



# **U.S. Department of Homeland Security**

## **Procedures Relating to a Lapse in Appropriations**

September 25, 2020



# Procedures Relating to a Federal Lapse in Appropriations

## Table of Contents

Table of Contents .....	1
I. Requirements and Limitations .....	3
II. Definitions; Determinations for Exempt and Excepted Functions and Employees.....	4
III. Procedures for an Orderly Closure .....	9
IV. Procedures in the Event of an Incident Requiring Recall .....	25
V. Procedures Following Conclusion of a Hiatus .....	30
VI. Appendix: Exempt/Excepted Employees .....	31
Office of the Secretary and Executive Management .....	32
Management Directorate.....	33
Office of Intelligence and Analysis .....	34
Office of Operations Coordination .....	35
Office of Inspector General .....	36
U.S. Customs and Border Protection .....	37
U.S. Immigration and Customs Enforcement.....	39
Transportation Security Administration .....	40
U.S. Coast Guard .....	41
U.S. Secret Service .....	42
Cybersecurity and Infrastructure Security Agency.....	43
Federal Emergency Management Agency .....	44
U.S. Citizenship and Immigration Services.....	45
Federal Law Enforcement Training Centers.....	46
Science and Technology Directorate .....	47
Countering Weapons of Mass Destruction Office.....	48
VII. Total Employees: On-Board vs. Exempt/Excepted .....	49
VIII. Appendix: Template Recall Request.....	50
IX. Appendix: Memo for DHS Employees Not in a Furlough Status .....	52

X. Appendix: Financial Assistance Supplemental Information.....	56
Table of Contents: Financial Assistance Contingency Plan .....	57
I. Purpose.....	58
II. Relationship to DHS-Wide and Government-Wide Guidance .....	58
III. DHS Financial Assistance Policy Regarding the Issuance of General Guidance to Recipients in the Event of a Federal Funding Lapse .....	59
IV. Fundamental Statutory Requirements (Anti-Deficiency Act) .....	59
V. Imminent Funding Lapse – Identifying Financial Assistance Supporting Exempt/Excepted and Non-Exempt/Excepted Functions .....	60
VI. Lapse Staffing Plan .....	61
VII. Procedures for an Orderly Closure and Support Following Notification of a Lapse in Appropriations .....	62
VIII. Actions Necessary to Mitigate the Effects of a Lapse in Appropriations .....	63
IX. Procedures Following Reauthorization of Funds after a Funding Lapse.....	64
X. Examples of Financial Assistance Awards that may be Awarded as a New Award During a Funding Lapse.....	65
XI. Continuing or Delaying Performance of a Pre-existing Funded Financial Assistance Award during a Funding Lapse (for a non-exempt/excepted activity). .....	67
Attachment 1 - Sample Informal Notices to Financial Assistance Recipients .....	69
Attachment 2 - Example Letter Template A/Independently Funded.....	70
Attachment 3 - Example Letter Template B/Independently Funded.....	71
Attachment 4 - Example Letter Template/NOTICE OF TERMINATION .....	72

# I. Requirements and Limitations

During a federal funding hiatus, or lapse in appropriations, the Department of Homeland Security (DHS) must be able to cease its government operations in an orderly fashion. Only those functions and activities that are exempt or excepted from the work restrictions specified in the Anti-Deficiency Act (ADA) may continue during a lapse in appropriations.

The ADA essentially codifies the Constitutional requirement that “No Money shall be drawn from the Treasury, but in consequence of appropriations made by Law.” Federal officials are prohibited from incurring obligations, to include entering into contracts or grants, or performing activities in the absence of a currently available appropriation, unless authorized by law. The Act further restricts acceptance of voluntary services or personal services beyond authorized levels “except for emergencies involving the safety of human life or the protection of property.” As a result, only activities that are exempt or qualify as excepted may continue to operate during a lapse in appropriations.

In accordance with Section 124 of Office of Management and Budget (OMB)’s 2018 Circular A-11, “Agency Operations in the Absence of Appropriations,” the Department has developed the procedures outlined in this document as its contingency plan. Included, and as also specified by the A-11 guidance, is the identification of the following information:

1. An estimate, to the nearest half-day, of the time necessary to accomplish an orderly closure.
2. The total number of DHS employees on-board before implementation of the plan.
3. The total number of employees expected to be exempt or excepted from a lapse in appropriations.

Upon notification from OMB and subsequent direction from the DHS Under Secretary for Management (USM), DHS Components must adhere to the guidelines as set forth in the following pages. This includes the preparation of employee notices of furlough, the processing of personnel and pay records in connection with furlough actions, and the release of employees subject to a furlough in accordance with applicable law and regulations of the Office of Personnel Management (OPM).

Failure to maintain and adhere to these procedures may result in a violation of the ADA.

<b>Lapse Plan Summary Overview</b>	
Estimated time (to nearest half day) required to complete shutdown activities:	.5 Days
Total number of agency employees expected to be on board before implementation of the plan:	251,867
<b>Total number of employees to be retained under the plan for each of the following categories:</b>	
Compensation is financed by a resource other than annual appropriations:	38,731
Necessary to perform activities expressly authorized by law:	41,807
Necessary to perform activities necessarily implied by law:	96
Necessary to the discharge of the President's constitutional duties and powers:	159
Necessary to protect life and property:	136,808

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

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- Activities necessary by law, the Constitution, or necessary for Safety of Human Life or Protection of Property
- Maintaining law enforcement operations, including drug and illegal alien interdiction
- Continuing passenger processing and cargo inspection functions at ports of entry
- Providing the protective functions of the U.S. Secret Service
- Maintaining counter-terrorism watches or intelligence gathering or dissemination in support of terrorist threat warnings
- Retaining minimal personnel to maintain telecommunications necessary for excepted activities
- Disaster Relief Fund activities will continue operations
- Fee-funded activities such as those funded by the Immigration Examinations Fee Account

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

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- Planning (such as strategic, business, or budgetary activities)
- Research and development activities
- Most policy functions, administrative, as well as programmatic, unless those functions are justified by an exception
- Auditing
- Most regulatory, legislative, public affairs, and intergovernmental affairs unless those functions are justified by an exception
- Training and development not deemed an excepted activity

## II. Definitions; Determinations for Exempt and Excepted Functions and Employees

### A. Definitions

The Department uses the terms “exempt” and “excepted” to describe functions and employees that may be required to continue operating during a federal funding hiatus. The following definitions are based on OPM’s “Guidance for Shutdown Furloughs – September 2015”:

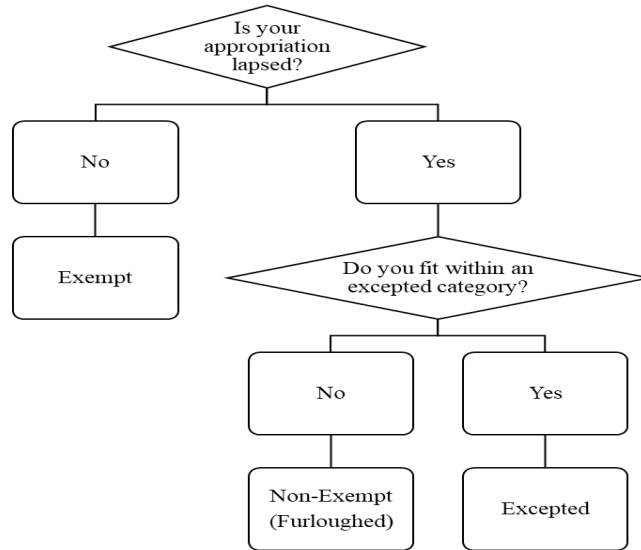
Exempt: Employees or activities funded by appropriations that have neither lapsed nor been exhausted, such as unobligated carryover balances (e.g. Disaster Relief Fund) and permanent appropriations (e.g. Immigration Examinations Fee Account).

Excepted: Employees or activities funded by lapsed (e.g. annual appropriations) or exhausted appropriations which may nonetheless continue because the work or the work they are performing by law, may continue to be performed during a lapse in appropriations. Such employees include those who are performing emergency work involving the safety of human life or the protection of property or other categories of excepted work.

Non-Exempt: Employees or activities which are funded by lapsed or exhausted appropriations and do not fit within any authorized exception, are neither exempt, nor excepted, and are therefore considered “non-exempt.” Non-exempt employees will be furloughed in the event of a lapse in appropriations.

Additionally, either an “emergency furlough” or a “federal funding hiatus” may be used to refer to a lapse in appropriations during which employees may be exempt or excepted.

**Employee Status Example:**



**B. Exempt Functions**

Guidelines for exempt activities follow. Proposals to continue activities that do not fit in the guidelines should be directed immediately to Component Counsel, and where appropriate after consulting with Component counsel, to the DHS Office of the General Counsel (OGC).

1. Funded by Sources Other than Annual Appropriated or Exhausted Funds.

Some functions are covered by fee revenues or by multi-year, no-year, or revolving funds (when the authority to establish the revolving fund has not expired), or advance appropriations, and if those accounts have sufficient carry-over balance, they would not be affected by a lapse of annual appropriations. Agencies may continue to incur obligations and disburse funds from such non-lapsed funding sources where personnel paid from such sources are available to perform these functions. Note that revolving funds that operate almost entirely on offsetting collections from other federal entities may be forced to close, unless sufficient retained earnings are available to forestall the closure. Employees paid directly from a funding source that has not lapsed during a lapse in appropriations may continue to perform normal duties and will receive pay for work performed during the lapse.

**EXAMPLES:**

- The Disaster Relief Fund, which is funded by a no-year appropriation and may have sufficient balances available to continue operations
- Fee-funded activities such as those funded by the Immigration Examinations Fee Account

Of note, the DHS Working Capital Fund (WCF) requires authorization through the yearly appropriations act to continue operations, and thus, activities funded through the WCF, unless excepted under one of the exceptions described below, must cease in the event of a lapse. See Appendix IX for additional information regarding work that may be performed by exempt and excepted employees during a lapse in appropriations.

## C. Excepted Functions

The following activities and/or functions may continue during a lapse in appropriations even when ordinarily funded by now lapsed (e.g. annual appropriations) or exhausted appropriations:

1. Authorized under Law to Continue Even without Funding.

Functions authorized by law to proceed during an appropriations lapse include “those functions as to which express statutory authority to incur obligations in advance of appropriations has been granted.”

For example, active duty military members are excepted because their entitlement to pay is provided under 37 U.S.C. § 204. This entitlement means that DHS is authorized by law to incur obligations for their pay. These active duty service members may perform normal duties during a lapse.

2. Implied by Law as Necessary to Continue Even without Funding

Functions authorized by law to proceed during an appropriations lapse also include “those functions for which such authority arises by necessary implication.”

Presidentially Appointed and Senate Confirmed Officers and other political appointees who are not subject to the Annual and Sick Leave Act, 5 U.S.C. § 6301, 5 C.F.R. § 630.211, are excepted from a furlough during a lapse in appropriations. These appointees are entitled to compensation based on their status. This entitlement means that DHS is authorized by law to incur obligations for their pay. These appointees may perform normal duties during a lapse.

3. Necessary to the Discharge of the President’s Constitutional Duties and Powers.

Employees who may be detailed to the Executive Office of the White House may be excepted.

Those who are engaged in the conduct of foreign relations essential to national security are excepted.

4. Necessary for Safety of Human Life or Protection of Property.

To qualify under the exception of protection of human life or property, there must be some reasonable likelihood that the safety of human life or protection of property would be compromised in some significant degree by the delay in the performance of the

function in question. Specifically, the risk should be real, not hypothetical or speculative, and must be sufficiently imminent that delay is not permissible.

Any activity and/or function that qualifies for the protection of human life or property exception must be limited only to the extent that the Component Head determines that imminent danger to life or property would result from their termination or diminution. Administrative, research, or other support functions related to an excepted activity should also continue, but only to the extent that they are essential to maintain the effectiveness of those activities and/or functions that are engaged in the protection of life or property, and at a minimum level.

For example, law enforcement officers (LEOs) whose duties include protecting human life or protecting property are excepted. However, LEOs who perform administrative functions that do not directly and demonstrably contribute to such activities are not excepted unless their work is necessary to support activities that protect life or property. While law enforcement activities are excepted, the pivotal factor is the work being performed, not the law enforcement officer status of any particular employee.

**EXAMPLES:**

- Maintaining law enforcement operations, including drug and illegal alien interdiction
- Continuing passenger processing and cargo inspection functions at ports of entry
- Providing the protective functions of the U.S. Secret Service
- Maintaining counter-terrorism watches or intelligence gathering or dissemination in support of terrorist threat warnings
- Retaining minimal personnel to maintain telecommunications necessary for excepted activities

5. Necessary for the Orderly Cessation of Functions.

Agencies may obligate funds during periods of lapsed appropriations to bring about the orderly cessation of non-exempt activities, which OMB has determined should generally take no more than four hours. During this time, employee activities must be wholly devoted to de-activating the function and upon completion, these employees would be released.

**EXAMPLES:**

- Performing payroll functions for the period just prior to the appropriation lapse
- Completing inventories of property and records to ensure protection of the Federal Government's interests and claims of affected private entities and individuals
- For "partially exempt or excepted" activities, the transferring of any ongoing work necessary to support an exempted or excepted function.
- Personnel functions to process furlough/reduction in force notices

See Appendix IX for additional information regarding work that may be performed by exempt and excepted employees during a lapse in appropriations. Appendix VI identifies the total estimated exempt and excepted employees within each DHS Component.



## D. Non-Exempt Functions

Non-exempt activities are all activities that do not fall within any of the categories of exempt or excepted functions described above. No obligations should be incurred to carry out non-exempt activities during a lapse in appropriations. Employees who are neither excepted, nor exempt, must be furloughed during a lapse in appropriations. This could include employees who may have to be recalled at a later date, if the furlough continues for more than a week.

### **EXAMPLES:**

- Planning (such as strategic, business, or budgetary activities)
- Research and development activities
- Most policy functions, administrative, as well as programmatic, unless those functions can be justified by the above exceptions
- Auditing
- Most regulatory, legislative, public affairs, and intergovernmental affairs unless those functions can be justified by the above exceptions
- Most training and development

## E. Exempt/Excepted vs. Essential Functions

Exempt and excepted functions are those which may continue to operate during an appropriations lapse. Exempt and excepted functions and activities are described in this guidance.

Essential functions are a limited set of mission-essential or mission-critical functions that must be performed to provide continuity of operations (COOP). Each DHS Component has identified and defined its mission-essential functions separately. The identification of essential activities is different than the determination of exempt and excepted activities.

Section IV provides additional guidance on the differences between exempt and excepted employees for the purpose of a lapse in appropriations and essential employees for the purpose of a COOP event.

## F. Employees: Exempt/Excepted vs. Non-Exempt

Exempt/Excepted employees have been designated by their supervisors to perform functions or activities that are exempt or excepted from work restrictions specified in the ADA and may continue to operate during a lapse in appropriations. Reference to an “exempt employee” for the purpose of government shutdown is not to be confused with an employee designated as an “exempt” employee under the Fair Labor Standards Act.

Non-exempt employees perform functions that may not continue during a lapse in appropriations. Non-exempt employees are subject to an “emergency” furlough and are not permitted to work. A non-exempt employee may be involved in the orderly cessation of functions. However, once it is determined that non-exempt employees have completed all tasks related to the orderly cessation of functions, those employees can no longer perform work in the

absence of appropriations. Non-exempt employees may not voluntarily perform non-exempt services during an “emergency” furlough. Doing so may violate the ADA.

## G. Designating Exempt or Excepted Employees

Components must designate in advance (before any potential furlough) those employees who must perform functions or activities that are exempt/excepted from work restrictions specified in the ADA and may continue to operate during a lapse in appropriations. DHS maintains standard notification templates, which may be used to notify employees that they are exempt or excepted and will not be required to stop working during an emergency furlough.

Excepted employees shall only work on excepted activities during the funding lapse. Excepted employees will be paid when a full-year appropriation or Continuing Resolution is enacted. Exempt employees may be paid during a lapse in appropriations because there are funds available to pay those employees.

The activities and funding of employees on detail to other Federal Government agencies and to Congressional offices must be reviewed as well to determine whether these detailed employees and activities will be designated exempt/excepted or non-exempt based on the function and the availability of funds. In making such a designation, the detailee’s home agency supervisor should coordinate with the supervisor at the place of the detail. Similar to home agency employees, exempt/excepted detailees shall only work on exempt/excepted functions and must be included in the *U.S. Department of Homeland Security Procedures Relating to a Lapse in Appropriations Supplemental Materials* as an exempt/excepted employee. To ensure compliance with this requirement, home agency supervisors must coordinate with the supervisor at the place of the detail to determine if the exempt/excepted detailee should return to their home agency to work on exempt/excepted functions. The employee’s home agency must include the detailees in their lapse plans. For example, if a Component has an employee deployed as part of the Surge Capacity Force, then that Component must include that employee on their exempt/excepted list.

## III. Procedures for an Orderly Closure

At the direction of the Secretary through the Deputy Secretary, USM is responsible for implementing the Department’s general procedures for an orderly closure. The Head of each Component is responsible for ensuring that Component’s compliance with the Department’s procedures, and should not endeavor to make changes to such procedures without advance consultation with USM.

Given that the duration of an appropriations hiatus is inherently uncertain, and consistent with OMB guidance, the plan that follows describes Departmental procedures to be taken during the commencement and the first five days of a lapse.

USM, in coordination with OGC and the Chief Financial Officer, will adjust the Department’s procedures as necessary should the lapse continue beyond five calendar days. USM will also provide direction as necessary should external factors require changes to the Department’s operations, such as may be caused by a natural disaster, catastrophe, or terrorist incident.

## A. Implementation of an Emergency Furlough

1. General Guidance. Upon receipt of a notice from OMB through either the Office of the Secretary or USM that there is a lapse in appropriations, Component Heads must notify their employees that an emergency shutdown furlough has been activated.
2. Notices to Exempt/Excepted Employees. Components must notify their exempt/excepted employees of their status in advance of an emergency furlough. The preferred notification process is by email. Notification also may be by telephone, by letter, or in person, if email is not feasible. Components may tailor this process to the degree needed to meet Component-specific requirements. Email messages to exempt/excepted employees do not require delivery receipt, read receipt, and return email.

Components should ensure that information on facilities, reporting officials, and systems available to employees working during a furlough is available and distributed to all of their exempt/excepted employees.

3. Report for Work. Exempt and excepted employees should discuss any previously planned leave with their supervisors, to determine whether they will still be permitted to take leave or whether they will be required to work during a lapse in light of changes in coverage. Exempt and excepted employees must report for work during an emergency furlough, unless authorized to take leave by their supervisor. An employee who refuses to report for work after being ordered to do so will be considered to be in an absence without leave status and may be subject to administrative or disciplinary action for not reporting for work. During a lapse in appropriations, all excepted employees must be either (1) at work performing excepted activities, (2) on documented approved leave, or (3) in a furlough status.

If an excepted employee is unable to report for work during a furlough and the supervisor or other management official approves the absence, the supervisor may change the status of the excepted employee to a leave status or to non-exempt and furlough the employee to allow the employee to be “absent” from work. When an employee is not working and performing excepted activities in compliance with the ADA, he or she must be either be on documented approved leave or furloughed and the furlough must be documented by a furlough notice.

4. Employee Pay. Excepted employees who work during a lapse in appropriations will not be paid during the funding hiatus. However, excepted employees will be paid when Congress passes and the President signs a new full-year appropriation or Continuing Resolution. Exempt employees whose salaries are funded by other than annual appropriations may receive pay as regularly scheduled. Human resource organizations must also be prepared to respond in the event legislation is enacted during the lapse that permits some excepted employees such as military personnel to continue to receive pay during the lapse.

**Military Pay:** Consistent with title 37 of the U.S. Code, United States Coast Guard (USCG) payroll liability accrues on a monthly basis. Thus the pay of USCG members will depend on the timing of the appropriation lapse.

5. Employee Leave. Exempt and excepted employees (i.e. employees who are exempt from furlough by reason of being funded by other than annual appropriations) may take paid leave (e.g., annual or sick leave) during a furlough. Under 31 U.S.C. 1341(c)(3), an *excepted* employee is permitted to use paid leave under 5 U.S.C. chapter 63 (or other applicable law, if the employee is not covered by chapter 63) during a lapse in appropriations—but payment for that leave cannot be made until after the lapse has ended. Such use of paid leave during a lapse in appropriations is subject to the normally applicable leave request and approval procedures. While *excepted* employees have the option of requesting paid leave during a lapse, they are not required to use paid leave to cover an absence from duty. The default approach is to treat any authorized absence from duty during a lapse as a furlough period. U.S.C. 1341(c)(2) for those paid leave hours.
6. “Use or Lose” Annual Leave. Many excepted and non-exempt employees may have accumulated annual leave that exceeds their applicable maximum annual leave ceiling. (Most employees are subject to the 30-day maximum annual leave ceiling. Members of the Senior Executive Service (SES) are subject to a 90-day maximum annual leave ceiling. Employees stationed overseas are subject to a 45-day annual leave ceiling.) Since excepted and non-exempt employees may not use annual leave during a lapse in appropriations, any unused annual leave in excess of the employee’s applicable leave ceiling at the end of the leave year (for instance, January 06, 2018 for Leave Year 2017) is subject to forfeiture.

Employees may request restoration of forfeited annual leave, if the annual leave was scheduled and approved in advance (see Component’s internal procedures), later cancelled by the supervisor due to “exigencies of the public business,” and the annual leave could not be rescheduled and used before the end of the leave year. A lapse in appropriations has previously been determined by OPM/OMB to be “an exigency of the public business,” and employees’ forfeited annual leave can be restored. (Also see the OPM fact sheet on “Annual Leave (General Information)” at <http://www.opm.gov/oca/leave/HTML/ANNUAL.asp>.)

7. Weather-Related Leave. Excepted employees are required to report for work on time even if, during a lapse in appropriations, OPM announces that “Federal agencies are operating under an unscheduled leave” policy because of emergency weather conditions. Although “essential employees” who have been furloughed because they are not designated as exempt or excepted employees should not come to work during a weather emergency occurring in the middle of a furlough, they should be aware that their non-exempt designation may change to excepted based on conditions and they would then be required to report for work. Should an excepted employee be unable to report for work because of emergency conditions, he or she must be placed in a furlough status until such time as the employee is able to report for work.

## B. Furlough of Non-Exempt Employees

1. General Guidance. The procedures outlined as follows apply to DHS operations that are non-exempt during a lapse in appropriations. They should be implemented by Component Heads upon receipt of a notice from OMB through either the Office of the Secretary or the USM.

If a funding lapse begins at midnight on a Friday, furlough notices should be issued on Saturday to non-exempt employees whose next scheduled workday is on Saturday, on Sunday to non-exempt employees whose next scheduled workday is on Sunday, and on Monday for non-exempt employees whose next scheduled workday is on Monday. If Monday is a Federal Holiday, furlough notices should be issued on the next scheduled workday of the non-exempt employees.

2. Employee Notices. Components must be sure to contact all employees who have been designated as non-exempt including those on detail, on travel, in training/conferences, overseas, on leave, etc. Those employees should be provided advance notice of their non-exempt status. This can be accomplished verbally or with a "Notice to Non-Exempt Employees;" a template will be maintained and available through the Department's Office of the Chief Human Capital Officer (OCHCO). This notice informs employees of their non-exempt status in the event of a funding hiatus; it is not a furlough notice. Servicing Human Resources Offices shall immediately transmit the employee notices that supervisors and managers must distribute to their employees.

Employee furlough notices must be delivered via email or in person using the template maintained by the Department's OCHCO. A read receipt or delivery receipt is preferred where feasible.

3. Non-Exempt Employees on Travel. Even with approved travel orders, non-mission critical travel should not commence within three business days of the date of a potential funding lapse. Non-exempt employees planning temporary duty assignments away from their normal duty stations at the time of a lapse in funding should change their travel plans and instead should report to their permanent duty station before the effective date of the funding lapse. Such employees should work with the Department travel management service provider to affect such changes and should be sure to terminate other reservations such as lodging or rental car.

Non-exempt employees already serving at temporary duty locations at the time of a lapse in funding may hold in place until their employing agency makes a determination that they must return to their permanent duty stations. Components should determine the reasonableness and practicality of changes to temporary duty travel on the basis of the length of the assignment and the time required for return travel, compared to the anticipated length of the lapse, and should in general minimize the burdens and costs associated with a return to permanent duty stations.

4. Notice to Federal Employees About Unemployment Insurance, Standard Form 8. It is possible that furloughed employees may become eligible for unemployment compensation and Components should provide them an SF-8 at the same time the furlough letter is issued. State unemployment compensation requirements differ; some states require a one-week waiting period before an individual qualifies for payments. Agencies or employees should submit questions to the appropriate state (or District of Columbia) office. (Also see the Department of Labor website "Unemployment Compensation for Federal Employees" at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>.)

The SF-8 informs employees of their right to file a claim for Unemployment Compensation, explains the basic eligibility requirements, provides general information

as to how, when, and where to file a claim, and describes the documents which the individual should take when filing a claim (20 C.F.R. Part 609.20). Components must annotate the address and Agency Code of the separating federal agency where wage and separation information can be obtained. This document may be posted to an accessible automated information-sharing site used to communicate useful and required information that would normally be attached to the furlough notice.

5. Shutdown Activities. Non-exempt employees may be engaged in shutdown activities during the first four hours of the first working day of a lapse in appropriations, such as:

- a. Supervisor notifications to non-exempt employees that they are furloughed
- b. Consolidating and organizing employee notices, including email receipt/read notices and employee return emails, for forwarding to the servicing human resources office upon request
- c. Consolidating and storing files
- d. Safeguarding classified materials
- e. Protecting government property
- f. Notifying the public and other agencies of the shutdown of DHS operations
- g. Documenting the status of projects to facilitate resumption when regular operations are resumed
- h. Processing appropriate personnel/payroll actions and filing documentation
- i. Setting out of office messages

6. Employee Pay. Component human resource organizations should ensure all employees will receive compensation as regularly scheduled for time worked prior to the lapse. OCHCO will provide Component human resource officers with a special code for input into employee time and attendance systems (such as WebTA) to identify hours not worked because of furlough. Components must ensure such code is utilized to help prevent over-payment of compensation to non-exempt employees for time worked prior to the lapse.

Non-exempt employees will receive pay for performing shutdown activities when Congress enacts a full-year appropriation or a Continuing Resolution.

7. End of Furlough. Furloughed employees will be instructed to monitor the media and to regularly check the DHS website as well as passively monitor their DHS-issued electronic devices for notice on when the furlough has ended and when to return to work. (See Section I(2) for more information).

8. Other Considerations.

- a. Component Employee Assistance Programs (EAP) are expected to continue to operate during a lapse in appropriations. All employees – including those that are non-exempt, may benefit from counseling assistance from their Component EAPs during this stressful time. In addition, employees may want to contact their financial institutions, credit unions, or learn about other options for financial assistance through the Thrift Savings Plan ([www.tsp.gov](http://www.tsp.gov)).

- b. Regardless of whether an approved Travel Authorization has been obtained, non-exempt employees may not start new travel in the event of a lapse in appropriations.
- c. In light of the uncertainty of the budget situation during a lapse in appropriations, Components should delay the enter-on-duty date for new employees and transfer employees (transferring from another government agency) who are scheduled to enter on duty on the first day or anytime during a furlough. Components should notify these employees that DHS is under an emergency furlough and they should NOT report for work until they receive further instructions. New and transfer employees should be in-processed after the furlough ends.

## C. Management Controls

1. General Guidance. DHS internal control standards will continue for exempt/excepted operations during a temporary funding hiatus. Components with continuing operations must (if possible), modify or develop procedures to ensure adequate controls in a streamlined environment to achieve the same internal control results expected during normal operations. This includes ensuring adequate reviewing, authorizing, and approving functions are in place. Additionally, Components must maintain key separation of duties for important business functions such as the following:
  - a. Authorizations
  - b. Records and documenting
  - c. Custody of assets, whether directly or indirectly (e.g., receiving checks in mail)
2. Record Keeping and Reporting. Special care must be taken throughout the lapse in appropriations to maintain logs, formal records, and file copies of all transactions and expenditures to provide adequate accountability and justification for exempt activities, including the costs expended for exempt activities.

At the conclusion of the hiatus, Components must be able to achieve the same reporting outputs that occur in a normal environment. For example, at the conclusion of the hiatus, Components will process any backlog of accumulated transactions not entered into the financial system and report compliance with internal control standards. Examples of activities and documentation includes, but is not limited to, tracking obligation data, exercising contract authority, managing revenue collection activities, and processing exempted travel processing.

Component reporting procedures will include gathering performance metrics data during the hiatus period to capture costs and savings data at the conclusion of the hiatus. Components must have procedures in place such that when appropriations become available to continue Federal Government functions, Components can report all costs incurred due to the lapse in appropriations. See Section V, Reporting of Costs Incurred.

## D. Financial Operations

1. General Guidance. In the event of a temporary funding hiatus, DHS and its Components will stop all financial operations and financial system operations, including processing

payments, receipts or performing funds control, except for the following exempt/excepted activities:

- a. U.S. Customs and Border Protection revenue collections
- b. Federal Emergency Management Agency disaster payments
- c. Organizational Program Coordinators needed to support credit card programs for exempt/excepted activities
- d. Financial operations funded by U.S. Citizenship and Immigration Services fees
- e. Electronic travel approvals and processing to support exempt activities

Per OMB's Update to *Frequently Asked Questions during a Lapse in Appropriations*, attached to *OMB Memorandum M-18-05*, updated January 22, 2019, excepted/exempt employees can also carry out activities necessary to process and make payments to liquidate funded obligations. Funded obligations are those that are properly chargeable either to expired funds available in a lapsed account that were obligated prior to that account lapsing, or a currently available, non-lapsed funding source (e.g., fee revenue or carryover balances in a multi-year or no-year account). NOTE: Funded obligations do not include obligations incurred against lapsed accounts to carry out an excepted function (e.g. contracts necessary to carry out activities necessary for safety of life and protection of property in the absence of an appropriation). No payments may be made to liquidate any obligation that has been incurred in the absence of appropriations. If you have questions or concerns about whether an obligation qualifies as a funded obligation, please consult your component counsel.

Whether DHS will incur interest due to delays in making payments caused by the funding lapse does not provide a justification to make payments.

2. Accounting Center Operations. Accounting centers will not run funds availability checks during a hiatus. Therefore, Components must keep a clear accounting record so that the accounting center may process complete transactions into the financial systems when normal operations resume.
3. Documentation and Reporting. Ensuring proper documentation and internal controls when conducting financial operations during a funding hiatus is mandatory. Components must maintain and control documentation of all transactions initiated and processed during a temporary funding hiatus. When the hiatus is over, Components must be able to account for all activities and meet reporting requirements just as under normal operations. In addition, Components must collect performance and cost data which can be analyzed for the purposes of determining the impact of a hiatus. Components will provide specific instructions on what data to collect.
4. Travel Management. Minimum travel management support will be available to support exempt/excepted functions. Travel expense reports will not be processed during a lapse in funding, and reimbursements for travel costs will not be made until the lapse has ended. Each traveler with an individually billed account is still responsible for the timely payment of their travel card balance.
5. Bank Card Program. Purchase cards, travel cards, and fleet cards will still be available to fund exempt/excepted activities. Component Organization Program Coordinators (OPCs) will consider a reduction in spending limits for non-exempt cardholders to one



dollar for the duration of the furlough. Each Component will provide support to cardholders for exempt/excepted activities through designated OPCs. Each Component will provide guidance and specific points of contact to its employees.

Funding that is available pursuant to a continuing resolution that is credited to a debit card may not be used to procure goods and services during a lapse in appropriations following the expiration of the continuing resolution (CR). To be certain, this determination does not apply to funds credited to debit cards from other sources of budget authority that remain available for obligation, such as no-year funds derived from fees.

6. Reimbursements. Reimbursements generally cannot be processed for activities for which DHS Components receive reimbursements from other than annual appropriations (e.g. multi-year or no-year funds) if the servicing Component's activities are funded from a lapsed appropriation. Because the servicing Component's appropriation is lapsed, there is no account to reimburse until after a full year appropriation or a continuing resolution has been enacted.
7. Transit Benefits. Each component administers and manages transit subsidy benefit programs differently. Components affected by the lapse in appropriations should attempt to ensure, where feasible, that there is sufficient funding available through the lapse period for excepted/exempt employees enrolled in transit benefit programs. The amount of funding provided for the transit benefit is at the discretion of the component.

## E. Contracting

1. General Guidance. The "Department of Homeland Security Contracting Contingency Plan" shall be maintained and, prior to a lapse in appropriations, distributed to the Heads of the Contracting Activities (HCAs) with a list of frequently asked questions through an Acquisition Alert. HCAs must work with their Component Heads to proactively survey and identify contracts that, in whole or in part, support activities that will continue to support exempt (See II.B) and excepted (II.C) functions. This will serve two major purposes for DHS contracting activities:
  - a. To identify and maintain a list of contracts for which Stop Work Orders or Partial Terminations for the Convenience of the Government should be issued to contractors, and to allow Contracting Officers sufficient lead time to prepare modifications to de-scope contracts and prepare any necessary justifications and other supporting documentation for contracts that will be partially terminated.
  - b. To allow HCAs to determine an effective distribution of warranted Contracting Officers to support an orderly shutdown and the management of contracts supporting exempted functions.
2. No New Obligations. DHS may not incur a new obligation by signing a new contract, by extending a contract, or by exercising an option when the funding source for that obligation is a lapsed appropriation unless the contract is required to support those

functions defined as excepted for DHS, such as safeguarding human life or protecting property.

- a. The ADA prohibits agencies from incurring obligations that are in advance of, or that exceed, an appropriation. Thus, except in limited circumstances, DHS may not incur obligations when the funding source for the obligation would be an appropriation that has lapsed unless the obligation is needed to support those functions defined as excepted for DHS. Even when a contract, order, agreement or other transaction may be awarded or modified in order to preserve life or safeguard property, DHS cannot pay the contractor until appropriations are enacted.
  - b. In addition to those contracts directly supporting exempt or excepted functions, many contracts are fully funded. Contractors performing under a fully funded contract may continue to perform unless government oversight, day-to-day interaction with non-exempt government employees, or access to government facilities which have been shutdown, is critical to the contractor's continued performance during that period.
3. Federal Employees Supporting Contracting Operations. If there is a lapse in the appropriation that funds the federal employees who supervise or support the performance of a contract, those federal employees cannot continue these activities during the funding lapse unless the contract supports an excepted activity. Routine ongoing activities related to contract administration are not authorized to continue when there has been a lapse in the appropriation that funds the contract administration activities. In other words, during a federal funding hiatus the performance by contracting officers, contracting officer technical representatives and contract administration personnel of routine oversight, inspection, accounting, administration, payment processing and other contracting activity would generally not continue, when there has been a lapse in the appropriation that funds these employees.
  - a. In the absence of federal oversight, DHS may, however, allow the contractor to continue performance during the lapse period if the continued oversight is not critical to the contractor's continued performance during that period. This is the case, for example, for all firm fixed price contracts and orders that are fully funded at the time of award. DHS does not have to issue an affirmative direction to the contractor to continue performance. Instead, the contractor continues to perform work in accordance with the contract. However, it is always prudent to communicate with the contractor to avoid potential misunderstandings.
  - b. Depending on the duration of a funding lapse, the absence of available federal employee oversight may lead DHS to reconsider whether the contract activity should continue to be performed. In particular, if the continued oversight during the lapse period is critical to the contractor's continued performance during that period then – where consistent with law and the terms of the contract – DHS should instruct the contractor to suspend performance.
  - c. Additionally, if continued performance is not statutorily required, then DHS should consider whether having the contracting activity continue is a sensible use of taxpayer funds in light of the lapse of appropriations. In this regard, there may

be situations in which the continued performance of a contract would be wasteful due to the impact that the funding lapse is having on other agency activities.

For example, it may be wasteful to have a contractor perform regular trash collection every day in the offices of a federal building that has closed due to the funding lapse. Should the relevant Component head decide that continued performance would be wasteful and thus should be suspended during the funding lapse, appropriate contractual action should be taken (which would be part of the agency's orderly-shutdown activities). Contracting staff will need to work closely with Component procurement counsel in making and implementing these decisions to minimize costs to the Federal Government.

## F. Grants and Other Forms of Financial Assistance

1. General Guidance. The "Department of Homeland Security Financial Assistance Contingency Plan" shall be maintained and, prior to a lapse in appropriations, distributed to the Heads of the Financial Assistance Activities with a list of frequently asked questions through a Grant Alert. Heads of the Financial Assistance Activities must work with their Component Heads to proactively survey and identify grants or other forms of financial assistance that, in whole or in part, fund activities that will continue to support exempt or excepted functions. This will serve two major purposes for DHS financial assistance activities:
  - a. To identify and maintain a list of grants and other forms of financial assistance that may be awarded during a funding hiatus.
  - b. To allow Heads of the Financial Assistance Activity to determine an effective distribution of Financial Assistance/Grant Officers to support an orderly shutdown and the management of grants and other forms of financial assistance supporting exempt or excepted functions.
2. No New Obligations. DHS may not incur a new obligation by signing a new grant or other form of financial assistance, by extending a grant or other form of financial assistance, or by exercising an option when the funding source for that obligation is a lapsed appropriation, unless the obligation is required to support those functions defined as excepted for DHS, such as safeguarding human life or protecting property.
  - a. The ADA prohibits agencies from incurring obligations that are in advance of, or that exceed, an appropriation. Except in limited circumstances, DHS may not incur obligations when the funding source for the obligation would be an appropriation that has lapsed, unless the obligation is needed to support those functions defined as excepted for DHS. Even when a grant or other form of financial assistance may be awarded or modified in support of an excepted function, such as in order to protect human life or property, DHS cannot pay the awardee until appropriations are enacted that provide the necessary funding.
  - b. In addition to those grants or other forms of financial assistance directly supporting exempt or excepted functions, grant awards or option periods for continuation awards that have already been awarded are fully funded. Those

awardees may continue to perform. In certain cases, existing grants and cooperative agreements require prior approvals or coordination with government non-exempt employees. In cases where the terms of the grant or cooperative agreement require prior approvals or coordination before the awardee proceeds, non-exempt employees will not be available to provide the required approvals or coordination. In those cases, the awardees' work must cease per the terms of the award until the required approvals can be obtained or the required coordination can take place.

3. Federal Employees Supporting Financial Assistance Operations. If there is a lapse in the appropriation that funds the federal employees who supervise or support the performance of a financial assistance program, those federal employees cannot continue these activities during the funding lapse, unless these grants or other forms of financial assistance are necessary to support an excepted activity. Routine ongoing activities, related to a grant or other form of financial assistance administration, are not authorized to continue when there has been a lapse in the appropriation that funds the award administration activities. In other words, during a federal funding hiatus, the performance by financial assistance/grant officers, program officials, and financial assistance administration personnel of routine oversight, monitoring, accounting, administration, payment processing, and other financial assistance activity would generally not continue when there has been a lapse in the appropriation that funds these employees. See General Guidance under section III.D.1.
  - a. In the absence of federal oversight, DHS may, however, allow the awardee to continue performance during the lapse period if the continued oversight is not critical to the awardee's continued performance during that period. This is the case, for example, for all existing financial assistance awards that are fully funded at inception. DHS does not have to issue an affirmative direction to the awardee to continue performance. Instead, the awardee continues to perform work in accordance with the grant or other form of financial assistance. However, it is always prudent to communicate with the awardee to avoid potential misunderstandings.
  - b. Depending on the duration of a funding lapse, the absence of available federal employee oversight may make continued performance by the awardee of a grant or other financial assistance award practically impossible, depending on the terms of the award. In particular, if the continued oversight, during the lapse period, is required by the terms of the award to permit the awardee to perform, then performance must cease. For awards where this is likely to be the case, e.g. those that require prior approvals for certain activities or cooperative agreements that have required coordination with DHS, DHS should remind awardees of these requirements and advise them that they must not perform work without receiving the approvals required by the terms of their awards.

Financial Assistance staff will need to work closely with Component general counsel in making and implementing these decisions to minimize costs and liability to the Federal Government. See Appendix X for additional information regarding specialized guidance to DHS financial assistance organizations prior to, during, and after a lapse in appropriations.

## G. Use of DHS Facilities

1. General Guidance. Procedures outlined below provide guidance on the management and disposition of DHS facilities and assets during a lapse in appropriations. They should be implemented by Component Heads upon receipt of orders from OMB through either the Office of the Secretary or USM.
  - a. Component Heads shall notify the senior real property official to direct real property management personnel to oversee the temporary closure of non-exempt facilities, coordinate and support staff consolidation, and to supervise the establishment of designated facilities for use in support of exempt/excepted functions.
  - b. A funding hiatus plan shall be implemented to provide notification and details for appropriate use of facilities. It should be distributed to the relevant workforces and should include the identification and contact information of real property Points of Contacts (POCs) for operations during and following a lapse in appropriations. The real property POCs should be designated staff who have the lead responsibility for facility shutdown and start-up operations.
2. Facilities Occupied with Exempt/Excepted Functions.
  - a. Consolidation – Consolidate exempt/excepted functions in the absolute minimum space needed to maintain exempt/excepted operations.
  - b. Building Operations – Maintain minimum operations to support exempted/excepted functions.
  - c. Security – Maintain physical security for exempted/excepted facilities including monitoring facilities as appropriate. The Headquarters (HQ) Office of the Chief Security Officer (OCSO) will maintain essential security support and services to DHS HQ’s facilities and personnel, as well as appropriate and required service to DHS Components. Collateral and Sensitive Compartmented Information security support to HQs and Components through the Special Security Office Program and Sensitive Compartmented Information Facilities support will continue. This includes working closely with the Federal Protective Service to ensure HQ facilities and exempt/excepted personnel are protected.
  - d. General Services Administration (GSA) Notice – Provide notification to GSA Building Management Representative of exempt/excepted activities that will continue normal operations in GSA controlled space.
3. Facilities Occupied with Non-Exempt Functions.
  - a. Discontinue use – Ensure facilities are vacated. For DHS-owned facilities, ensure essential shutdown and start-up procedures have been defined for the impacted assets, and notifications given to service providers for major systems such as elevators, electrical, mechanical, water and sewer supply, and security.

- b. Building Operations – Reduce operating systems to minimal requirements needed to ensure asset protection and maintain safety measures. For DHS-owned facilities, utilities should be set to weekend settings, and building systems should be placed in sleep mode/weekend service levels-lowered to minimum levels needed to maintain life, safety and security systems. Confirm emergency back-up systems are operational.
  - c. Security – Maintain physical security monitoring. The DHS OCSO will maintain essential security support and services to DHS HQ facilities and personnel as needed. Non-exempt facilities will be secured and card readers deactivated as needed. This includes working closely with the Federal Protective Service to ensure HQ facilities and exempt/excepted personnel are protected.
  - d. Notifications – Provide notification to GSA Building Management Representative of vacated non-exempt facilities leased by GSA to DHS, and similarly to other lessors if applicable. For DHS-owned facilities, develop a list of external notifications for use at time of a lapse in appropriations, such as monitoring companies, local safety and security offices, and mail operations.
4. Mail Operations. – Operational considerations for the Mail Surety exempt/excepted functions are based on assumptions that the primary mail delivery vendors, United Parcel Service (UPS), FedEx, and the United States Postal Service (USPS) will continue to process some level of mail for DHS and its Components.
- a. In the event of a lapse in appropriations, Components shall determine how to accommodate existing mail surety services for operational functions. Service levels and arrangements may vary from location to location but should utilize minimum staffing levels. Designated points of contacts shall be responsible for receiving items identified as registered, sensitive, medical-related, and items requiring refrigeration.
  - b. Mail delivery: The DHS Consolidated Remote Delivery Site will deliver mail to the designated DHS exempt/excepted facility locations. The DHS Office of the Chief Readiness Support Officer (OCRSO) in coordination with the DHS OCHCO and the DHS OCSO will provide a list of exempt/excepted personnel during a lapse in appropriations.
5. Transportation Shuttle Service Operations for Exempt/Excepted Employees.
- a. The DHS Shuttle service will continue operations and is available to DHS exempt/excepted employees utilizing the OCRSO HQ shuttle service activity.
  - b. Shuttle Service support to U.S. Coast Guard, the Federal Emergency Management Agency and the Transportation Security Administration will operate at normal schedules due to limited access to public transportation.
  - c. Limited shuttle services will be available for the DHS HQ components within the National Capital region (NCR) and the OCRSO will distribute guidance based on exempt functions at specific locations in the NCR.

## H. Use of Mobile Assets and Personal Property

1. Exempt/Excepted Functions. The guidance provided below regarding DHS Mobile Assets (Fleet, Air, and Marine) and Personal Property functions is intended to reaffirm the continuance of only those functions which are required for exempt/excepted activities. Component managers responsible for the control, maintenance, and operational readiness of critical assets necessary for the continuance of exempted/excepted activities must take the following actions:
  - a. Determine the bare minimum number of support personnel necessary.
  - b. Consolidate equipment, operations, and supporting facilities.
  - c. Ensure that only the minimum amount of recordkeeping necessary to document the expenditure of funds and disposition of assets.
  - d. Acquire only the minimum amount of parts and supplies necessary for continued operation of critical assets.
  - e. Secure all property not used for critical activities in a manner that protects the asset and ensures its immediate availability upon reactivation.
  - f. Discontinue all contractor support not directly associated with the maintenance of critical assets.
  - g. Discontinue the acquisition of new or replacement assets unless the new or replacement asset is critical to the execution of an exempt/excepted activity and cannot be sourced from idle assets within the immediate inventory or located within the organization's or Department's regional inventory.
  - h. Utilize shared mobile assets and personal property resources within the Component, Department, and where possible through inter-agency means.
  
2. Non-Exempt Functions. Maintenance and support activities and personnel whose absence would not cause an unacceptable interruption in the execution of exempted/excepted activities outlined by DHS HQ include:
  - a. Air, marine, and fleet assets used for training or administrative functions.
  - b. Operations and maintenance activities necessary to support training or administrative functions.
  - c. Home-to-Work Transportation not in direct support of exempted/excepted functions (emergency response on a 24x7 basis).
  - d. Department and Component management activities which do not directly support exempted/excepted activities.
  - e. Recurring inventory for the sole purpose of property accountability;
  - f. Record keeping including reporting (field level, Component, Component HQ, or DHS HQ).
  - g. Acquisition and procurement functions (excluding parts and supplies otherwise mentioned in this guidance).
  - h. Planning.
  - i. Work order management not associated with the continuance of maintenance activities associated with critical assets.
  - j. Oversight, audit, and assessment not essential to the mitigation of fraud, waste, and abuse during the lapse in appropriations.

## I. Use of Information Technology (IT) Equipment

1. Exempt/Excepted Functions. DHS exempt/excepted personnel performing exempt/excepted functions may continue to use their DHS-issued information technology resources including portable communication devices, computer software and hardware equipment without restrictions, except that some personnel may need to utilize temporary equipment at consolidated locations.
2. Non-Exempt Functions. Once OMB notifies DHS that a lapse in appropriations has commenced, non-exempt employees may use their DHS-issued electronic devices, to receive furlough notices, acknowledge delivery receipt and read receipt of furlough notices, and acknowledge receipt of notices via return email.

During a hiatus, non-exempt personnel may continue to retain and passively monitor their DHS-issued electronic devices for status updates and emergency notifications from their supervisors or other management officials; however, employees are prohibited from using this equipment for any other purposes (e.g., employees may only use their DHS electronic devices for one-way communication to monitor the status of the furlough, which is strictly an option (employees are not on standby duty). Failure to follow this policy may result in a violation of law, specifically the ADA, which has a criminal component, and may result in severe penalties.

3. Internet Services and DHS Network Access. The Department and Component public websites will remain accessible, but will not be maintained or updated, except to the extent necessary to provide information, where in the absence of providing such information, there is a reasonable likelihood of imminent compromise in some significant degree to human lives or property. The DHS network will remain accessible to support exempt and excepted functions.

## J. Training Functions

1. New Hire Training. The training of newly hired employees, including those in law enforcement, is generally not permissible unless such training and related support activities are funded by other than annual appropriations or is necessary to continue carrying out an excepted activity. Upon a funding lapse, such training functions and associated facilities should proceed with an orderly closure, unless exempt/excepted. Please note that the mere fact that the new hires at issue have been hired to perform excepted functions necessary for the safety of human life or protection of property (e.g. law enforcement) is not, without more justification, sufficient to qualify such new hire training as excepted.

If DHS Components, or other Partner Organizations (PO), have employees receiving, or scheduled to receive, new hire training at the Federal Law Enforcement Training Centers (FLETC) during a lapse in appropriations, the Components, or PO, must coordinate with FLETC. Specifically, DHS Components, and POs, must, in coordination with FLETC, ensure that any required FLETC personnel and the justification that the training is necessary to continue a function excepted because it is necessary for the safety of human life or protection of property, are included in the FLETC lapse plan. Justification should clearly articulate the connection between the training function to be performed and the



safety of human life or the protection of property, in addition to the reasonable likelihood that the safety of human life or protection of property would be compromised in some significant degree by a delay in the performance of the training function. Coordinating any such justification with your Component Chief Counsel and CFO is recommended.

2. **Skills Training.** Training necessary to maintain specific perishable skills associated with excepted law enforcement functions is excepted. Such activities may include training of canine units, Federal Air Marshals marksmanship training, and Secret Service presidential protection exercises.

General skills training, including such activities provided by the Federal Law Enforcement Training Centers (FLETC), is generally not excepted, although may be exempt where funded by other than annual appropriations. Trainees who are on temporary duty assignment and receiving training at a DHS Component training facility and are non-exempt may hold in place until their employing agency makes a determination that they must return to their permanent duty stations, if a funding hiatus occurs and only extends for a short period of time (one to two days). Should the determination be made that a funding hiatus will continue for an extended period of time, the trainees should return to their permanent duty station, the planned training should be rescheduled, and the training facility should proceed with an orderly cessation of that training.

Similar to new hire training, if DHS Components, or POs, have employees receiving, or scheduled to receive, skills training at FLETC during a lapse in appropriations, the Components, or PO, must coordinate with FLETC. Specifically, DHS Components, and POs, must, in coordination with FLETC, ensure that any required FLETC personnel and the justification that the training is necessary to continue a function excepted because it is necessary for the safety of human life or protection of property, are included in the FLETC lapse plan. Justification should clearly articulate the connection between the training function to be performed and the safety of human life or the protection of property, in addition to the reasonable likelihood that the safety of human life or protection of property would be compromised in some significant degree by a delay in the performance of the training function. Coordinating any such justification with your Component Chief Counsel and CFO is recommended.

## K. Travel Guidance

1. Excepted personnel may travel during a funding lapse only when necessary for excepted activities, such as when necessary for safety of human life or protection of property. The heads of the Components must approve domestic temporary duty (TDY) travel by their employees for excepted activities in consultation with their chief counsel and chief financial officer (CFO). Travel within 50 miles of the employee's official duty station, commonly known as local travel, may be approved per ordinary procedures and does not require component head approval. Any such travel conducted must be limited in duration and performed only when absolutely necessary with no alternative means of carrying out the excepted activity. Examples of excepted activities for which travel may be taken include travel necessary for:
  - ongoing litigation in Federal court for which a stay has not been issued

- participation in the Department’s security coordination efforts at a Level 1 SEAR event
  - travel related to the conduct of foreign relations
2. Exempt employees whose domestic travel is funded by other than annual appropriations may continue to travel during a general funding lapse. Travel of exempt employees, which is funded by other than annual appropriations will be approved using the ordinary travel approval process. Components heads should limit travel funded by other than annual appropriations, where appropriate (i.e. where activities are funded by finite carryover balances as opposed to a permanent, indefinite appropriation), to ensure that non-lapsed funds are not exhausted and remain available, to the extent possible, to carry out operations until the funding lapse ends.

All international travel during a funding hiatus, to include travel necessary to carry out exempt/excepted functions, is strongly discouraged and requires written approval by the USM in advance of incurring any costs related to the travel. International travel is defined as travel Outside the Contiguous United States (OCONUS). It also includes Non-Foreign travel to Alaska, Hawaii, Puerto Rico, Guam, and other U.S. territories and possessions. For Components which may have categories of international travel e.g. FEMA disaster travel to Alaska, Puerto Rico, and U.S. territories, Components heads should submit a request, cleared by the Component CFO and Chief Counsel, to the USM for approval of these categories of travel.

## IV. Procedures in the Event of an Incident Requiring Recall

### A. Essential Employees.

An emergency situation may arise for which federal assistance is needed to supplement State and local efforts and capabilities to save human lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States. Such emergency situations may require certain DHS essential employees to report for work. Essential employees generally are employees in jobs that are vital to public health, safety, welfare, and national defense, front line law enforcement, or the operation of essential facilities and functions.

Although some employees identified as “essential” will likely be determined to be “excepted employees,” many will not since they do not perform functions or activities that are “excepted” from work restrictions specified in the ADA – e.g., functions/activities that are necessary for the safety of human life or protection of property.

The categories of “essential personnel” within DHS are as follows:

1. Mission Critical Personnel. Those employees occupying positions and performing functions that must be maintained under all circumstances to ensure the safety and security of the Nation and its citizens. The critical nature of these positions is inherent in the position description (e.g., securing the Nation’s borders, protecting the Nation’s transportation system, etc.). These employees must report for duty regardless of the emergency or operating status. Employees whose work is critical to the ability of DHS to perform its national or homeland security mission.

2. COOP Personnel. Personnel occupying positions identified to sustain an organization's primary mission essential functions (PMEFs) and mission essential functions (MEFs). These personnel:
  - a. May conduct these activities at an alternate site, virtually or through the observance of an alternate work schedule.
  - b. Are expected to initiate and remain in contact with their Component during an emergency to maintain continuity of operations (COOP).
  - c. Are Emergency Relocation Group (ERG) members and alternate ERG members.
3. Contingency/Incident Personnel. Employees who are in positions identified for possible activation, as needed, depending on the emergency, including:
  - a. Personnel designated in positions that ensure three-deep backup to mission critical or emergency personnel.
  - b. Subject Matter Experts (SMEs).
  - c. Personnel in positions pre-identified as part of a Crisis Action Team, and other operational teams established in response to a specific incident or situation.
  - d. Federal Emergency Response Officials.
  - e. Reconstitution Personnel in positions identified as Reconstitution Staff.
  - f. Personnel in positions identified as Devolution Staff.
  - g. Persons in positions identified in an order of succession.
  - h. Given that the duration of a lapse in appropriations is inherently uncertain, additional personnel may be subject to recall should a lapse in appropriations extend for a prolonged period of time. Components must identify personnel required for a shutdown lasting 5 days or less and identify additional personnel for a prolonged shutdown lasting longer than 5 days.
4. Emergency Personnel. Employees who are assigned to positions required to sustain a facility or function in the event of a localized situation, such as inclement weather or a dismissal or closure of DHS operations or services. These employees will be expected to work even when DHS applies dismissal or closure procedures. Because of the diversity in Component missions, employee occupations/skills, nature of the emergency, geographic location, and other factors, the designation of emergency personnel will be the responsibility of the Component Heads. It is advised that Component Heads designate, in advance of an emergency, those personnel that provide operational support or perform support functions (including security and maintaining infrastructure) which must continue following the release/non-reporting requirements of other personnel.
5. Exempt/Excepted Employees: Employees who have been designated by their supervisors to perform functions or activities that are exempt/excepted from work restrictions specified in the ADA and may continue to operate during a lapse in appropriations. See Section II of this Plan (*Procedures Relating to a Lapse in appropriations*) for definitions of DHS exempt/excepted functions and employees.

Management Directive 250-05, Designation of Essential and Exempt Personnel, and its associated instructions provide further guidance. Please note that Management Directive 250-05, consistent with prior versions of the DHS Procedures related to a Lapse in Appropriations, uses the term "exempt" to describe both "excepted" and "exempt" employees. The nomenclature

adopted by the current version of these procedures is intended to clarify, but not substantively change, the description and designations of covered personnel.

## B. Recall of Non-Exempt Employees

During a furlough, a situation may arise under which an office or Component may need to recall a non-exempt employee to carry out an excepted function. Such situations could include (1) an unplanned or unexpected project or activity that qualifies as an excepted function; (2) a determination that existing excepted functions require additional personnel; or (3) a need to replace an excepted employee who is unable to work.

In such a situation, DHS may recall from furlough the minimum number of non-exempt employees required to effectively respond to a specific project. If recalled to work on a specific excepted project, such an employee may work only on that project.

Each Component must designate a Senior Executive Service employee or Flag Officer, who is already designated as an exempt/excepted employee, to serve as its Recall Approval Official. This individual will have the authority, in consultation with Component OCFO and counsel, to either approve or deny requests for temporary or permanent recalls where the recall is to a) recall an individual to replace an excepted individual who must now be furloughed (i.e. one-for-one), b) recall an additional individual in support of a function listed as excepted in the Component's lapse plan, because the volume of excepted work necessitates an additional individual to perform the excepted function, or c) recall an individual to perform a function listed as "Potentially Excepted in the Event of an Incident or Credible Threat," in the event of an incident or credible threat. Although the Recall Approval Official may approve these three categories of recall requests, the components must notify the USM and DHS OCFO of the recall via a completed Recall Request Memo. The memo should be submitted to DHS OCFO which will coordinate with USM. A template for the Recall Request Memo can be found in Appendix XIII.

If a component wants to recall an employee whose recall function is not identified as an excepted or potentially excepted function in the plan, the component must submit a Recall Request Memo to DHS OCFO for advanced approval by the USM who will serve as the approving official and may consult with OGC as necessary to approve or deny requests

In all cases, the servicing human resources office should be informed.

The specific procedures for both component approvals and USM approvals are as follows:

1. Components must complete a Recall Request Memo and have it signed by the Recall Approval Official. Details on what the Recall Request Memo must include are located just below and a template can be found in appendix VIII. This Recall Request Memo must include a signed certification from the Recall Approval Official that the planned recall has been reviewed and approved by component counsel and the component CFO. Applicable counsel and CFO should be cc'd on the submission to DHS OCFO for transmittal to USM, whether it's being submitted as notice or for approval.
2. For DHS HQ only, prior to recall of one or more DHS HQ personnel, the head of that Office must provide to DHS OCFO for review a Recall Request Memo which must include a signed certification that the recall is needed and that the planned recall has been

reviewed and approved by any applicable division counsel. DHS OCFO will coordinate with DHS OGC and USM shall serve as the Recall Approval Official for headquarters offices and make a determination of either approval or disapproval of the proposed recall.

3. Recall Requests requiring USM approval, should be submitted to DHS OCFO as soon as components identify the need and no later than three business days in advance of the proposed recall date, with the understanding that there may be instances where a sudden and immediate need arises. Requests requiring USM approval should also be submitted in the form of a word document attached to an email. There is no guarantee that requests submitted less than three business days in advance of the proposed recall date will be approved in time. Recall Request Memos provided to DHS OCFO for transmittal to the USM for notice only and not approval, still must be submitted prior to or at the same time as a recall is initiated.
4. Once the Recall Request has been approved by the Component Recall Approval Official or USM, the Component must complete a Return to Work Notice, and have it signed by the Recall Approval Official. In particular, the form must include (a) the purpose for which the employee is to be recalled; and (b) how that function qualifies as an excepted function (e.g., how it is necessary to protect life or property from imminent threat). A copy of a template Return to Work notice is available from Component servicing human resources offices.
5. Complete and send the Return to Work Notice by email to the employee. If the employee does not have a DHS electronic device, the employee may be notified verbally by telephone and provided with the recall notice upon reporting to duty.
6. Once the project/function that the employee was recalled to support is completed, that employee must be re-furloughed for the duration of the lapse in appropriations. The employee must be issued a new furlough notice, with a new effective date.
7. The servicing human resources office will be provided a copy of the Return to Work Notice and any new furlough notice (along with all furlough notices).

In order to ensure sufficient information is provided in recall requests submitted, whether for notice or approval purposes, to enable the Department to determine whether the request complies with any of the available legal exceptions that permit personnel to continue working in the absence of an appropriation, recall requests must answer the questions directly below. Requests that do not include the required information, will be rejected by the USM or may be vetoed by the USM in the case of those submitted for notice purposes. A template Recall Request can be found in Appendix VIII.

**Recall Requests Must Answer the Following Questions:**

1. What is the date you wish to recall the employee and the anticipated duration of the recall e.g. “January 18-20, 2019” or “the duration of the lapse”?
2. Is the function you want the employee to perform when he/she is recalled, already listed in the lapse plan you submitted to DHS in December? In other words, are you simply

requesting to recall additional employees to perform a function you've already determined is excepted or potentially excepted in the event of an incident or credible threat? If so, please indicate the exception and function from the plan, under which you are requesting the recall and briefly indicate why you need additional employees to perform the excepted function.

3. Where you are not requesting to recall an employee to perform a function already listed in your lapse plan, please indicate under what exception you are requesting the employee to be recalled. Where an employee's salary is sourced out of a lapsed appropriation, they can only continue working during a lapse under one of the available legal exceptions. Pages 4-6 of [DHS Procedures Relating to a Lapse in Appropriations](#) describe the available exceptions. As a note, of those DHS employees who have been excepted, most have been excepted under the "Necessary for Safety of Human Life or Protection of Property" exception. The other available exceptions tend to apply to a very narrow group of individuals and functions.
4. Where you are not recalling the employee to perform a function already listed in your lapse plan, please briefly describe, how the function you want to recall the employee to perform, would fit within one of the available exceptions. For example, a recall request might take on the following form:

“Component wishes to recall Jane Doe under the “Necessary for the Safety of Human Life or Protection of Property” exception to perform Functions A, B, and C from January 18-20. There is a reasonable likelihood that the safety of human life or protection of property would be imminently compromised in some significant degree by a delay in the performance of Functions A, B, and C, because a delay in the performance of Functions A, B, and C would result in Ramifications A, B, and C.”

**Ramifications A, B, and C are the most important part of the description. The information provided for each employee does not need to be lengthy; a paragraph or two will generally suffice. For requests under the lives and property exception, those submitted without a description of the consequences of a delay in recall, will be rejected.**

### C. Emergency Relocation Group

An employee may be designated both as an essential employee and as a member of the ERG. Essential employees must be ready, willing, and able to serve during emergency furloughs and continuity events without regard to declarations of unscheduled leave or government closures due to weather, protests, and acts of terrorism or lack of funding. Essential employees may be designated as exempt/excepted employees in such events. Designation as an essential employee requires that the Department Emergency Notification System, the COOP point of contact, and/or the supervisor is able to contact the employee for notification of emergency conditions applicable to the employee's designation.

An employee's manager or supervisor will advise him or her regarding what the employee must do should a continuity event occur during an emergency furlough. The employee should

immediately provide all personal contact information to his or her supervisor, and provide any changes or updates in contact information as soon as known.

If an employee is on the ERG and his or her position is designated as non-exempt during an emergency furlough, the employee would not remain “on call” and would not be compensated for remaining “on call.” However, in the event COOP is activated and ERG personnel are notified to report to duty, they would be compensated for the hours worked based on appropriate statutes and laws.

## V. Procedures Following Conclusion of a Hiatus

### A. Notification Procedures

Upon appropriate notification from OMB, the Secretary will notify DHS officials that the lapse in appropriations has concluded and order them to direct employees to return to work. The DHS Office of Public Affairs will ensure that appropriate employee communications are delivered promptly and efficiently.

Although employees likely will receive an email notifying them when Congress has reached a funding agreement, they will be encouraged to watch the news and regularly check the DHS website for additional information on when to return to work. Typically, employees will be required to return to work at the beginning of their next regular workday following the President signing a continuing resolution or full-year appropriation providing funding for federal agencies. If employees are having issues returning to work on the next regular workday then supervisors have the discretion on the use of accrued annual leave, compensatory time off, or credit hours.

### B. Workforce Compensation

After appropriations are enacted, payroll centers will pay all exempt, excepted, and furloughed employees. NFC will issue additional guidance on payroll processing.

### C. Reporting of Costs Incurred

As soon as appropriations become available to continue Federal Government functions, Components must report all costs incurred due to the lapse in appropriations including, but not limited to the following:

1. Interest incurred for late payments.
2. Amount of discounts lost due to late payments.
3. Unplanned travel expenses to send staff home and to return them to the field.
4. Other costs of stopping then restarting operations, such as shutting down information technology systems.

### D. Program Activities

Components must maintain procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds upon the end of a shutdown.

## VI. Appendix: Exempt/Excepted Employees



U.S. Department of Homeland Security

Procedures Relating to a Lapse in Appropriations

Closure Times and Exempt/Excepted Employees  
by Component



## Office of the Secretary and Executive Management

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 1, 2020, the Office of the Secretary and Executive Management (OSEM) had 659 on-board employees including reimbursable attorneys.

### II. Estimated Time to Complete an Orderly Cessation of Activities

OSEM expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

OSEM estimates 76 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

## Management Directorate

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 1, 2020, the Management Directorate had 3,311 on-board employees.

### II. Estimated Time to Complete an Orderly Cessation of Activities

MGMT expects to complete an orderly cessation of all other activities not identified as exempt functions within 4 business hours following notification of a lapse in appropriations, with the following exception:

The Office of the Chief Readiness Support Officer expects that it may be necessary to retain 2 employees for a period of an additional 4 business hours (totaling 1 business day) to accomplish the orderly closure of facilities and the government fleet of vehicle functions. The 2 employees will be required during this period, which is wholly devoted to closing down the vehicle fleet functions and non-exempt government facilities. The additional time is required because of the necessity to close out the DHS vehicle fleet, which will require involvement to protect government-owned property, and because the Department is geographically dispersed with facilities and assets spread over 40 locations across the National Capital Region. The intent is to close as many DHS facilities as possible and have exempt personnel consolidate at designated exempt facilities in the National Capital Region.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

MGMT estimates 1,764 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

Exempt functions in MGMT follow, along with the identification of exempt/excepted employees estimated to be necessary for each.

## Office of Intelligence and Analysis

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

The total number of employees in the Office of Intelligence and Analysis (I&A) is classified. As of August 1, 2020 the Department had a total of 875 on-board employees under the Analysis and Operations account (I&A and Ops combined).

### II. Estimated Time to Complete an Orderly Cessation of Activities

I&A expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

I&A has 409 employees who are exempt/excepted and will be retained during a lapse in appropriations.

## Office of Operations Coordination

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

The total number of employees in the Office of Operations Coordination (OPS) is classified. The total on board numbers for the Office of Operations Coordination as of August 1, 2020 is reported in the Office of Intelligence and Analysis section.

### II. Estimated Time to Complete an Orderly Cessation of Activities

OPS expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

OPS has 130 total employees who are exempt/excepted and will be retained during a lapse in appropriations.

## Office of Inspector General

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 1, 2020, the Office of Inspector General (OIG) had 704 on-board employees.

### II. Estimated Time to Complete an Orderly Cessation of Activities

OIG expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within four business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

OIG estimates 218 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

## U.S. Customs and Border Protection

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of, August 15, 2020 U.S. Customs and Border Protection (CBP) had 63,622 on-board employees.

### II. Estimated Time to Complete an Orderly Cessation of Activities

CBP expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations, with the following exceptions:

- **Function:** Legal Counsel and Support
  - *Exempt/Excepted Employees:* Employees necessary to perform activities that facilitate the orderly cessation of functions.
  - *Justification:* These employees are needed for no longer than 3 days to assist in expediting the adequate transfer, resolution and/or disposition of pending procurement, contracting, budgetary, information technology, and personnel actions for the Office of Chief Counsel. Specific tasks would include: coordinating shutdown financial procedures with the Enterprise Services Office and Office of Human Resources Management, resolving year end procurement issues, creating necessary purchase card documents, processing necessary PARTS actions, assuring connectivity of all devices to CBP's network, and transitioning the ongoing workload to Chief Counsel employees who are deemed necessary to perform excepted work during the hiatus.
  
- **Function:** Labor and Employee Relations
  - *Exempt/Excepted Employees:* Employees necessary to perform activities that facilitate the orderly cessation of functions.
  - *Justification:* These employees are needed for no more than 3 days to close out labor and employee relations case files and other documents, ensure that CBP's approximately 60,000 employees are notified of their furlough status, and identify requirements of and render assistance to excepted legal counsel functions in matters such as active litigation in a variety of judicial and administrative venues, which requires additional time due to CBP's large workforce.
  
- **Function:** Advanced Training Center (ATC) Site Security
  - *Exempt/excepted Employees:* Employees necessary to perform activities that facilitate the orderly cessation of functions.
  - *Justification:* An estimated 1 day is required for ATC to facilitate the orderly relocation of approximately 150-300 law enforcement students that

are locally housed attending non-exempt advanced training classes. Due to the local housing arrangement, ATC requires additional time to execute an orderly cessation of its operations. This process requires coordination with local hotels, Partner Organizations (many of which are not within DHS), and contract employees, as well as the students themselves. (The students are not employees of the ATC but of CBP's component organizations.) In order to cease operations, ATC must: (1) coordinate with students' employing organizations to facilitate outgoing air transportation; (2) assign, account for, and organize students' transportation to regional airports, sometimes as far as 50 miles away; (3) receive sensitive inventory belonging to ATC that had been signed out to students; and (4) provide food and lodging to students until they depart the training facility.

- A small number of law enforcement students attending exempt perishable skills training includes firearms, less lethal, and pre-deployment threat awareness will remain on-site along with instructors and staff at the bare minimum needed to provide all training activities.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

CBP estimates 57,309 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

## U.S. Immigration and Customs Enforcement

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 2, 2020, U.S. Immigration and Customs Enforcement (ICE) had 20,604 onboard employees.

### II. Estimated Time to Complete an Orderly Cessation of Activities

ICE expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

ICE estimates 16,716 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.



# Transportation Security Administration

## I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 19, 2020, the Transportation Security Administration (TSA) had 59,426 on-board employees. This number does not include Law Enforcement Officers serving in the Federal Air Marshal Service (FAMS), as that number is Sensitive Security Information.

## II. Estimated Time to Complete an Orderly Cessation of Activities

TSA expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

## III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

TSA estimates 51,467 employees as the total number of employees exempt/excepted and estimated to be retained during a lapse in appropriations. This number does not include Law Enforcement Officers serving in the Federal Air Marshal Service (FAMS), who are excepted; as the total employee number is Sensitive Security Information.

## U.S. Coast Guard

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 01,2020, the U.S. Coast Guard (USCG) had 50,545 on-board employees.

### II. Estimated Time to Complete an Orderly Cessation of Activities

USCG expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

USCG estimates 44,663 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

## U.S. Secret Service

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 01, 2020, the U.S. Secret Service (USSS) had 7,574 on-board employees.

### II. Estimated Time to Complete an Orderly Cessation of Activities

USSS expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

USSS estimates 6,910 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

# Cybersecurity and Infrastructure Security Agency

## I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 17, 2020, the Cybersecurity and Infrastructure Security Agency (CISA) had 2,122 on-board employees.

## II. Estimated Time to Complete an Orderly Cessation of Activities

Following notification of the lapse in appropriations, the non-exempt CISA staff will need four business hours to complete an orderly cessation of all other activities.

## III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

CISA estimates 344 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

# Federal Emergency Management Agency

## I. Number of Employees On-Board Prior to a Federal Funding Hiatus

As of August 11, 2020, the Federal Emergency Management Agency (FEMA) had 20,885 on-board employees.

## II. Estimated Time to Complete an Orderly Cessation of Activities

FEMA expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations. Recognizing exceptions may occur requiring up to a full day for any employees in travel status.

## III. Exempt/Excepted Functions and Employees Retained During a Federal Funding Hiatus

FEMA estimates 17,235 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

## U.S. Citizenship and Immigration Services

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 17, 2020, U.S. Citizenship and Immigration Services (USCIS) had 19,623 on-board employees.

### II. Estimated Time to Complete an Orderly Cessation of Activities

USCIS expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

USCIS estimates 19,346 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

## Federal Law Enforcement Training Centers

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 1, 2020, the Federal Law Enforcement Training Centers (FLETC) had 1,260 on-board employees.

### II. Estimated Time to Complete an Orderly Cessation of Activities

As outlined In Section III.E. below, certain FLETC training for new public safety personnel and ongoing skills for public safety personnel is excepted. However, non-excepted training programs in session at FLETC that do not meet the criteria for exception will be suspended initially, and applicable students and staff supporting those programs will remain at the training site during the temporary suspension. If a determination is made after several days that the funding lapse will be prolonged, students and instructors involved in non-excepted training programs will be given direction to return to their permanent duty stations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

FLETC estimates 898 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.

# Science and Technology Directorate

## I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 1, 2020, the Science and Technology Directorate (S&T) had 435 on-board employees.

## II. Estimated Time to Complete an Orderly Cessation of Activities

S&T expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

## III. Exempt Functions and Employees Retained During a Lapse in Appropriations

S&T estimates 31 employees as the total number exempt/excepted and estimated to be retained during a lapse in appropriations.



## Countering Weapons of Mass Destruction Office

### I. Number of Employees On-Board Prior to a Lapse in Appropriations

As of August 01, 2020, the Countering Weapons of Mass Destruction (CWMD) Office had 222 on-board employees funded by the legacy appropriations.

### II. Estimated Time to Complete an Orderly Cessation of Activities

CWMD expects to complete an orderly cessation of all other activities not identified as exempt/excepted functions within 4 business hours following notification of a lapse in appropriations.

### III. Exempt/Excepted Functions and Employees Retained During a Lapse in Appropriations

CWMD estimates 85 employees as the total number exempt and estimated to be retained during a lapse in appropriations.

## VII. Total Employees: On-Board vs. Exempt/Excepted

DHS Component	Total Employees On-Board, 08/01/2020 <sup>1</sup>	Total Exempt/ Excepted Employees	Additional Exempt/ Excepted Employees For Lapse Longer Than 5 Days
OSEM	659	76	24
MGMT	3,311	1,764	116
A&O	875	539	42
OIG	704	218	5
CBP	63,622	57,309	500
ICE	20,604	16,716	0
TSA	59,426	51,467	1
USCG	50,545	44,663	514
USSS	7,574	6,910	44
CISA	2,122	344	0
FEMA	20,885	17,235	0
USCIS	19,623	19,346	280
FLETC	1,260	898	0
S&T	435	31	7
CWMD	222	85	0
<b>TOTALS<sup>2</sup></b>	<b>251,867</b>	<b>217,601</b>	<b>1,533</b>

### NOTES:

<sup>1</sup> On-Board employees include permanent and temporary employees as of 08/01/2020 (unless otherwise stated in the body of the document); the number of temporary employees changes on a frequent basis.

<sup>2</sup>These totals do not include additional personnel who may qualify as excepted or exempt in the event of an emergency.

## VIII. Appendix: Template Recall Request



U.S. Department of Homeland Security

Procedures Relating to a Lapse in Appropriations

Template Recall Request

## TEMPLATE RECALL REQUEST

[Date]

MEMORANDUM FOR: [Name]  
Deputy Undersecretary for Management

FROM: [Name]  
[Regular Title] and Recall Approval Official for [Component]

SUBJECT: Certification of Recall for [Insert Employee Name]

---

**Purpose:** The purpose of this memorandum is to describe the function we want the employee to perform upon recall and how that function qualifies as an excepted function.

**Date and Duration of Requested Recall:** [Start Date and duration of recall necessary to complete the excepted function e.g. “January 18-20, 2019” or “the duration of the lapse.”]

### **Justification:**

#### **OPTION 1:**

We are recalling the employee to perform a function already listed in the lapse plan we submitted to DHS, [because we now need an additional employee to perform the function OR because an incident or credible threat requires us to recall individuals already listed in our lapse plan as potentially exempt]. The function from our plan that we are recalling the individual to perform is [list function from plan here] and we need an additional employee to perform this function because [insert explanation].

#### **OPTION 2:**

We are requesting to recall the employee under the exception for [indicate under what exception you are requesting the employee to be recalled].

We wish to recall the employee under this exception to perform the following functions: [insert a brief description of the specific functions you want the employee to perform. For any acronym used, spell out the first use.]. The functions we need the employee to perform fit within [insert name of chosen exception] because [explain why the functions fit within the exception].

EXAMPLE: Component Amazing wishes to recall Jane Doe under the “Necessary for the Safety of Human Life or Protection of Property” exception to repair a broken gas line at Component Amazing Headquarters (CAHQ). There is a reasonable likelihood that the safety of human life or protection of property would be imminently compromised in some significant degree by a delay in Jane repairing this gas line because the leaking gas could result in an explosion.”

**REMINDER: The explanation of why the activities fit within the chosen exception is the most important part of the description. The description does not have to be lengthy. A paragraph or two will generally suffice. For requests under the lives and property exception, those submitted without a description of the consequences of a delay in recall, will be rejected.**

### **Certification:**

I certify that the planned recall has been reviewed and approved by counsel and the CFO. [Include signature]

# IX. Appendix: Memo for DHS Employees Not in a Furlough Status



U.S. Department of Homeland Security

Procedures Relating to a Lapse in Appropriations

Work That May be Performed by Exempt and Excepted  
Employees during a Lapse in Appropriations

January X, 2020

**MEMORANDUM FOR:** DHS Employees Not in a Furlough Status

**FROM:** Allen Blume  
Budget Director, DHS Office of the Chief Financial Officer

**SUBJECT:** **Work That May be Performed by Exempt and Excepted Employees during a Lapse in Appropriations**

As DHS is approaching the 30 day mark since the lapse in appropriations, and based on recent questions received, this Memorandum is provided to remind employees about work that may be performed by Department of Homeland Security (DHS) employees during a lapse in appropriations. Although we are experiencing a lapse in appropriations, DHS has consistent with the law, retained certain employees to perform “exempt” and “excepted” functions. This memorandum provides guidance on the definition and scope of exempt and excepted functions, in addition to the guidance previously provided in DHS’ Procedures Relating to a Lapse in Appropriations which can be found at <https://www.dhs.gov/publication/lapse-funding-dhs>.

**EXEMPT FUNCTIONS:**

The salaries of some DHS employees are funded from sources other than annual appropriated funds including fee revenue, multi-year, and no-year funds. To the extent that these sources have sufficient funds remaining in the account, activities and salaries funded from these sources can continue and are considered exempt. Employees whose regular salary and benefits are paid from a funding source that has not lapsed will continue to perform their normal duties and be paid during this funding hiatus.

Employees should have received notification of their status as an “exempt” employee immediately prior to the lapse in appropriations which took effect on December 22, 2018. Employees who are uncertain whether they are exempt should consult with their supervisor, or make contact with exempt management personnel within their organization for guidance if their supervisor is furloughed.

**EXCEPTED FUNCTIONS:**

Many DHS employees are funded from lapsed (e.g. annual appropriations) or exhausted appropriations but may nonetheless continue to work because the work they are performing is legally authorized to continue during a lapse in appropriations. These employees are known as excepted. Employees should have received notification of their status as an excepted employee immediately prior to the funding hiatus which took effect on December 22, 2018. Employees that are uncertain whether they are excepted should consult with their supervisor, or make contact with excepted management personnel within their organization for guidance if their supervisor is furloughed. These employees will not be paid their salary until an appropriation is passed.

As a matter of law, excepted employees can only perform excepted work that is consistent with the exception under which they were authorized to continue working. For example, if an employee has been excepted under what is commonly known as the “necessary for safety of human life or protection of property” exception, they can generally only perform the work that is necessary to protect human life or property.

The four categories of exceptions applicable to DHS are as follows:

1. Authorized under Law to Continue Even without Funding
2. Necessary for Safety of Human Life or Protection of Property
3. Implied by Law as Necessary to Continue Even without Funding
4. Necessary to the Discharge of the President’s Constitutional Duties and Powers

The majority of DHS employees who are excepted, have been excepted under Exceptions #1 and #2, which are described below. A small group of employees have been excepted under Exceptions #3 and #4. Employees excepted under Exceptions #3 and #4 should consult with their supervisor, or acting supervisor if their supervisor is furloughed, about the work they are permitted to perform during a lapse in appropriations. Employees who are unsure about which exception they are working under or whether the work they are performing qualifies for the exception, should also consult with their supervisor, or acting supervisor, if their supervisor is furloughed.

**Exception #1: Authorized under Law to Continue Even Without Funding:**

Activities authorized by law to proceed during an appropriations lapse are those functions for which express statutory authority to incur obligations in advance of appropriations has been granted. The group of employees excepted under this exception category is comprised almost exclusively of United States Coast Guard service members. Active duty military members are excepted because their entitlement to pay is provided under 37 U.S.C. § 204. This entitlement means that DHS is authorized by law to incur obligations for active duty service members pay. These active duty service members may perform normal duties during a lapse.

**Exception #2: Necessary for Safety of Human Life or Protection of Property:**

The exception applicable to most excepted DHS employees is commonly known as the “necessary for safety of human life or protection of property” exception. For work to qualify under this exception, there must be some reasonable likelihood that the safety of human life or protection of property would be compromised in some significant degree by the delay in performance of the function/work/activity in question. The risk should be real, not hypothetical or speculative, and must be sufficiently imminent that delay is not permissible. Certain administrative, research, or support functions necessary to maintain the effectiveness of functions/work/activities that are engaged in the protection of life or property at a minimum level may also continue.

Activities NOT included Under This Exception are:

- Strategic planning
- Budget planning
- Responding to correspondence
- Long-term project management
- Developing products for future program delivery
- Professional development
- Exercises
- Routine contract and grant administration, to include payment processing

Activities Which May Be Included Under This Exception Include:

- Maintaining law enforcement operations, including drug and illegal alien interdiction
- Continuing passenger processing and cargo inspection functions at ports of entry
- Providing the protective functions of the U.S. Secret Service
- Maintaining counter-terrorism watches or intelligence gathering or dissemination in support of terrorist threat warnings
- Deployment to a declared major disaster or emergency
- Support for emergency work or individual assistance arising from declared events

- Contract and grant administration necessary to address an imminent threat to life or property (no new grants, contracts, contract modifications, exercise of options, assisted acquisitions, orders, etc. may be made during the lapse unless it is determined to be excepted in accordance with DHS procedures, or, unless such non-exempt activities are performed pursuant to the guidance set forth below:.)

Situations may exist where Components have excepted functions to perform but not in a sufficient amount to keep an employee busy for an entire day or multiple days. In such cases, DHS may be required to furlough employees once the excepted function is completed and recall them when there is excepted work to perform again. There may be cases where an employee is required to perform this excepted function intermittently throughout the day and the intervals in between are too short to enable the employee to be furloughed and recalled in time to perform the excepted function. In such cases, the employee may remain at work and perform minimal non-exempt functions during the intervals. However, where excepted functions are intermittent, DHS must consider consolidating functions for performance by a smaller number of employees. This consideration becomes more important in a long period of lapsed appropriations.

If you have any questions about this guidance please contact Allen Blume, Budget Director, DHS Office of the Chief Financial Officer.



# X. Appendix: Financial Assistance Supplemental Information



## **U.S. Department of Homeland Security**

### Financial Assistance Contingency Plan During a Federal Funding Lapse

Version 1.3

# Table of Contents: Financial Assistance Contingency Plan

I. Purpose.....	58
II. Relationship to DHS-Wide and Government-Wide Guidance .....	58
III. DHS Financial Assistance Policy Regarding the Issuance of General Guidance to Recipients in the Event of a Federal Funding Lapse .....	59
IV. Fundamental Statutory Requirements (Anti-Deficiency Act) .....	59
V. Imminent Funding Lapse – Identifying Financial Assistance Supporting Exempt/Excepted and Non-Exempt/Excepted Functions .....	60
VI. Lapse Staffing Plan .....	61
VII. Procedures for an Orderly Closure and Support Following Notification of a Lapse in Appropriations .....	62
VIII. Actions Necessary to Mitigate the Effects of a Lapse in Appropriations .....	63
IX. Procedures Following Reauthorization of Funds after a Funding Lapse.....	64
X. Examples of Financial Assistance Awards that may be Awarded as a New Award During a Funding Lapse.....	65
XI. Continuing or Delaying Performance of a Pre-existing Funded Financial Assistance Award during a Funding Lapse (for a non-exempt/excepted activity).....	67
Attachment 1 - Sample Informal Notices to Financial Assistance Recipients .....	69
Attachment 2 - Example Letter Template A/Independently Funded.....	70
Attachment 3 - Example Letter Template B/Independently Funded.....	71
Attachment 4 - Example Letter Template/NOTICE OF TERMINATION .....	72

## DHS Financial Assistance Contingency Plan During a Federal Funding Lapse

### I. Purpose

The purpose of this document is to provide specialized guidance to Department of Homeland Security (DHS) financial assistance organizations to assist in their decision-making and operations during a run-up to a lapse in appropriations, during a lapse in appropriations, and after the end of a lapse in appropriations. This document should be used in conjunction with DHS-wide and government-wide guidance.

The intent of this document is to provide guidance that is particularly applicable to the financial assistance function during a funding lapse, not absolute guidance on determining how to comply with the Anti-Deficiency Act (ADA). DHS Headquarters and Components will identify activities that are either exempt/excepted or not exempt/excepted during a lapse in appropriations and the Heads of Financial Assistance Activities (HFAAs) will implement those decisions with the help of guidance included in this guide.

### II. Relationship to DHS-Wide and Government-Wide Guidance

- a) During the run-up period to a lapse in appropriations, the Office of Management and Budget (OMB) provides guidance and direction to all affected agencies; direction may be provided through government-wide conference calls or other types of communications. Any guidance from OMB will be communicated DHS-wide to all components. To the extent it conflicts with this guide, OMB's direction should be followed.
- b) Additionally, DHS has prepared a plan for operations during a funding lapse titled, *Department of Homeland Security Procedures Relating to a Lapse in Appropriations*, which was developed and issued in accordance with OMB Circular A-11, *Preparation, Submission, and Execution of the Budget*, Section 124 requirements. To the extent that plan conflicts with this guide, the DHS plan must be followed.
- c) OMB has also prepared *Government-Wide Frequently Asked Questions on Contracting, Grant Administration, and Payment Processing during a Lapse in Appropriations*. That guide provides many useful questions and answers plus background material to help in decision-making.
- d) The Department uses the terms "exempt" or "excepted" to describe functions and employees who may be required to continue to perform during a federal funding hiatus. Exempt employees or activities are those funded by appropriations that have neither lapsed nor been exhausted, such as unobligated carryover *balances* (e.g. Disaster Relief Fund) and permanent appropriations (e.g. Immigration Examinations Fee Account). Excepted employees or activities are those funded by lapsed (e.g. annual appropriations) or exhausted appropriations which may nonetheless continue because the work or the work they are performing may, by law, continue to be performed during a lapse in appropriations. Such employees include those who are performing work necessary to prevent imminent threats to the safety of human life or the protection of property or other categories of excepted work.

### **III. DHS Financial Assistance Policy Regarding the Issuance of General Guidance to Recipients in the Event of a Federal Funding Lapse**

Upon receipt of orders from either the Office of the Secretary or the Under Secretary for Management (USM) authorizing recipient notification, financial assistance activities will initially provide recipients with general guidance regarding a lapse in appropriations and its impact on recipient activities (see Attachment 1 for sample recipient notifications). If a funding lapse continues for more than a week, HFAAs should decide whether to issue additional guidance regarding continued recipient performance specific to each award, as appropriate. Additional information on this process can be found in Section XI, Continuing or Delaying Performance of a Pre-existing Funded Financial Assistance Award during a Funding Lapse. The need to follow-up initial general guidance with more formal and specific financial assistance actions may require the recalling of a limited number of additional financial assistance officers from furlough status to supplement the financial assistance staffs that are providing support for exempt financial assistance.

The rationale for this two-step process is to avoid the initiation of costlier formal financial assistance actions, such as terminations for cause, that may take longer to process, settle, and staff on the part of the recipient and Government, than the duration of a funding lapse.

### **IV. Fundamental Statutory Requirements (Anti-Deficiency Act)**

#### **a) Anti-Deficiency Act Requirements**

The discussion in this section is to provide familiarity with terms, not to provide absolute guidance on determining how to comply with the Anti-Deficiency Act (ADA). DHS HQ and Components will identify activities that are either excepted or not excepted from restrictions of the Anti-Deficiency Act and the HFAA organizations will implement those decisions with the help of guidance included in this guide, DHS Financial Assistance Contingency Plan during a Federal Funding Lapse, and the Department of Homeland Security Procedures Relating to a Lapse in Appropriations

Federal employees who violate the ADA may be subject to two types of sanctions: administrative and criminal. Employees may be subject to appropriate administrative discipline including, when circumstances warrant, suspension from duty without pay or removal from office. In addition, employees may also be subject to fines, imprisonment, or both.

#### **b) Anti-Deficiency Act Restrictions and Exceptions**

The ADA prohibits federal employees from:

- Making or authorizing expenditure or obligation in excess of the amount available in the appropriation or fund unless authorized by law. 31 U.S.C. § 1341(a)(1)(A);
- Involving the Government in any obligation to pay money before funds have been appropriated for that purpose unless otherwise allowed by law. 31 U.S.C. § 1341(a)(1)(B);
- Accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property. 31 U.S.C. § 1342;

- Making obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by agency regulations. 31 U.S.C. § 1517(a).

Activities and financial assistance actions that are excepted from ADA restrictions are those:

- Authorized by law to continue even without funding;
- Implied by law as necessary to continue even without funding;
- Necessary for the discharge of the President’s Constitutional duties and powers;
- Necessary for safety of human life or protection of property; or
- Necessary for the orderly cessation of functions.

In contrast, essential functions are a limited set of mission-essential or mission-critical functions that must be performed to provide continuity of operations (COOP). While some essential functions overlap with functions and activities that are excepted from ADA restrictions, for instance search and rescue operations at the U.S. Coast Guard, not all functions that are essential are also excepted. Although some financial assistance activities may support essential functions, they may not continue unless they also qualify as necessary to support a function that is excepted under the ADA. Each DHS Component has identified and defined its mission-essential financial assistance areas that support mission essential-functions. Not all of the new mission-essential financial assistance and orders are authorized to be awarded during a funding lapse even though they might be critical to accomplish DHS’s mission-essential functions. Only some of these mission-essential financial assistance may be excepted financial assistance. Accordingly, some new DHS mission critical financial assistance might not be authorized to be awarded during the funding lapse period.

Financial assistance that was awarded prior to the funding lapse using previously appropriated funds does not have to be terminated or stopped as a result of the funding lapse. However, continuation of performance of those financial assistance awards should be evaluated for economy and efficiency reasons to determine if recipients can continue performance in the absence of DHS support or oversight, or whether guidance should be issued to recipients to stop or curtail performance during the funding lapse. Additionally, any DHS employee support that is necessary for these funded awards will need to be closely examined to determine whether one of the exceptions applies or whether the DHS employees will be subject to a furlough because of the lapse. Detailed guidance on this evaluation is provided in Section XI, Continuing or Delaying Performance of a Pre-existing Financial Assistance Award during a Funding Lapse (for a non-exempt/excepted activity), of this guide.

## **V. Imminent Funding Lapse – Identifying Financial Assistance Supporting Exempt/Excepted and Non-Exempt/Excepted Functions**

In the event of an imminent lapse of funding, using the *DHS Procedures Relating to a Lapse in Appropriations*, and any guidance provided by OMB, it is necessary to survey and identify activities and financial assistance that, in whole or in part, support activities that are exempt or excepted from shutdown, and those that do not support exempt or excepted activities. This will serve two major purposes in the event of a lapse in appropriations:

- a) To identify the following:
  - 1. Financial assistance supporting exempt/excepted functions, especially those the funding of which is scheduled to lapse;
  - 2. Existing financial assistance awards that do not support exempt/excepted functions and that may require the issuance of guidance to recipients regarding continued performance or termination of the award for cause.
- b) To allow HFAA Determinations
  - 1. HFAAs should determine a distribution of financial assistance officers that provides the minimum staffing necessary to: (1) support an orderly shutdown; (2) ensure the effective management of financial assistance awards supporting exempt/excepted activities, including any staff that may be necessary to make payments under existing awards; and, (3) if a furlough continues for more than a week, allow for the call back of a limited number of additional financial assistance officers according to guidance contained in the Department of Homeland Security Procedures Relating to a Lapse in Appropriations.
  - 2. To issue necessary guidance to existing grant recipients or, in extremely rare scenarios where the funding lapse makes it impossible for a recipient to successfully complete the objectives of an award, terminations for cause. Determining an effective level of management for financial assistance supporting exempt/excepted activities would include consideration of financial assistance program officers and program management support. HFAAs must coordinate with their Component Heads or other designated personnel to ensure that financial assistance employee staffing information is consolidated along with other Component program information and included in the Department of Homeland Security Procedures Relating to a Lapse in Appropriations..
  - 3. Questions concerning activities that do not meet the requirements in the DHS Procedures Relating to a Lapse in Appropriations, and the OMB guidance on proceeding during a funding lapse should be directed immediately to the DHS OGC.

## **VI. Lapse Staffing Plan**

- a) The HFAAs will determine a distribution of financial assistance officers that provides the minimum staffing necessary to: (a) support an orderly shutdown; (b) ensure the effective management of financial assistance supporting exempt/excepted activities; and (c) if a furlough continues for more than a week, allow for the call back of a limited number of additional financial assistance officers in accordance with guidance contained in the *DHS Procedures Relating to a Lapse in Appropriations*, to issue necessary guidance to existing grant recipients or terminations for cause. Determining an effective level of management for financial assistance supporting exempt/excepted activities would include consideration of program management support.
- b) HFAAs must ensure that financial assistance employee staffing information is consolidated along with other Component program information as included in the DHS Procedures Relating to a Lapse in Appropriations.

- c) HFAAs may except from furlough the minimum number of staff necessary to make payments to grant recipients under awards that are funded by non-lapsing appropriations or under existing awards that were fully funded and obligated prior to the lapse. OMB has determined that personnel who are needed to make payments to grant recipients on funded awards can be excepted. This is because the action of making the payment is necessarily implied by the continued availability of the funding for the payments themselves. As a result, disbursement of valid obligations, including payments to contractors and grantees, may continue during a lapse in appropriations. Note that payments of obligations that are incurred during the lapse in the absence of an appropriation – for example, obligations for new awards that are necessary for the protection of life or property – may not be made until an appropriation is enacted into law.
- d) If more than one-half day will be needed for a financial assistance activity to complete an orderly shutdown, OMB Circular A-11 Section 124 requires agencies to submit policy statements and legal opinions supporting those estimates to OMB for consideration. If this is the case for a financial assistance activity, HFAAs must coordinate with their Component Heads or other designated personnel to review and, as appropriate, forward their policy statements and supporting legal opinion to the Chief Financial officer, Office of General Counsel, and Under Secretary for Management for consideration, and, as appropriate, submission to OMB for review.
- e) HFAAs shall finalize and activate their plans for an effective distribution of financial assistance officers and program officials within their Components to support an orderly shutdown and the management of financial assistance supporting exempt/excepted activities. Copies of their plans, including point of contact information for primary Component financial assistance personnel supporting shutdown and management of financial assistance supporting exempt activities shall be provided to the DHS Chief Financial Assistance Officer (CFAO) and the OCFO within four hours of receipt of official notification from USM and/or the CFO of a lapse in funding and the need to shut down operations.

## **VII. Procedures for an Orderly Closure and Support Following Notification of a Lapse in Appropriations**

NOTE: HFAAs and their financial assistance staffs may implement shutdown procedures only upon receipt of orders through either the Office of the Secretary or USM to proceed with an orderly shutdown of operations necessitated by a Federal funding lapse.

- a) Timeline: From the date of notification to proceed with orderly shutdown through the end of one week from start of funding lapse:
  - 1. HFAAs shall ensure that financial assistance personnel are notified of their “exempt/excepted” or “non-exempt/excepted” status, e.g., those who have been determined to be exempt/excepted in order to provide support for exempt/excepted financial assistance, in accordance with the DHS Procedures Relating to a Lapse in Appropriations.

It is recommended that furloughed employees provide a list of program office and recipient contact information so exempt/excepted employees can easily contact the appropriate points of contact during the shutdown. A best practice is to upload this contact information into a financial assistance management system (if appropriate) or other financial assistance system. This allows non-exempt/excepted employees to make quick decisions rather than wasting time looking for hard copy files.

2. Financial Assistance officers shall issue formal notification letters to their recipients informing them of any necessary actions to be taken by the recipient (See Attachment 1 for sample letters). For non-exempt/excepted financial assistance programs, Financial Assistance officers should also issue guidance to recipients regarding the unavailability of staff for questions, prior approvals, and any other activities that require manual staff inputs or approvals. If the ability of a recipient to request drawdowns or payments will be impacted, they should be notified.
  3. If a financial assistance award or modification is determined to be for an excepted activity or is determined to be necessary to support an excepted activity but funds are not available because of a lapse in appropriations, the financial assistance may be awarded per advice from the Department of Justice (DOJ) and OMB (see OMB Government-wide Frequently Asked Questions on Contracting, Grant Administration, and Payment Processing During a Lapse in Appropriations). This also applies if a financial assistance award was previously awarded, but was incrementally funded because of a Continuing Resolution. In either event, in order to make the financial assistance award or modification to an existing award, a term and condition permitting the Government obligate the award and not make a payment per that obligation until appropriations are provided to DHS must be included in the award. See Section X for a sample term and condition to accomplish this.
- b) Timeline: More than One Week from Start of Funding Lapse
1. If a furlough continues for more than a week, HFAAs may allow for the call back of a limited number of additional financial assistance officers following the guidance contained in the DHS Procedures Relating to a Lapse in Appropriations, so that they may issue necessary guidance to recipients or terminations for cause.
  2. After determinations have been made as to whether or not performance under a financial assistance award should continue during the funding lapse (see Section XI) financial assistance officers shall finalize and issue any necessary guidance to recipients or terminations for cause.

### **VIII. Actions Necessary to Mitigate the Effects of a Lapse in Appropriations**

- a) HFAAs must coordinate with Component program officials and using the guidance provided in the DHS Procedures Relating to a Lapse in Appropriations, and Section X to this plan, survey and identify financial assistance that, in whole or in part: (Category 1) support activities that are exempt/excepted from shutdown; and (Category 2) those that do not support exempt/excepted activities.
- b) HFAAs are responsible for ensuring financial assistance activity review of Category 1 and Category 2 financial assistance to identify:



1. Financial assistance supporting excepted functions, the funding of which is scheduled to lapse (e.g., is based on annual appropriations); and
2. Financial assistance for which the following types of modifications, and, if a funding lapse continues for more than a week, guidance to recipients regarding continuation of work or terminations for cause should be issued:
  - i. Fully funded/not dependent on additional appropriations;
  - ii. Exempt/excepted and partially exempt/excepted; and
  - iii. Delayed activity (suspension).

See Attachments for sample notification letters

- c) In order to identify whether the funding of an exempt/excepted financial assistance award is scheduled to expire during an anticipated funding lapse, financial assistance officers must review their awards to identify and take necessary action on any exempt/excepted awards. For example, if an exempt/excepted award's funding is scheduled to expire on a certain date, and a Continuing Resolution is scheduled to expire shortly before that date, the financial assistance officer must coordinate with the OGC and take immediate action prior to the Continuing Resolution's expiration date to award a continuation or new award to ensure continued performance of the excepted function In Advance of Funds.
- d) As appropriate, financial assistance officers should draft notification letters to recipients regarding the unavailability of DHS staff and the impact this could have on continued recipient performance. For example, work under an existing award that requires prior approval will need to be delayed because DHS staff will not be available to provide the required approvals. In rare situations, financial assistance officers should also issue any terminations for cause that may be necessary in advance for awards supporting non-exempt/excepted activities (e.g., those not on the Component's listing of awards necessary to continue in whole or in part to support activities that are exempt/excepted from shutdown). See Attachments for sample letters. OMB has determined that the normal winding down of operations should take no more than four hours. Having draft award notifications on hand and ready will facilitate closing down activity within the four-hour OMB shutdown estimate, and if the furlough lasts more than a week, reduce the need to recall financial assistance officers from furlough to supplement the financial assistance staffs that are providing support for exempt/excepted awards to issue additional guidance to recipients and terminations for cause.

## **IX. Procedures Following Reauthorization of Funds after a Funding Lapse**

Following official notifications that a shutdown is concluded, or that employees are directed to return to work, and that funding is available for obligation:

- a) Financial assistance officers will issue written notices to recipients who were sent notification letters indicating funding availability and issue any guidance to recipients that may be necessary for any work under the award to resume.
- b) If the funding lapse continued for more than a week and terminations were issued, financial assistance officers shall follow the appropriate termination procedures, as

appropriate for awards terminated in whole or in part for cause. In general, terminated financial assistance awards may not be resumed using previously obligated funding after the conclusion of a lapse. Because terminated awards cannot ordinarily be easily resumed or re-awarded, terminations should be issued for existing awards only in extremely rare and unusual circumstances. Any reinstatements of prior awards in whole or in part must be coordinated with OGC.

- c) Financial assistance officers shall issue written notices of funding availability for any award or award modification supporting an excepted activity that was issued during the shutdown in which an availability of appropriations term and condition was used.

## **X. Examples of Financial Assistance Awards that may be Awarded as a New Award During a Funding Lapse**

If a Component determines that a financial assistance award should be made during a funding lapse, that award may be executed only if it is supported by a determination that it is exempt and being funded with non-lapsing appropriations or that is excepted from the restrictions of the ADA that otherwise prohibit making an obligation during a funding lapse. Such determinations are not required to be made on an individual award basis. They can be made on a program basis and applied to awards that must be made to conduct exempt/excepted activities.

- a) If an award is made for an excepted activity and there is no funding available to obligate because of the lapse, a Term and Condition similar to the below must be included in the award:

### **Sample Term and Condition**

*Performance under this award has been designated by the [.....] as necessary for the avoidance of imminent threat(s) to the safety of human life or the protection of property and this work is exempt from the restriction under 31 U.S.C. § 1341, Limitations on Expending and Obligating Amounts, Against Creating an Obligation in Advance of Appropriated Funds. Accordingly, despite the fact that appropriated funds are not presently available to make all payments under this award, the recipient is authorized to perform under the award; the government will make payments otherwise required by the award once the Department of Homeland Security is provided appropriated funds for this award. The Financial Assistance Officer shall notify the recipient immediately upon DHS receiving or failing to receive such appropriated funds and shall make such funds received available for payment under this award within [.....].*

- b) Congressional Notification. When an award is made during a funding lapse, the requirement for Congressional Notification remains in effect. In the event the Office of Legislative Affairs (OLA) is in operation during the funding lapse, submit the notice as normal. In the event the OLA is not in operation during the funding lapse, submit the notice to OCFO/Financial Assistance Policy and Oversight (FAPO) at [FAPO.hq.dhs.gov](mailto:FAPO.hq.dhs.gov).
- c) Funded by Sources Other than Annual Appropriated Funds. Some functions are covered by multi-year, no-year, revolving funds, or advance appropriations; if those accounts have sufficient carry-over balance, they would not be affected by an annual appropriation

lapse. Revolving funds that operate almost entirely on offsetting collections from other Federal entities may also be forced to close, unless sufficient retained earnings are available to forestall the closure. This type of award would not require a clause as noted above.

EXAMPLES:

- Financial assistance funded by a no-year appropriation and may have sufficient balances available to continue operations.
  - Fee for service activities such as those performed by U.S. Coast Guard.
- d) Authorized by Law to Continue Even Without Funding. Congress provides express authority for some agencies to enter into financial assistance awards or borrow funds to accomplish some of their functions despite an appropriations lapse. We do not know of any DHS financial assistance functions that qualify; however, if your Component believes that it has a function that qualifies, please discuss it with the OGC. This is in addition to the below “safety of life or protection of property” exemption.
- e) Necessary for Safety or Human Life or Protection of Property
1. In order to qualify under the exception as necessary for the protection of life or property, there must be some reasonable likelihood that the safety of human life or protection of property would be compromised to some significant degree by the delay in the performance of the function in question. Specifically, the risk should be real, not hypothetical or speculative, and must be sufficiently imminent that delay is not permissible.
  2. Any activity and/or function that continues based on a determination that it qualifies for the protection of life or property exception must be limited only to the extent that the Component Head determines that imminent danger to life or property would result from their termination or diminution. As for any administrative, research, or other support function related to an excepted activity, that function should also continue, but only to the extent that the function is essential to maintain the effectiveness of those activities and/or functions that are engaged in the protection of life or property. In particular, administrative, research, and other overhead activities supporting excepted activities should be carefully reviewed to make certain their continuance is essential to carrying out the excepted activities. In addition, there must be some reasonable likelihood that the safety of human life or protection of property would be compromised to some significant degree if there were any delay in the performance of the administrative, research, overhead, or support activity that is in question. This determination can be made on an activity-wide basis and does not need to be made on an award by award basis.

EXAMPLES (Necessary for Safety of Human Life or Protection of Property):

- Maintaining criminal law enforcement operations, including drug and illegal alien interdiction.
- Continuing passenger procession and cargo inspection functions at ports of entry.

- Providing the Presidential protective functions of the Secret Service.
- Maintaining counter-terrorism watches or intelligence gathering or dissemination in support of terrorist threat warnings.
- Retaining minimal personnel to maintain telecommunications as they relate to exempt activities.

f) Necessary for the Orderly Cessation of Functions

Agencies may obligate funds during periods of lapsed appropriations to bring about the orderly shutdown of non-exempt/excepted activities. Contingency plans that call for halting operations of an agency after an appropriation lapse should be consistent with the Anti-Deficiency Act. OMB has determined that the normal halt in operations should take no more than four hours. The activities of employees during this period must be wholly devoted to closing down the function and upon completion, these employees would be released.

EXAMPLES (Necessary for the Orderly Cessation of Functions)

- Performing payroll functions for the period just prior to the appropriation lapse.
- Completing inventories of property and records to assure protection of the Government's interests and claims of affected private entities and individuals.
- For "partially exempt/excepted" activities, the transferring of any ongoing work necessary to support an exempt/excepted activity.
- Personnel functions to process furlough/reduction-in-force notices.

**XI. Continuing or Delaying Performance of a Pre-existing Funded Financial Assistance Award during a Funding Lapse (for a non-exempt/excepted activity).**

There is NO requirement in the ADA to stop, delay or terminate an award during the period of a funding lapse if that award was awarded and funded prior to the onset of the funding lapse.

Financial assistance awards that were awarded prior to a funding lapse and which are funded with funds not impacted by the funding lapse (such as prior year funds) often have periods of performance that cross fiscal years. When this occurs and a previously funded award has a period of performance that includes the period of a funding lapse, the specific terms and conditions of an award may make performance during a lapse impractical or impossible.

Pre-existing financial assistance awards that support an exempt/excepted activity or function should be allowed to continue during the funding lapse and should not be terminated or delayed.

Pre-existing financial assistance awards that do not support an exempt/excepted activity or function must be evaluated individually to decide if work can continue during the funding lapse based on the terms and conditions of the award. This decision on whether or not to permit award performance to continue during a funding lapse should be based whether the terms and conditions of the award permit it to continue in whole or in part without government oversight or participation. Recipient performance under most fully funded grant awards will not be impacted by a lapse in appropriations. Some awards may be impacted,

however. For example, as a practical matter, work under an award that requires the recipient to obtain prior approval to conduct certain work, or cooperative agreements that require substantial involvement from DHS staff may not be able to continue because DHS staff will not be available to provide the required approvals or involvement.

The actual scenario for each award has to be evaluated and the best balance reached. The decision is one of stewardship. Financial assistance officers with existing awards where performance would be impacted by a lapse, including by the unavailability of federal staff, should issue appropriate guidance and direction to the recipient prior to the funding lapse to help ensure the most economical outcome.

## **Attachment 1 - Sample Informal Notices to Financial Assistance Recipients**

Dear Financial Assistance Recipient,

This is to advise the Department of Homeland Security (DHS) financial assistance recipient community of the DHS plans regarding actions that may be necessary in the event financial assistance award funding is affected by a lapse in appropriations.

As you are aware, the budget for fiscal year 20XX has not been enacted which may result in a lapse in the funds designated for your award. As a consequence of the lapse, certain planned awards may be cancelled or postponed, and work under certain existing awards may need to be stopped or reduced in scope.

Should DHS determine that any of these actions are necessary, the financial assistance officer for each of the affected programs or awards will provide prompt appropriate notice to the recipient in accordance with the terms and conditions of the award. Notices will contain the direction necessary to comply.

If an award will not be affected by the lapse in appropriations, DHS does not plan to provide any separate notifications or communications of that fact. Unless a recipient is provided a formal notification to the contrary, all DHS recipients must continue to comply with all terms, conditions, requirements, and performance goals specified in their financial assistance award.

Thank you for your continued partnership with DHS, and for your cooperation as we work together to manage a potential lapse in appropriations.

Sincerely,

**Attachment 2 - Example Letter Template A/Independently Funded**

Date

Awardee Name

Attn:

Street Address

City, State and Zip Code

Subject: Financial Assistance Award number: \_\_\_\_\_ Continued Performance during a Lapse in Appropriations

The Continuing Resolution (CR) providing (Agency/Component) appropriations expired on \_\_\_\_\_. As of \_\_\_\_\_ there are no longer annual appropriations for Federal agencies, including (Agency/Component).

However, the subject financial assistance award is not dependent on additional appropriations. As a result, we have determined that performance is to continue during the lapse of appropriations. Until appropriations again become available, the Government will be working with a very limited staff, so you may be contacted by another financial assistance officer within (Agency/Component). Additionally, due to the funding lapse, staff may not be available to answer questions, provide prior approvals, or provide any other necessary coordination required by the terms of your award. You are still required to comply with all of the terms and conditions of your award, including any requirements that you receive prior approval, even if staff are not available.

Name

Financial Assistance Officer

### Attachment 3 - Example Letter Template B/Independently Funded

Date

Awardee Name

Attn:

Street Address

City, State and Zip Code

Subject: Financial Assistance Award number: \_\_\_\_\_ Continued Performance during a Lapse in Appropriations

The existing appropriation funding Government operations expires at midnight, \_\_\_\_\_ if new appropriations legislation is not enacted, only certain exempt and excepted Government operations will continue until such time that appropriations are again available. This letter is to remind you of your obligations during this funding lapse and is not meant to provide specific direction.

During a lapse in funding, the terms and conditions of your fully funded financial assistance award remain in full force and effect. Unless otherwise directed by the financial assistance officer, you will be required to satisfy all requirements under the award, within the existing timeframes, unless otherwise directed.

For those financial assistance awards that are not fully funded (i.e., incremental annual appropriations funding), you are not to incur costs in excess of the amount of funds already awarded to you as described in your financial assistance award. Should you incur costs during the shutdown in excess of the funds already awarded to you, those costs may or may not be considered by your financial assistance officer as allowable costs and/or subject to reimbursement should future appropriations become available. There is no legal liability on the part of the Government for any payment until funds are made available to the financial assistance officer for such an award, and until the financial assistance recipient receives notice of such funding availability in writing by the financial assistance officer.

Finally, staff may not be available to answer questions or provide necessary approvals or coordination during the lapse. If the lack of government personnel to provide oversight or technical direction, access to facilities, or other factors related to the funding lapse impact the satisfaction of your financial assistance award requirements, immediately notify [ provide officer's name and point of contact information here] and a financial assistance officer will provide you with timely direction.



## Attachment 4 - Example Letter Template/NOTICE OF TERMINATION

Date

Awardee Name

Attn:

Street Address

City, State and Zip Code

Subject: Financial Assistance Award number: \_\_\_\_\_ Continued Performance during a Lapse in Appropriations

As you are aware the Government has been operating on a Continuing Resolution (CR). That CR expired on [insert date] and has not been replaced with another CR or an appropriation. Therefore you are notified that Financial Assistance award number \_\_\_\_\_ (referred to as “the award”) is terminated \_\_\_\_\_ [insert “completely” or “in part”] for the cause as referenced in the *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards*. The termination is effective \_\_\_\_\_ [insert “immediately upon receipt of this notice” or “on \_\_\_\_\_”].

You shall take the following steps:

- (1) Stop all work relating to this financial assistance award except for
  - (i) Work-in-progress or other materials that you may wish to retain for your own account; or
  - (ii) Work-in-progress that the financial assistance officer authorizes you to continue (A) for safety precautions, (B) to clear or avoid damage to equipment, (C) to avoid immediate complete spoilage of work-in-process having a definite commercial value, or (D) to prevent any other undue loss to the Government. (If you believe this authorization is necessary or advisable, immediately notify the Financial Assistance Officer by telephone or personal conference and obtain instructions.)
- (2) Keep adequate records of your compliance with paragraph (1) above, showing the:
  - (i) Date you received the Notice of Termination;
  - (ii) Effective date of the termination; and
  - (iii) Extent of completion of performance on the effective date.
- (3) Furnish notice of termination to each immediate subrecipient that will be affected by this termination. In the notice:
  - (i) Specify your government financial assistance award number;
  - (ii) State whether the award has been terminated completely or partially;
  - (iii) Provide instructions to stop all work, make no further shipments, place no

further orders, and terminate all subrecipient awards subject to the exceptions in paragraph (1) of this section;

- (iv) Provide instructions to submit any settlement proposal promptly; and
  - (v) Request that similar notices and instructions be given to all immediate subrecipients.
- (4) Notify the Financial Assistance Officer of all pending legal proceedings that are based on subawards, or in which a lien has been or may be placed against termination inventory to be reported to the Government. Also promptly notify the Financial Assistance Officer of any such proceedings that are filed after receipt of this notice.
- (5) Take any other action required by the Financial Assistance Officer or under the terms and conditions of the award
- (a) *Termination of inventory* As instructed by the Financial Assistance Officer, transfer title and deliver to the Government all termination inventory, including subrecipient termination inventory that you have the right to take: [Financial Assistance Officer insert proper identification or “none”].
  - (b) To settle your proposal, it will be necessary to establish that all prime and subrecipient termination inventories has been properly accounted for.
  - (c) *Settlements with subrecipients*, You remain liable to your subrecipients and suppliers for proposals arising because of the termination of their subawards. You are requested to settle these settlement proposals as promptly as possible.
  - (d) *Completed end items*. Notify the Financial Assistance Officer of the number of items completed under the award and still on hand and arrange for their disposition.
  - (e) *Patents*. If required by the terms and conditions of the award, promptly forward the following to the Financial Assistance Officer
    - (i) Disclosure of all inventions, discoveries, and patent applications made in the performance of the award.
    - (ii) Instruments of license or assignment on all inventions, discoveries, and patent applications made in the performance of the award.
  - (f) *Employees affected*:
    - (i) If this termination, together with other outstanding terminations, will necessitate a significant reduction in your workforce, you are urged to:
      - (a) Promptly inform the local State Employment Service of your reduction-in-force schedule in numbers, and occupations, so that the Service can take timely action in assisting displaced workers;
      - (b) Give affected employees maximum practical advance notice of the

employment reduction and inform them of the facilities and services available to them through the local State Employment Service Office

- (c) Advise affected employees to file applications with the State Employment Service to qualify for unemployment insurance, if necessary;
  - (d) Inform officials of local unions having agreements with you of the impending reduction-in-force; and
  - (e) Inform the local Chamber of Commerce and other appropriate organizations which are prepared to offer practical assistance in finding employment for displaced workers of the impending reduction-in-force.
- (ii) If practicable, urge subrecipients to take similar actions to those described in the above section.

*Administrative.* The financial assistance officer name in the award will identify the person who will be in charge of the settlement of this termination and who will, upon request, provide the necessary settlement forms. Matters not covered by this notice should be brought to the attention of the undersigned.

Please acknowledge receipt of this notice as provided below

\_\_\_\_\_  
Financial Assistance Officer

\_\_\_\_\_  
Name of Office

\_\_\_\_\_  
Address

#### ACKNOWLEDGEMENT OF NOTICE

The undersigned acknowledges receipt of a signed copy of this notice on \_\_\_\_\_, 20\_\_\_\_\_. Two signed copies of this notice are returned.

\_\_\_\_\_  
Name of Financial Assistance Award Recipient

By \_\_\_\_\_

\_\_\_\_\_  
Title

(End of notice)