



Guidance in the Absence of Appropriations

April 7, 2011

The Congress has not passed a continuing resolution or enacted appropriations for FY 2011. The current continuing resolution will expire at midnight between Friday, April 8 and Saturday April 9, 2011. Budget negotiations between the White House and the Congress are ongoing; however, given current circumstances and time needed to prepare for a lapse in appropriations, all posts are to begin preparing for a shutdown of the federal government. Permission to determine who is excepted and non-excepted falls under Chief of Mission Authority. The purpose of this message is to provide an integrated reference guide for all information previously provided on Department of State Operations during a lapse in appropriations. (Previous guidance was issued December 13, 1995). NO/NO steps to actually shut down (including issuance of furlough letters) should occur until you receive guidance from the Department.

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I. DETERMINATION OF EXCEPTED FUNCTIONS AND POSITIONS

A. Definition of Excepted Functions: "Excepted" functions that may be continued in an absence of appropriations include those necessary for emergencies involving "the safety of human life or the protection of property," and those necessary for activities essential to national security, including the conduct of foreign affairs essential to national security. Employees performing "excepted" functions will continue to report to work and perform their duties, as will employees performing activities for which funds are still available. For example, functions that the Department chooses to fund by multi-year or no-year appropriations (with remaining available balances), trust funds, other permanent appropriations, and the Working Capital Fund will continue as long as there is funding available and work to be performed. If funds for these activities later become exhausted, then the applicable shutdown plan will become operative and only excepted functions will be continued.

B. Chief of Mission (COM) Authority regarding other U.S. Government Agency Employees Overseas: Under a lapse of appropriations, each U.S. Government agency at post must determine which positions meet the criteria of "excepted" in the absence of appropriations. (As indicated above, if the Department determines that it will pay the salary of a U.S. citizen employee from appropriations that have not lapsed, e.g., an appropriation has been enacted or no-year funds are available, that employee may continue to work.) If an agency has determined that certain of its positions overseas do not meet those criteria, and that determination conflicts with that of the Chief of Mission, then the Chief of Mission should attempt to resolve the matter directly with the parent agency concerned. Based on COM authority and the Department's foreign affairs responsibilities, the COMs and Department's judgment about what functions constitute the conduct of foreign relations essential to national security carries great weight. If the COM is unable to reach agreement with another agency on what functions should continue to be performed during a lapse of appropriations, the COM may refer the matter to Washington to see if the Department can reach an accommodation with the other agency. In the case of Locally Employed Staff (LE Staff), COM guidance as to local labor law implications and other matters should be conveyed to the agency seeking to furlough local national employees. USG agencies are authorized to require LE Staff and FSN PSAs to work if post determines that local labor law obliges the U.S. to pay their salaries, unless these agencies are unable to provide adequate supervision with other excepted staff. The COM should inform agencies involved that, as ratified by OMB in the past, the Department plans generally to treat those foreign national employees as excepted whom the Department believes must be paid under host country labor laws regardless of attendance. The COM will be responsible for informing the Principal Officers of other agencies at post immediately upon notification by OMB that we are to implement shutdown procedures.

i. We anticipate a significantly higher percentage of excepted positions abroad than in Washington because of these unique factors:

- Department of State personnel perform a diplomatic reporting function that is essential to the conduct of foreign relations and the national security, providing invaluable information to all national security agencies that helps prevent and contain crises affecting our national security.
- Our personnel abroad are also the primary means by which the U.S. Government carries out diplomacy. This communication is essential to the conduct of foreign relations and may be required on short notice to prevent or contain crises.
- Our posts abroad symbolize the presence of the United States of America abroad. Closing down or significantly scaling back operations abroad could

immediately diminish our influence and damage our relations with the host governments.

- Our posts abroad are also the platform that supports the work of other U.S. agencies abroad. Department personnel provide essential administrative support for other agencies abroad. These agencies could not conduct their excepted activities if Department support personnel were not present.
- Because many countries' labor laws require that our local employees and contractors be paid regardless of attendance, we are authorized to treat them as if excepted.

ii. In broad summary, the following describes the types of Department of State operations abroad, among others, that we expect will be continued in the event of a lapse in appropriations:

- Diplomatic reporting, involving most bilateral and multilateral issues, arms control issues, and "crisis countries" will require nearly 100% staffing which is necessary to support this essential function to our nation's security.
- In the consular area, American citizens' services, emergency visa services (e.g., those for life/death or medical emergencies, humanitarian cases involving minor children, and diplomatic travel) would continue. Basic visa issuance would be severely curtailed.
- Regional medical centers providing life-supporting medical care would be staffed at between 90% and 100%.
- Refugee assistance, narcotics interdiction, and repatriation loan programs would continue at nearly 100%.
- Staffing for Administrative functions would be reduced somewhat, as a direct result of reduced numbers of staff (both Department of State and other U.S. Government agencies) requiring support. However, all security and medical functions would be performed, as would most communications functions. MEDEVACs would continue, as required. General services, financial services, and personnel functions would be curtailed by and large.
- Support for travel, by the President, Vice President, Secretary of State, and other Cabinet-level officials, as well as international conferences' negotiators. Participation in major international fora such as the U.N. must be fully staffed.
- Given the extreme nature of events, certain posts will be at 100% staffing, including Baghdad, Cairo, Islamabad, Kabul, Sana'a, Tokyo, Tunis, Valetta, and Abidjan.
- We will maintain full Marine Security Groups, continue drug interdiction and law enforcement functions, and continue criminal investigations.

C. The Bureau of Consular Affairs, as well as other areas in the Department, undertake a combination of excepted and non-excepted activities related to consular services. For the most part, visa and passport functions are not excepted activities, nor do fees entirely cover them. Instead, the Department relies on a mix of fee-funded and appropriation-funded employees and is dependent on support services that would be scaled back or eliminated during a shutdown. Therefore, the Department will not operate these non-excepted functions in the absence of appropriated funding.

D. Consular Operations Domestically: For all practical purposes, passport offices will be closed for the acceptance of new applications. Emergency passport services will be provided. As part of an orderly shutdown, domestic passport agency staff will remain on the job to process expedited applications already in the system. Domestic Bureau of Consular Affairs offices that must remain operational to support overseas excepted services are themselves engaged in excepted activities and will remain staffed at the appropriate minimal level. Expedited passports will be processed immediately. Following the rescission of the furlough, non-expedited passports will be processed in the order of date received. In order to advance the safety of human life and in order to carry out authorized functions, CA will support the provision of emergency services for U.S. citizens overseas, including but not limited to those detailed in section D below; staff and support, as necessary, task forces related to U.S. citizens in crisis situations; and take urgent action to prevent international parental child abductions.

E. Consular Operations Overseas: Consular sections should cease the provision of routine consular services.

i. Routine services to U.S. citizens will be suspended; posts should provide only those services related to U.S. citizen emergencies necessary for the safety of human life or otherwise to carry out excepted activities, which include, but are not limited to, the following:

- Emergency passport issuance;
- Deaths;
- Arrests and detentions;
- Welfare and whereabouts requests related to in-process parental child abduction cases and other instances where refusal to act would result in the endangerment of a U.S. citizen;
- Emergency repatriation, Emergency Medical and Dietary Assistance (EMDA), and medical evacuation loans;
- Continued payment to overseas beneficiaries of federal benefits already received by posts;
- Assistance in extraditions and prisoner transfers that are in their final stages;
- Support for in-process emergency adoption cases (such as when the child's health or safety is at risk) that are at the point of visa issuance, when the adoptive parents are in country to pick up the child to return to the United States;
- Assistance in returning abducted children to the United States from abroad or from the United States to the child's home country;
- All necessary consular functions at posts involved in crisis management activities, until the Department determines the crisis to have passed;
- Support for consular systems, including software, fobs, Blackberries, and laptops that are essential to support emergency consular functions; and
- Other exceptional or compelling circumstances that affect U.S. citizens, as determined by Overseas Citizens Services (CA/OCS) management.

ii. Posts abroad would process to conclusion any passport applications on hand at the time of shutdown. Excepted service would also include truly compelling emergency visa services (i.e., the issuance of a non-immigrant visa to an individual with a critically ill family member in the United States, diplomatic emergencies, adoption cases as described above, and immigrant visa cases in which the applicant will turn 21 and lose the claim to immigrant status). Posts should continue to review and pass to the Department urgent Visa Viper information. Routine visa services would be suspended. Posts should bear in mind that the Bureau of Consular Affairs will be minimally staffed during a shutdown.

F. Overseas Consular Fee Collections (Machine Readable Visa, Diversity Lottery, Affidavit of Support, H&L Visa Fraud, IV Security Surcharge): Post managers may continue to collect consular fees for any emergency or compelling humanitarian visas during the lapse, but should account for these fees separately from fees collected prior to the lapse. Posts should prepare a daily OF-158 for emergency consular fee collections during a lapse in appropriations or a government shutdown.

Bank collections should continue as appropriate. These instructions also apply to passport fees collected overseas.

G. Domestic Consular Fee Collections (Passport Security Surcharge, Western Hemisphere Travel Initiative, Passport Expedite Fee): Agencies and acceptance agents may continue to collect consular fees for any emergency or compelling humanitarian passports during the lapse, but should account for these fees separately from fees collected prior to the lapse. Agencies and the domestic lockbox should prepare a daily OF-158 for consular fee collections during a lapse in appropriations or a government shutdown. Lockbox operations should continue as appropriate. These instructions also apply to visa fees collected domestically.

H. Use of E-Mail/Telegrams/Remote Access/Mobile Applications: The Department will be minimally staffed if a shutdown occurs. Department managers and post managers are asked to reduce message traffic to include only the most urgent need. Remote access and mobile programs, to include fobs, secure laptop services, and centrally managed Blackberry support services will be minimally staffed. Additionally, due to reduced domestic staff levels, all personnel should be cognizant that there are fewer personnel available to respond to incoming messages.

II. ORDERLY SHUTDOWN OF NON-EXCEPTED FUNCTIONS

A. All employees scheduled to work on the first workday following a lapse in appropriations should report to work. Non-expected employees should perform only those tasks necessary to safeguard property, records, and information, and to complete administrative functions such as processing payroll for pay through April 8, 2011. In addition, non-expected 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, cancelling non-essential meetings, conferences, and other previously arranged business; completing at-post passport work; documenting the status of cases and projects so that they can be resumed, transferred, or otherwise appropriately handled when the Department's operational status is regularized; performing those tasks necessary to protect confidential information; and performing necessary functions to process all unpaid bills in hand for obligations incurred prior to April 8, 2011. We anticipate that these activities will take approximately four hours for the majority of employees.

B. After performing the functions necessary for an orderly suspension of non-expected operations, employees performing "non-expected" functions will be furloughed. Managers are reminded that the Government cannot accept voluntary services – therefore, no employee may work if he or she is in a non-expected status. Employees are advised that "work" includes reporting to work as well as using fobs, Blackberrys, and teleworking. These employees should monitor the news for information on an additional continuing resolution and, unless told otherwise, should report back to work on their next scheduled workday once another continuing resolution or an appropriation bill is enacted (passed by the House and the Senate and signed by the President), unless told to do so earlier (i.e., for rotation or other purposes).

C. Upon receipt of specific Department instructions, if a shutdown occurs, bureau Executive Directors are responsible for providing a copy of the furlough letter to non-expected domestic employees including those who may be on travel or on leave. Posts' Management Officers similarly should distribute furlough notices to impacted overseas employees. Management Officers should also advise their bureaus' executive offices by cable of the names and contact information for non-expected employees on leave or travel in the U.S. who are not expected back at post within two weeks of the furlough so bureaus may attempt to forward to them a copy of the furlough notice. Management Officers should confirm with each of these employees as they return to post that they have received notification. If any employees are visiting other posts, and contact names or addresses are available, please contact that post for assistance in delivering the notice and getting an acknowledgement of receipt, citing this guidance in support of the request.

D. For other non-expected employees who cannot be contacted within two weeks due to lack of a contact address, please advise HR/Employee Relations (HR/ER) of their names and their expected date of return to the bureau or the post. If possible, HR/ER will try to locate these employees.

i. The text of the Notice of Furlough for Foreign Service employees is as follows:

In the absence of either an FY 2011 appropriation or a continuing resolution for the Department of State, no further financial obligations may be incurred by the Department, except for those related to the orderly suspension of the Department's 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 as of the date of this letter. We would hope that the furlough (i.e., non-pay, non-duty status) will not exceed 30 days. You should monitor public broadcasts and when you hear that a continuing resolution or an FY 2011 appropriation for the Department has been approved by Congress and signed by the President, you will be expected to return to work on your next regular work day. This action is being taken because of a sudden emergency requiring curtailment of the Department's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 USC 752.404(d)(2). If other employees are being retained, they are required for orderly suspension of our operations or they are performing one of the excepted activities defined in the OMB memorandum. When you are on furlough, you will be in a non-pay, non-duty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, and therefore you must remain away from your workplace unless and until recalled. In addition, a furloughed employee may not work remotely by, for example, using a fob or Blackberry. You may, however, be permitted into the building for personal business at the credit union or to obtain forgotten items from your office. You may use the grievance procedures under 3 FAM 4400 or, if represented by a union, under the negotiated grievance procedures of the applicable collective bargaining agreement, to contest this decision. Please contact your Executive Director or Post Management Officer if you have questions, including your rights and entitlements during the period of furlough. END TEXT.

ii. The text of the Notice of Furlough for Civil Service employees is as follows:

In the absence of either an FY 2011 appropriation or a continuing resolution for the Department of State, no further financial obligations may be incurred by the Department, except for those related to the orderly suspension of the Department's 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 as of the date of this letter. We would hope that the furlough (i.e., non-pay, non-duty status) will not exceed 30 days. You should monitor public broadcasts and when you hear that a continuing resolution for FY 2011 appropriation for the Department has been approved, you will be expected to return to work

on your next regular duty day. This action is being taken because of a sudden emergency requiring curtailment of the Department's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(0)(2). If employees are being retained in your competitive level, they are required for orderly suspension of our operations or 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. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, and therefore you must remain away from your workplace unless and until recalled. In addition, a furloughed employee may not work remotely by, for example, using a fob or Blackberry. You may, however, be permitted into the building for personal business at the credit union or to obtain forgotten items from your office. Employees, who have completed a probationary or trial period, or one year of current continuous employment in the competitive service under other than a temporary appointment, may appeal this action to the Merit Systems Protection Board (MSPB). Employees who are a member of a bargaining unit represented by a Union under a Collective Bargaining Agreement that contains a Negotiated Grievance Procedure (NGP) may appeal this action to the MSPB or file a grievance under NGP, but not both. Employees in the excepted service who have veterans preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans 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 years of current continuous service in the same or similar positions in an executive agency under other than a temporary appointment limited to two years or less. SES career appointees adversely affected may also appeal (5 USC 3595A and Subpart H of 5 CFR Part 359). Employees have a right to representation in the matter and may be represented by an attorney or other person of their choosing. If you have the right to appeal to the MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, contact your Executive Office to obtain a copy of the MSPB regulations and appeal form and the address of the MSPB regional office having jurisdiction. For employees in the Washington, D.C., area, appeals to the MSPB should be addressed to:

Merit Systems Protection Board
Washington, DC Regional Office
1800 Diagonal Road, Suite 205
Alexandria, VA 22314-2840

If there are any further questions, please contact your Executive Director or Management Office and visit <http://www.opm.gov/furlough/furlough/asp>. END TEXT.

iii. The text of the Notice of Furlough for Locally employed staff is as follows:

To Be Translated into Host Country Language.

Date

LE Staff Addressee

RE: Decision of Furlough - Lapse of Appropriations

As you may have read in the U.S. news, in the absence of either an FY 2011 appropriation or a Continuing Resolution, no further financial obligations may be incurred by the US Embassy except for those related to the orderly suspension of operations or when performance is related to an excepted activity as defined by the Office of Management and Budget. This affects the majority of U.S. Government employees, programs, services, and facilities in the United States, and many of our staff and operations in other countries. Due to the lack of appropriations funding, we are unable to pay all salaries during the furlough and only previously funded benefits will continue.

Unfortunately, your position is not among those "excepted" from the shutdown. You are therefore on furlough status effective as of the date of this letter. This action is being taken because of a sudden emergency requiring curtailment of the Embassy's activities; therefore, no advance notification was possible. (For post mgmt: INSERT specific guidance on how to keep in touch with LE Staff, whether by personal e-mail, phone call, house visit, etc. and any host nation required legal language such as compliance with local law, referral to unemployment benefits. Seek L guidance, as appropriate.) Due to the lack of an appropriation, during the furlough period, affected employees will remain in a non-pay, non-duty status until further notice. Also, during the furlough, we regret employees will not be permitted to serve as unpaid volunteers, and therefore you are requested to remain away from your place of work unless and until recalled. You may, however, have access to the building for personal business, if essential, and to obtain forgotten items from your office. Due to the lack of an appropriation, any paid leave (annual, sick, etc.) approved for use during the furlough period must also be cancelled. We would hope that the furlough will not exceed 30 days. This action is being taken by officials in Washington and is not a reflection of your services to the U.S. Government. If there are any further questions, please contact your executive or administrative office.

We sincerely hope appropriations to resume U.S. Government services will be restored shortly and we will all soon return to normal operations. END TEXT.

III. PERSONNEL

A. American Employees

An immediate hiring freeze will apply during a lapse in appropriations. Entry-on-board dates for prospective employees with employment offers are suspended until the funding lapse is over. No new job offers may be made. We will need to examine the text of any subsequent appropriation or continuing resolution to determine if the Congress has authorized retroactive pay and allowances. All non-excepted personnel support activities, such as unfunded security investigations, should be suspended.

B. Locally Employed Staff (LE Staff)/Foreign National

Personal Services Agreement (FSN PSA) Employees. If FSNs and other LE Staff would, under local law, be required to be paid whether or not they work, they may work if they can be properly supervised. Supervisory American staff may not be solely justified as "excepted" employees merely because of their supervisory role; their "excepted" status must be independently justified. If supervisory staff is not excepted, these employees should be put on administrative leave. During any lapse of appropriations, post should obligate benefits and allowances for FSNs and other LE Staff who are required to work, but as referenced in Section VIII the incurred obligation should not be formally recorded (posted) in our accounting systems as there are no appropriations against which to record obligations. Any such obligations will be liquidated only after the Department receives a new appropriation covering their activities at which point the obligation may be recorded in the finance system. FSNs and other LE Staff who do not work will likely need to await further Congressional action.

C. Part-Time Employees. In defining the number of furlough days for part-time employees, bureaus and posts should equitably compute the furlough days in the same proportion to those days scheduled for full-time employees, based on work schedules. (The hours might be computed as a percentage of the work schedule for full-time employees.)

D. Intermittent/WAE Employees. When-Actually-Employed (WAE) employees or seasonal employees are called to duty at identified periods of the year in accordance with pre-established conditions. Intermittent/WAE employees are non-full-time employees without a regularly scheduled tour of duty. Whether either group is called for work during the period in which furloughs are scheduled is discretionary with agencies, but must be to perform excepted functions.

E. Rotation of Personnel. Rotating personnel to perform excepted functions may be made at bureau and post discretion. However, the following should be taken into consideration when making a decision on rotations:

- Managers should take into account the impact the rotation schedule may have on unemployment compensation eligibility for the employee, based on local jurisdictions' unemployment insurance policies.
- Decisions on rotations for specific positions should balance the Department's need for continuity and equity to the employees.
- Posts may determine on what basis rotations may take place (i.e., daily or for longer periods), but due consideration should be given to continuity and fairness.
- Personnel rotated into and out of an excepted function must have the requisite qualifications to perform the function.

i. All decisions to rotate employees must be documented by the bureau or post.

IV. TRAVEL

A. Travel should be limited to that necessary for emergencies involving the safety of human life or the protection of property, or that necessary for activities essential to national security, including the conduct of foreign relations essential to national security. This may include, but is not limited to, the negotiation of major treaties; attending a significant bilateral or multilateral meeting; maintaining excepted post operations; emergency visitation, medical, or other ordered evacuation; or providing food, medicine, or other essential services to refugees. All travel authorizations must be approved by the Deputy Chief of Mission at post, the Principal Deputy Assistant Secretary in the regional and functional bureaus, or the Assistant Secretary in the management bureaus.

B. Reassignment of personnel already planned may be continued, such as movement related to changes in post assignment, only if funds have been previously obligated.

C. 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 was incurred for the travel (i.e., prior to the lapse) and because we are hopeful that any hiatus in funding will be temporary, do not yet instruct personnel in non-excepted travel status abroad to return to their home duty stations. If such persons are not performing an excepted activity, they should be furloughed.

D. Personnel in domestic travel status, including students in training and on authorized travel orders, who are not performing excepted functions, should make arrangements to return or deploy to their duty city as soon as informed by the Director of the Foreign Service Institute or the bureau involved. Personnel in domestic travel status who are performing excepted functions may continue to do so.

V. TRAINING

A. In accordance with the shutdown plan, Foreign Service Institute (FSI), FSI field offices, and all other domestic facilities will be closed, except those portions of the Diplomatic Security Training Center and FSI's National Foreign Affairs Training Center campus housing employees performing excepted functions. Crisis Management Training and Antiterrorism Assistance Training that has already started at overseas posts may continue if posts are open, subject to the approval of the Chief of Mission since this pertains to the safety and security of personnel. Domestically, the following courses will continue as scheduled since they pertain to the safety and security of personnel going to Afghanistan, Iraq and other posts of heightened danger: the High Threat Tactical Course (HTTC DS 301); the Afghanistan PRT Orientation (AR421); Afghanistan Familiarization (RS415); Iraq Familiarization (PT610); Iraq PRT Orientation (AR 420) and the Interagency Integrated Civilian-Military Training Exercise for Afghanistan (RS510); the Diplomatic Security Training Security/Non-Traditional Operation Environments course (SNOE OT401) and for those deploying to posts where it is mandatory, the Foreign Affairs Counter Threat Course (OT610).

B. All other class attendance, domestically and overseas, will be suspended. This applies to all training, except as noted above, whether conducted by Department employees or contractors. Other security-related training may be continued subject to the specific written approval of the Under Secretary for Management.

C. 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. Overseas personnel in training in the U.S. will be furloughed. Personnel in domestic travel status who are not performing excepted functions should make arrangements to return or deploy to their duty site as soon as told to do so by the Director of FSI or their bureau senior leadership. Personnel in domestic travel status who are performing excepted functions may continue to do so. Similarly, employees enrolled in training conducted by entities outside the Department should not attend class and should be treated as stated above.

VI. ALLOWANCES UNDER THE STANDARDIZED REGULATIONS

For persons in overseas positions or on TDY, allowances and per diem will continue to accrue, except for representation allowances. The Chief of Mission may authorize the use of representational funds on an exceptional basis when necessary for activities essential to national security, including the conduct of foreign affairs essential to national security.

VII. CONTRACTS

A. As the Government Accountability Office has long recognized, funding gaps due to lapses in appropriations raise particularly thorny issues in the area of contractual commitments, where generally applicable Anti-Deficiency Act requirements may be in apparent conflict with orderly shutdown activities and with continuation of excepted functions. The following guidance is directed toward providing a framework for consistent treatment of contractual commitments by Department contracting activities and posts abroad that is consistent with the overall Department shutdown plan and that will minimize ultimate costs and disruptions.

B. 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 the post/contracting activity cannot provide 'adequate oversight of contract performance during a shutdown period. 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 Government'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. If circumstances require further guidance, consult L/BA per paragraph G below.

C. For domestic offices, previously awarded contracts and leases that would, in the absence of funding, require renewal or modification during a lapse in appropriations to obligate additional funds for continued performance may be authorized to continue only if necessary to support excepted activities authorized for continuance under the Department's shutdown plan or if genuinely needed to protect Government property or human safety. The necessity for such renewals or modifications must be certified to the contracting officer by the Deputy Chief of Mission at post, the Principal Deputy Assistant Secretary (in the regional and functional bureaus), or the Assistant Secretary (in the management bureaus) with a written statement of the basis for such necessity. Post Administrative Officers and bureau Executive Directors must certify that funds are available within the annual financial plan targets provided by RM. Incurring unfunded obligations for such services during a funding gap does not violate the Anti-Deficiency Act, but payment of such unfunded obligations must be deferred until appropriations are provided by the Congress.

D. New contractual commitments during a lapse in appropriations may be made only if necessary to support excepted activities authorized for continuance under the Department's shutdown plan or if genuinely needed to protect Government property or human safety. The necessity for such unfunded commitments must be certified to the contracting officer by the Deputy Chief of Mission, the Principal Deputy Assistant Secretary, or Assistant Secretary (as previously described) with a written statement on the basis for such necessity. Additionally, Administrative Officers and Executive Directors must certify that funds are available within the annual financial plan targets provided by RM. Unfunded contractual commitments should be kept to the minimum in cost and duration that will meet the essential need.

E. You should not enter into any new grants or cooperative agreements during the period of a lapse in appropriations.

F. You should suspend unfunded non-real estate leases during the period of a funding lapse, unless necessary to support excepted activities. You may continue previously awarded construction and renovation projects for which adequate funds were obligated unless adequate supervision cannot be provided, in which case consider suspension of work if contractually permitted and practically feasible. OBO funded leases and real estate purchases may continue under regular rules and procedures.

G. You should treat foreign national personnel with personal services contracts agreements in the same manner as foreign service national direct hires where local labor law necessitates. You should treat U.S. personal services contractors in the same manner as similarly situated civil service or foreign service employees, retaining only if necessary to perform an excepted function.

H. You should consult L/ BA, preferably by e-mail or facsimile (703-516-1547) with questions arising in connection with guidance in this section.

VIII. OBLIGATIONS AND DISBURSEMENTS

A. Obligations

- During any lapse of Fiscal Year 2011 single year appropriations, obligations against lapsed appropriations may continue to be incurred for excepted activities. The Department may make available unobligated balances from prior-year appropriations, including multiyear and no-year funds subject to apportionment and allotment requirements. Those balances can be reprioritized and reallocated for use during a lapse in new appropriations through the financial plan process subject to any plans or notifications previously submitted to Congress on the functions, statutory requirements regarding reprogramming or transfer of funds, guidance from OMB, and any other relevant guidance. For obligations incurred against an appropriation now lapsed, the availability of any deobligated funds for reobligation depends on the provisions of the relevant appropriations act.

- During a lapse in appropriations, the Department has legal authority to incur obligations to continue excepted activities. However, the incurred obligations should not be formally recorded (posted) in our accounting systems as there are no appropriations against which to record the obligations. Bureaus and posts must ensure that such obligations are not sent to the RM/GFS to be recorded in official accounts.

- Per OMB guidance, payments cannot be disbursed against lapsed appropriations for obligations incurred after the lapse begins. Disbursements can be made for obligations incurred before the lapse period (in this case, on or before April 8, 2022).

- All obligations and obligating documents issued during the lapse period must be approved by the Deputy Chief of Mission, a Principal Deputy Assistant Secretary in the regional and functional bureaus, or an Assistant Secretary in the Management Bureaus, and have the following statement affixed and signed by the DCM, Assistant Secretary, or Principal Deputy Assistant Secretary, as applicable: "This obligation is necessary to carry out excepted activities in the absence of an appropriation or to perform activities for which funds are otherwise available."

- Bureaus and posts should maintain detailed records of all obligations incurred that cannot be recorded at this time. As soon as obligation authority is obtained, all obligations should be recorded immediately.

B. Disbursements. Bureaus and posts can certify and RM/GFS can make payments against valid obligations established against prior year annual appropriations (including FY2010), and for FY2011 obligations established only through the end of the current Continuing Resolution (i.e. April 8, 2011). Bureaus and posts also can certify and authorize payments against valid obligations in no-year or multi-year appropriations for which funding remains available. These payments should be routinely sent to RM/GFS for processing. Bureaus and posts cannot certify and authorize payments against Department of State obligations incurred after date TBD against any FY 2011 lapsed single year appropriations. Again, obligations can be incurred for excepted activities but cannot be posted (formally recorded) in the Department's financial systems.

C. Specific Situations. The following are typical bureau/post obligation/payment categories and how they should be handled:

i. LE Staff and FS PSA pay/allowances: Standard procedures to process LE Staff payroll must be followed. Under no circumstances should alternate means be used to pay LE Staff and FS PSA salaries, such as using petty cash. As per the above general guidance for obligations after April 8, 2011, no obligations for payroll after that date should be recorded on official accounts or sent to RM/GFS, even for excepted activities. More detailed guidance on submitting time and attendance during the period of the lapse will be provided prior to the deadline for the next submission of time and attendance.

ii. American Salaries, Benefits, and Allowances: While work can continue for persons performing "excepted" and shutdown activities, payments for salaries and allowances may only be made for services rendered through April 8, 2011.

iii. Travel: Only travel in fulfillment of excepted activities can be initiated after a lapse of appropriations. Per guidance above, even in cases of travel in this category, obligations made after any lapse of appropriations should not be recorded on official bureau or post accounts even though obligations have been incurred. Blanket travel orders issued prior to April 8, 2011 are not valid during the lapse period, unless in the case of overseas travel, travel commenced or any cost was incurred for that travel prior to the shutdown. No travel advances can be issued unless the obligation for overseas travel was incurred prior to April 8, 2011. Travel voucher reimbursements can be processed only if against obligations incurred and recorded for prior years, or for FY 2011 (if obligated prior to April 8, 2011) multi-year or no-year appropriations for which funds remain available. Travelers who hold Citibank Travel Cards may charge advances against these cards for any approved trips as travel card advance charges do not create advances to official accounts. As part of GSA Smart Pay cards, Citibank Travel Cards will continue to function normally and banks will continue to provide service. Cardholders, as usual, should contact the bank customer service organization should they experience problems with their cards.

iv. Utilities: As with other categories of payments, utility payments for obligations established prior to April 8, 2011 can be processed and sent to RM/GFS and the FSCs for payment. Obligations for utility costs after April 8, 2011 should not be recorded even though incurred, and utility payments for periods after April 8, 2011 cannot be made from lapsed appropriations. Posts confronted with any emergencies in this regard should contact the Department as soon as possible (see paragraph 13 below).

v. OBO Allotment Activities: Since overseas OBO activities (e.g., rents, maintenance and repair, fire/safety and capital projects) are paid from the no-year OBO appropriation, these activities can be obligated and paid if the post has sufficient funds in its OBO allotment. Salaries for facility managers and OBO direct-hire project staff at post are funded domestically from the no-year OBO appropriation; therefore, those personnel will continue to report to work and perform their duties. Salaries for locally-hired OBO project staff are funded from post-held OBO allotments and can therefore be obligated and paid as long as post has sufficient funds in its allotment.

vi. Representation: Reimbursements for Representation events held through April 8, 2011, may be certified and payments processed if funds are available within bureau or post Representation allotment. Reimbursements may not/ repeat/may not be made for approved representation events held after April 8, 2011.

vii. Purchase Order Payments: Generally, purchase order obligations and payments are to be governed by the above guidance. Obligations for purchase orders prior to April 8, 2011 should have been recorded. Payments against these obligations can be processed. Obligations incurred for purchase orders after April 8, 2011, for excepted activities against lapsed FY 2011 appropriations cannot be recorded and payments against these obligations cannot be made.

viii. Petty Cash Payments: Similar guidance applies to all categories of miscellaneous petty cash payments. A voucher can be paid if the obligation supporting it was incurred prior to April 8, 2011. For example, a petty cash reimbursement for taxi fares incurred prior to April 8, 2011 can be paid. No petty cash reimbursement can be made for taxi fares or other purposes incurred after April 8, 2011 unless against an available multi-year or a no-year appropriation. Please follow guidance in paragraph 13 for cash payments deemed absolutely necessary. The absence of appropriations does not affect accommodation exchange.

ix. Collections: Embassy cashiers can continue to process all collections normally including MRV fee collections.

x. Certifying officer Responsibility: Post financial management and certifying officers have the responsibility to ensure that only authorized obligations are recorded, and only payments against authorized obligations are certified for payment and forwarded to the FSC for disbursement. Edits in our overseas financial systems should ensure that payments are not processed unless a valid obligation has been recorded. Posts should not de-obligate funds previously obligated prior to April 8, 2011 and re-obligate to new obligations after April 8, 2011.

xi. Absolutely Necessary Payments: To reiterate, and consistent with OMB guidance, we have authority to incur obligations but cannot make payments for excepted activities after April 8, 2011. Because our accounting system pays for incurred obligations, we cannot post (record) obligations due to the lapse of appropriations even though obligations have been incurred, nor can we make payments against the incurred but not recorded obligations for FY 2011 lapsed appropriations. If it is necessary to make payments in emergency situations (e.g., to safeguard life and property), the bureau or embassy should send a memo or cable, respectively, on a case-specific basis to request use of funds that RM determines may be available for such purposes. Each request should provide details of the date the funds are needed, the amount, the justification and any other relevant information. Requests of this type should be limited to extreme cases.

xii. Repatriation Loans: Post authority to expend up to \$2000 per applicant without Department approval is temporarily rescinded. If a post determines that a repatriation loan is absolutely essential during the period of a lapse in appropriations, the post should cable CA/OCS and the Chief Financial Officer to request funding as mentioned in paragraph 13 above.

xiii. Emergency Medical Services: If the concurrence of MED is received, emergency medical travel and services obligations can be incurred but not recorded. Accordingly, payments against such obligations cannot be made. Please coordinate with MED and follow guidance in paragraph 12 in emergency situations where payment is required immediately. For medical services funding requests the post should cable MED and the Chief Financial Officer (not the regional bureaus).

xiv. Other Agencies: For other agencies for which the embassy makes disbursements or processes payments only, State officials must rely on other agency approvals to ensure compliance with the above-described procedures and funds availability. For other agencies for which the embassy provides accounting as well as payment services, the obligation and payment guidance in this cable applies.

IX. TIME AND ATTENDANCE REPORTING

A. Reporting hours during the furlough period (during the lapse in appropriations) employees must be either (1) 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.

B. If an excepted employee had an emergency which precluded them from working during this period, their time should be reported as a furloughed employee for that time period. 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.

C. Reporting time for the first workday of a lapse and subsequent days with a lapse in appropriations, you should give special attention to reporting T&A for employees for the first workday of a lapse since the shutdown may occur during the workday and non-excepted employees would work varying periods of time before departing on furlough. A determination should be made on the amount of time each employee worked on the first furlough day – defined as your first scheduled workday after April 8, 2011. The remaining period of time in a furloughed employee's duty day would then be considered furlough time.

D. Overseas timekeepers (main and sub) will submit time for PP07 as normal – NLT Thursday, April 7, 2011. Domestic timekeepers must report to work on Friday, April 8, 2011 to complete time and attendance reporting for PP07 as normal. Their work to complete the T&A will be an excepted activity. Detailed guidance to all timekeepers and supervisors on how to record furloughed time in the T&A system will be provided separately.

X. SPEECH-MAKING

A. As a general rule, all speeches to public audiences should be cancelled and no invitations to give speeches to public audiences should be accepted during the shutdown period. If you believe there are exceptional reasons to honor an existing speech commitment or to accept a speaking invitation, you should contact Public Affairs at 202-647-6607 for guidance. No speeches to public audiences may be made during the shutdown period without PA's explicit approval.

B. The Bureau of Public Affairs may need to communicate with the media, via on-camera or off-camera briefings and/or the release of statements via traditional or social media means, for events and issues involving the safety of human life or the protection of property, or those necessarily related to national security, including the conduct of foreign affairs essential to the national security ("excepted activities"). This would include direct support to the Secretary of State for travel related to national security-related issues, and any news media and transcription support that would entail. Approval for such activities will rest with the Bureau Assistant Secretary or Principal Deputy Assistant Secretary.

XI. REPRESENTATION EVENTS

A. 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. If you believe there are truly exceptional circumstances that merit a Representation event being held during the shutdown period, you should contact RM/CFO.

B. Overseas Representation: As a general rule, no overseas Representation events should be held during a shutdown period. Chiefs of Mission may authorize a representational event abroad only if it is necessary to support excepted activities. COMs should consider the perception of a representational event during a Department shutdown.

XII. FREQUENTLY ASKED QUESTIONS

For the most current information regarding furlough procedures and employee status, please see OPM guidance at <http://www.opm.gov/furlough/furlough.asp>.

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