, 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 your timesheet for work performed through December 21st;
- 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;

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- 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;
- Performing those tasks necessary to protect confidential information;
- Approving and processing all timesheets;
- Processing contractual stop work orders as needed, and
- Processing all unpaid and due bills on hand for obligations incurred prior to the shutdown.

It is expected that these activities will 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 U.S. 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.