

SECTION 124—AGENCY OPERATIONS IN THE ABSENCE OF APPROPRIATIONS

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124.1 What types of actions may my agency conduct during a funding hiatus?*(a) Background.*

The Attorney General issued two opinions in the early 1980s that the language and legislative history of the Antideficiency Act unambiguously prohibit agency officials from incurring obligations in the absence of appropriations ("Applicability of the Antideficiency Act Upon a Lapse in an Agency's Appropriations" (1980) and "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations" (1981)). The Office of Legal Counsel of the Department of Justice issued an [opinion](#) dated August 16, 1995, that reaffirms and updates the 1981 opinion.

(b) Policies.

This section provides policy guidance and instructions for actions to be taken by Executive Branch agencies when Congress fails to enact regular appropriations, a continuing resolution, or needed supplementals, resulting in an interruption of fund availability.

This section does not apply to specific appropriations action by the Congress to deny program funding.

When the Congress fails to act on program supplementals and the result is partial funding interruptions, special procedures beyond those outlined in this section may be warranted. In such cases, you should consult your OMB representative.

In the absence of appropriations:

- Federal officers may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.
- Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but funds may not be disbursed.

Within the guidance established by the opinions issued by the Department of Justice and this Circular, agency heads, in consultation with their general counsels, must decide what agency activities are excepted or otherwise legally authorized to continue during an appropriations hiatus. Agencies should address questions to OMB, including questions about the interpretation of the Antideficiency Act. OMB will engage with the agency and the Department of Justice's Office of Legal Counsel, as necessary and appropriate.

124.2 What plans should my agency make in anticipation of a funding hiatus?

Agency heads, in consultation with their general counsels, must develop and maintain plans for an orderly shutdown in the event of the absence of appropriations. Up-to-date plans must be on file with OMB. Whenever there is a change in the source of funding for an agency program or any significant modification, expansion, or reduction in agency program activities, the agency must submit an update to

its plan to reflect this change. At a minimum, agencies should submit updated plans to OMB every four years, starting August 1, 2014.

Given that the duration of an appropriations hiatus is inherently uncertain, your plan should describe agency actions to be taken during a short hiatus (1-5 days). It also should identify anticipated changes if the hiatus extends beyond that time period. Your plan should also designate personnel responsible for implementing and adjusting the plan to respond to the length of the appropriations hiatus and changes in external circumstances.

Include the following information at the beginning of your plan:

- A brief summary of significant agency activities that will continue and those that will cease during an appropriations hiatus.
- An estimate of the time (to the nearest half-day) needed to complete shutdown activities. To the extent that specific shutdown activities will not be completed within one-half day, specify the nature of each such activity, together with the time and the number of employees necessary to complete the activity.
- A statement of the total number of agency employees expected to be on-board before implementation of the plan.
- A statement of the total number of employees to be retained under the plan for each of the following categories:
 - ▶ Their compensation is financed by a resource other than annual appropriations;
 - ▶ They are necessary to perform activities expressly authorized by law;
 - ▶ They are necessary to perform activities necessarily implied by law;
 - ▶ They are necessary to the discharge of the President's constitutional duties and powers; or
 - ▶ They are necessary to protect life and property.

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

- ▶ The total number of employees in the component to be on-board before implementation of the plan;
- ▶ The total number of employees to be retained in the component under the plan for each of the categories listed above (i.e., the employees' compensation is financed by a resource other than annual appropriations; they are necessary to perform activities expressly authorized by law; they are necessary to perform activities necessarily implied by law; they are necessary to the discharge of the President's constitutional duties and powers; or they are necessary to protect life and property); and
- ▶ The agency's legal basis for each of its determinations to retain categories of employees, including a description of the nature of the agency activities in which these employees will be engaged.

124.3 When should my agency's shutdown plans be implemented?

OMB will monitor the status of congressional actions on appropriations bills and will notify agencies if shutdown plans are to be implemented. Whenever it appears that a hiatus in appropriations might occur,

you should review your shutdown plans, and, if revisions are required, promptly submit the revised plan to OMB.

After OMB has identified a hiatus in appropriations and all available funds (including reallocated/reallocated funds), are exhausted, you must begin orderly shutdown activities. Each agency head must determine the specific actions that will be taken; however, all your actions must contribute to an orderly shutdown of the agency and give primary consideration to protecting life and safeguarding Government property and records. Agency heads will notify OMB immediately when shutdown activities are being initiated.

During an absence of appropriations, agencies should only engage in activities consistent with their shutdown plan.

Take necessary personnel actions to release employees in accordance with applicable law and regulations of the Office of Personnel Management. You must prepare employee notices of furlough and process personnel and pay records in connection with shutdown furlough actions. You should plan for these functions to be performed by employees who are retained for orderly termination of agency activities as long as those employees are available.

OMB will notify you when the hiatus of appropriations has ended.

