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SEPTEMBER 20, 1982

EXAMINER: MEMPHIS NORMAN
EXT: 4534

REVIEW OF AGENCY SHUTDOWN PLAN
OFFICE OF SCIENCE AND TECHNOLOGY POLICY

The shutdown plan submitted by OSTP is impressive and is well done for its small size--only 23 FTE work years.

No employees are expected to be retained during the shutdown.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20500

September 15, 1982

MEMORANDUM FOR DAVID A. STOCKMAN
DIRECTOR
OFFICE OF MANAGEMENT AND BUDGET

SUBJECT: Contingency Plan

In accordance with OMB Bulletin 80-14, Supplement 1, dated August 20, 182, enclosed you will find a copy of the policy guidance and instruction for action memorandum issued to the Office of Science and Technology Policy Staff.

Jerry D. Jennings
Executive Director

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF SCIENCE AND TECHNOLOGY POLICY
WASHINGTON, D.C. 20500

September 14, 1982

MEMORANDUM FOR THE OSTP STAFF

FROM: THE EXECUTIVE DIRECTOR

SUBJECT: Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations

This memorandum provides policy guidance and instructions for actions to be taken by OSTP when failure by the Congress to enact either regular appropriations, a continuing resolution, or needed supplements, results in interruption of fund availability.

Attached for your information and guidance are several documents which should prove helpful in understanding shutdown activities:

- Contingency Plan for Shutdown
- Format for Designating Essential Personnel
- Furlough Letter
- Guidance for Personnel Planning
- Copy of OMB Bulletin 80-14 and Supplement No. 1

CONTINGENCY PLAN FOR SHUTDOWN OF OSTP OPERATIONS IN THE ABSENCE OF APPROPRIATIONS OR OTHER FUNDING HIATUS

This plan shall be implemented by OSTP upon determination that funds availability will be interrupted because the Congress has failed to enact or the President has vetoed a regular appropriation, a continuing resolution, or required supplemental appropriation. When facing the possibility of such funding interruption, the following steps will be taken to prepare for orderly shutdown of the agency:

DATE	ACTIVITY	RESPONSIBLE OFFICER
4 Work-days before possible shutdown	Notification to the Director of Possible Funding interruption	Executive Director
4 Work-days before possible shutdown	Reallocation of available funds (if any) to forestall shutdown. Notification to OMB Budget Examiner.	Executive Director
4 Work-days before possible shutdown	Identification of agency shutdown coordination.	Executive Director
3 Work-days before possible shutdown	Identification of physical security requirements for classified information, materials, and equipment.	Agency Security Officer with Executive Director and Assistant Director's
3 Work-days before possible shutdown	Identification of activities and and employees required to continue operations supporting shutdown and/or for other activities required to protect life, property and records, including direct support to the President.	Executive Director; Assistant Directors
2 Work-days before possible shutdown	Notification to all employees of possible furlough; guidance on shutdown activities required of each employee; instructions on termination of agency activities and on reporting for duty should shutdown be initiated.	The Director

DATE	ACTIVITY	RESPONSIBLE OFFICER
1 day before possible shutdown	Notification to individual employees of of their specific activities on order of Shutdown. Commence those shutdown activities immediately required.	Executive Director
Last day of funding	Complete Shutdown activities. Notify employees that are to report for duty to carry out essential activities after shutdown.	Executive Director
Shutdown	Furlough non-essential personnel. Provide OA Personnel with listings of essential and furloughed staff. Notify GSA, OMB, Treasury, and OPM of Shutdown.	

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

DESIGNATION OF ESSENTIAL PERSONNEL AND ACTIVITIES
REQUIRED FOR CONTINUED OPERATION OF
AGENCY AFTER SHUTDOWN COMMENCING (DATE)

Title/Position	Name of Employee	Division/Branch	Brief Description and Justification of Duties

FURLOUGH MEMORANDUM

MEMORANDUM FOR THE OSTP STAFF

FROM: THE DIRECTOR

SUBJECT: Furlough During Interruption of Funding

As a result of (reason), the agency will be without the authority to incur additional obligations or expend funds beyond midnight, (date).

Should we be required to shutdown agency operations because of a funding lapse, you will be individually advised of those activities that must be accomplished to support the shutdown and at the appropriate time released from duty by furlough. Employees determined to be not essential for continuing activities after shutdown will not report for duty and will not be paid during the period of furlough. You will be notified by telephone or through the media when the availability of funding permits termination of the furlough and return to duty.

GUIDANCE FOR PERSONNEL PLANNING FOR LAPSED APPROPRIATIONS

This guidance is predicated on the assumption that funding interruptions will not exceed 30 days. (Should agency heads determine that interruption of funding is likely to continue for more than 30 days, the Office of Personnel Management should be consulted as to application of procedures prescribed in 5 CFR, Part 351, Reduction in Force.) The first part of the Guidance identifies personnel management areas to be addressed in contingency planning. The second part provides specific information, in question and answer format, relating to employees' rights and benefits. Citations in parentheses refer to guidance contained in the U.S. Code (U.S.C.), Code of Federal Regulations (CFR), and Federal Personnel Manual (FPM). Additional requirements may be contained in applicable labor-management agreements.

1. Personnel Management Areas to be Addressed in Contingency Planning

- Determination of functions to be performed for orderly closedown.

- Determination of period of time necessary to accomplish closedown.

- Identification of essential positions for closedown activities.

- Plan to recall incumbents of essential positions who are on leave.

- Identification of employees to be released at various times during and at completion of orderly closedown.

- Explanation of the situation to employees to be retained. It is probably in their best interests to report for work if the agency has determined that their services are allowed.

- Notification, consultation, and/or negotiation with labor organizations, as appropriate (5 U.S.C. Chapter 71).

- Notification to employees to be released (5 U.S.C. 7511-7514; 5 CFR Part 752).

- Dissemination to employees of information concerning rights and benefits for furloughed employees.

- Procedures for recalling employees -- or terminating employees (including those on furlough) if appropriation is passed at reduced level.

- Communication system for keeping all employees fully informed.

II. Questions and Answers on Employee Rights and Benefits

Q. Upon a lapse in appropriations, may an agency's employees continue to work?

A. They may not continue to perform functions necessary to accomplish the agency's mission, but they may be asked to perform duties required to shutdown the agency. However, no employee is required to work during a period for which no funds are available. An agency's acceptance of employees' services during this shutdown period would not violate the prohibition on acceptance of voluntary services because it is an emergency situation. (31 U.S.C. 665(b)) However, salary payments will not be made until funding is provided by the Congress.

Q. What personnel action is appropriate for those who do not work or who have completed work on orderly termination?

A. The agency should place its employees in a non-duty and non-pay status. This can be accomplished by the use of a furlough under adverse action procedures (5 CFR part 752).

Q. Can employees appeal a furlough action?

A. Since a furlough of 30 days or less is an adverse action, certain employees will be entitled to appeal the action to the Merit Systems Protection Board (5 CFR part 752). Employees who are in the competitive civil service, and have completed one year of current continuous employment under an appointment other than a temporary appointment, may appeal the adverse action to the MSPB. Preference eligibles in the excepted service may appeal to MSPB if they have completed one year of current continuous service in the same or similar positions. However, certain employees, including those who are serving in probationary status, do not have any adverse action appeal rights.

Employees who have appeal rights to MSPB and are covered by a collective bargaining aggreement may elect to file a grievance under the negotiated grievance procedure, if applicable. (5 U.S.C. 7121(e)(1)) Employees with neither MSPB appeal rights nor access to negotiated grievance procedures may file under an agency grievance procedure. Any employee may, of course, file a complaint with the Special Counsel if he or she believes that the action has been taken in violation of law, rule, or regulation. All employees have the right to file discrimination complaints if they feel they have been discriminated against on the basis of race, sex, color, religion, national origin, age, or handicap.

Q. What notice to employees is required for furlough?

A. Ordinarily, a minimum of 30 days' notice is required for furlough. Since it is generally assumed that Congress will provide appropriations authority on schedule, a sudden unplanned lapse in appropriations authority may create an emergency situation. Under such circumstances, the 30 day notice may be waived (5 CFR 752.404(d)(3)).

Q. Can a furloughed employee take another job temporay?

A. Normally, yes. Other than conflict of interest prohibitions, there is no restriction on Federal employees' taking additional jobs outside the Federal service. The law (5 U.S.C. 5533) generally prohibits an employee from receiving pay for more than one Federal position for more than a total of 40 hours in one calendar week. However, in this case, since the employees would not be working for their "primary" employer, they would be free to take any other employment, subject to any conflict of interest prohibitions which may apply.

Q. How would furlough affect waiting periods for completion of probation and the service requirement for career tenure?

A. The employee would receive "free" credit for 22 work days toward completion of the probationary period and 30 calendar days toward completion of career tenure requirements. Any furlough time in excess of these amounts would not be counted toward completion of probation or the service requirement for career tenure. (FPM Chapter 315).

<u>Procedural requirements</u>

Q. If, after employees have been on furlough for 30 days, short term fundings were made available and then lapsed again, could adverse action (Part 752) procedures be used for the second furlough?

A. Yes.

<u>Employees not covered by Part 752</u>

Q. May employees who are not covered by Part 752 be furloughed?

A. Yes. Temporary employees and those serving probationary periods are not covered by Part 752 procedures. It is necessary only to notify them that they will be furloughed on a certain date. Excepted employees are covered under Part 752 for furlough purposes if they are preference eligibles who have completed one year of current continuous service in the same or similar positions. Thus, they are entitled to full procedural protection. Excepted employees who are not preference eligibles who have completed the year of service requirement may be treated as temporaries.

Q. What notice requirement and release procedures apply to Senior Executives?

A. As far as furloughs are concerned, SES members are not covered by subchapter II of Chapter 75, Title 5, U.S.C. (applying adverse action procedures to furloughs for 30 days or less). Therefore, notice requirements and release procedures for SES members are within the jurisdiction of the individual agency; and there is no appeal right.

Personnel records

Q. How shall furloughs be documented?

A. A Standard Form 50 (SF-50) or approved equivalent form shall be executed for furloughed employees using the appropriate PAC/NOA code, e.g., for a furlough of less or more than 30 days. If the agency desires, it may use the list form of notice to process the furlough actions. Instructions for preparing a list form of notice are found in Table 6 of Book V of FPM Supplement 296.31. These same procedures shall be used to process the subsequent return to duty actions.

Q. What action is required should a furloughed employee resign or find employment in another agency?

A. Under such circumstances, the processing actions necessay to effect either a resignation or a separation are described in Subtable II of Book V, FPM Supplement 296-31. The employee does not have to be returned to duty before the resignation or separation action is processed. The remarks section of the SF-50 or approved equivalent form for the resignation or separation should show "From furlough effective (date)."

The PAC/NOA's which will normally be used for these actions are:

317 - Resignation
320 - Separation-Transfer (if under Reg. 315.501)
321 - Separation-Appointment in (agency)*
311 - Resignation-Appointment (agency)*

* These codes are to be used when the employee accepts an appointment in another agency other than by transfer under Regulation 315.501.

Q. Who processes personnel actions during a period of lapsed appropriations?

A. Such work should be done by employees retained for orderly closedown.

Q. What data should be provided to the Central Personnel Data File (CPDF) when an agency is in an orderly shutdown mode?

A. Agencies need not provide data to CPDF while in an orderly shutdown mode. Agencies should contact the CPDF Systems Manager once funding is received and when employees are returned to normal duties for instructions as to what data should be submitted to CPDF.

Labor-Management Relations Concerns

Q. Can an employee grieve the procedure used to issue an adverse action furlough notice under a negotiated grieveance/arbitration procedure?

A. Yes, if matters covered under 5 U.S.C. 7512 (adverse actions) are not excluded from the negotiated grievance/arbitration procedure.

Q. What procedures should an agency follow for handling pending labor-management relations cases?

A. Grievances - contact each labor organization and work out an appropriate arrangement to insure that employees retain their rights while at the same time insuring that agency management will be able to respond to each grievance in a timely manner at an appropriate level within the organization after the agency returns to work.

Unfair Labor Practices - Inform the FLRA Regional Director of a need for an extension of the time for filing an answer to any pending complaint(s) and any charge(s) filed during the shutdown period (5 CFR 2423.13); if a hearing has been scheduled, contact the administrative law judge assigned to the case or the Chief Administrative Law Judge and inform him of the circumstances and the need for a postponement (5 CFR 2423.19).

Other Matters Before the FLRA - inform the Executive Director of the FLRA or the General Counsel of a need to waive any time limit; if possible, this should be done in writing no later than 5 days before the established time limit (5 CFR 2429.23).

Q. What collective bargaining obligations does an agency have when developing plans for orderly shutdown?

A. Agencies should maintain constant and open communications with labor organizations when there is any likelihood of an appropriations lapse. Agency management has the authority under 5 U.S.C. 7106(a)(2)(D) to take whatever action may be necessary to carry out the agency's mission during an emergency and may issue rules and regulations implementing a mandate of law or an outside authority if they are nondiscretionary (7117(a)(2) and 5 CFR 2424.11) without engaging in collective bargaining. However, agencies are required to afford unions an opportunity to bargain on the procedures which will be observed in exercising the agency's authority (7106(b)(2)) and appropriate arrangements to be made for employees adversely affected by the agencies' decisions. In those agencies where one or more unions have been granted national consultations rights (7113), the agency should follow its established procedures for those parts of the agency-wide shutdown plan effecting conditions of employment. Agencies are responsible for meeting their obligations to negotiate and/or consult with recognized labor organizations, as appropriate. All of this will have to be done in a much shorter time than normal.

Q. Should these Q & A's be shared with unions?

A. Yes, an agency should share these Q & A's with the union(s) representing its employees if a shutdown seems imminent.

Benefits-Leave, Retirement, Life and Health Insurance

Questions and answers deal with employees on nonpay, nonwork status, (furlough) and those on nonpay, work status. The latter category includes those who are retained to work during the period of lapsed appropriations, but who are not retroactively paid -- which would happen if the appropriations authority were never passed or, if passed, failed to provide retroactive authority to pay salaries during the lapsed appropriations period. If employees "volunteer" to work during the lapsed appropriations period, and funding is subsequently provided, their benefits continue as during any normal working period.

Accuring Leave

Q. Will an employee accrue annual leave and sick leave (a) during furlough? (b) during nonpay, work status?

A. a. An employee does not accure annual or sick leave during each pay period he/she is in a furlough status for the full pay period. If the employee is in a pay status (paid leave or work status) during part of a pay period and in a furlough status for the remainder of the pay period at the beginning and/or end of the furlough, the employee will accrue leave on pro rata status. A table for crediting workdays on a pro rata basis can be found in FPM Supplement 990-2, Book 630, S2-3c(2).

b. An employee who is in a nonpay, work status will not accrue leave during each full pay period he/she is in a nonpay status, and will accrue leave for any partial pay period he/she is in a pay status at the beginning or end of the nonpay period, on the same basis as the employee who is in a furlough status (2a above). However, if the agency receives retroactive funding and the employee is paid retroactively or the nonpay period, the employee will also retroactively be credited with annual and sick leave accrual for that period.

Substituting Leave

Q. Will the employee who has been furloughed be able to substitute annual leave or sick leave for all or a portion of the furlough period if the agency receives retroactive appropriations?

A. The employeee who has been furloughed will not be able to substitute annual leave or sick leave for any portion of the furlough period. (38 Comp. Gen. 354; B-181087, Jun 21, 1974; B-188242, Aug 9, 1977)

Q. Will the employee who has been in a nonpay work status be granted annual or sick leave for those days he/she did not work during the period for which retroactive appropriations are authorized?

A. Annual or sick leave (or LWOP) may be granted retroactively for those days an employee does not work during the period of nonpay work status upon payment of retroactive pay for that period provided the absence was requested, approved, and documented in accordance with agency policy in advance of the absence (except in emergency situations).

Use or Lose Leave

Q. Will an employee be subject to forfeiture of annual leave if the period of furlough extends into the subsequent leave year? If the period of nonpay, work status extends into the subsequent leave year?

A. It is important that any annual leave which is subject to forfeiture be scheduled in writing well in advance of the anticipated expiration of appropriations, for use at some period or periods prior to the end of the leave year.

The requirement that leave must have been scheduled in advance to be considered for restoration will have been met. However, we have no precedent cases to ascertain that scheduled leave which is cancelled because of the requirement to place an employee on furlough under these conditions would meet the requirement of 5 U.S.C. 6304(dX1XB) that an exigency of public business exists.

In the case of the employee who is continued in a nonpay, work status, it is likely that the agency head (or his delegated authority) would determine that an exigency of major importance existed and annual leave may not be used to avoid forfeiture (5 CFR 630.305), thereby meeting the requirements for restoration.

Lump Sum Leave Payment

Q. If any employee resigns during the lapsed appropriations period, how is the lump sum leave payment processed?

A. If the agency terminates, OPM can take over the necessary processing. Otherwise the lump sum payment is simply delayed until appropriations authority is passed.

Retirement Coverage

Q. What happens to retirement coverage and service credit for an employee who has been furloughed? Of an employee who has been in a nonpay work stats for "close-out" activities?

A. Retirement coverage continues without cost to the agency or the furloughed or nonpay work status employee, providing the agency is still in existence. However, service credit for retirement purposes is granted only for time on the rolls in a nonpay status which does not exceed six months in the aggregate in a calendar year. Retirement coverage and retirement credit cease when the agency terminates. See FPM Supplement 831-1,S3-4, 5 U.S.C. 8332(f), 5 U.S.C. 8334, FPM Supplement 831-1,S21-3.

If full or partial retroactive appropriations are received, total employee retirement contributions for the period of furlough are withheld from retroactive pay, coverage continues as though furlough had not occurred. Total agency contributions are due from the appropriations.

Early Retirement

Q. Does the lapsed appropriations situation trigger eligibility for early retirement?

A. Not as we foresee such temporary lapses. If the agency is definitely terminated, of course, eligibiity for early retirement would be triggered.

Refund of Retirement Contributions

Q. Can accumulated retirement contributions be refunded under these circumstances?

A. Only if the agency is ultimately terminated or the employee otherwise becomes eligible to receive it by resigning and having at least a 31-day break in service.

Life Insurance

Q. What happens to regular and optional life insurance coverage of an employee who has been furloughed? Of an employee who has been in a non-pay work status for "close-out" activities?

A. Regular and optional life insurance coverage may be continued up to 12 months without cost to the agency or the furloughed or nonpay work status employee, providing agency is still in existence. If agency terminates, there is a 31-day extension of coverage after date of termination during which the employee may convert to a private plan.

If full retroactive appropriations are received:

Total regular and optional life insurance employee contributions for the period of furlough are withheld from retroactive pay and coverage(s) continue as though furlough had not occurred. Total agency contributions are due from the appropriations.

If partial retroactive appropriations are received:

Total regular and optional life insurance employee contributions for the period are withheld from retroactive pay and coverage(s) continue as though furlough had not occurred. Total agency contributions are due from the appropriations. If the amount of salary for a pay period is not sufficient to cover the full withholding, the balance of pay earned, after deduction for retirement or FICA tax, Federal income tax, and health benefits, must be withheld. Further information may be found in FPM Supplement 870-1,S4-2.

Health Benefits

Q. What happens to health benefits coverage of an employee who has been furloughed under adverse action procedures for 30 days or less? Of an employee who has been in a nonpay status for "close-down" activities?

A. Health benefits coverage may be continued up to 12 months without cost to the agency or the furloughed or non-pay work status employee, providing the agency is still in existence. If the agency terminates, there is a 31-day extension of coverage after date of termination during which employee may convert to a private plan (5 CFR 890.303(e) and FPM Supplement 890-1,S8-4).

An employee who has been granted a 31-day extension of coverage and who is confined in a hospital or other institution for care or treatment on the 31st day of the temporary extension is entitled to contribution of the benefits of the plan during the continuance of the confinement but not beyond the 60th day after the end of the temporary extension. 5 CFR 890.401(b)

If full retroactive appropriations are received:

Total employee contributions for the furlough period are withheld from retroactive pay, and coverage continues as though furlough had not occurred. Total agency health benefit contributions are due from the appropriations.

If partial retroactive appropriations are received:

Total employee contributions for the furlough period are with-held from retroactive pay, and coverage continues as though furlough had not occurred. Total agency health benefits con-tributions are due from the appropriations. If the amount of salary for a pay period is not sufficient to cover the full withholding, no withholding and no agency contributions will be made for the pay period. Deductions for retirement, FICA

Tax, and Federal income tax have priority over health benefit withholdings. FPM Supplement 890-1,S19-2.

Creditable Service

Q. Will the period of furlough or nonpay, work status be creditable for all rights and benefits?

A. The period of furlough or nonpay, work status will be creditable for the following purposes to the extent indicated:

(1) Retirement - 6 months in the aggregate in any calendar year.

(2) Annual leave accrual rate - 6 months in the aggregate in any calendar year.

(3) Reduction in force - 6 months in the aggregate in any calendar year.

(4) Leave accumulation reduction - no reduction in leave accumulation because there is no accrual of leave during the period of furlough or nonpay, work status.

(5) Within-grade increases - for General Schedule employees, 2 weeks for advancement to steps 2, 3, and 4; 4 weeks for steps 5, 6, and 7; and 6 weeks for steps 8, 9, and 10. For Federal wage system employees see FPM Supplement 532-1,S8-5.

(6) Severance pay - fully creditable for 12 months continuous service requirement of 5 U.S.C. 5595(b); 6 months in the aggregate in any calendar year creditable for computation of severance pay under 5 U.S.C. 5545(c).

In the case of an employee in a nonpay, work status, upon receipt of authority for retroactive payment of salary, the period would become fully creditable to the extent that it would have been creditable under normal working conditions.

DPCR

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Bulletin No. 80-14

August 28, 1980

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations

1. Purpose and Coverage. This Bulletin provides policy guidance and instructions for actions to be taken by Executive Branch agencies when failure by the Congress to enact either regular appropriations, a continuing resolution, or needed supplementals results in interruption of fund availability. This Bulletin does not apply to specific appropriations action by the Congress to deny program funding. In the instance of partial funding interruptions, e.g., failure of the Congress to act on program supplementals, special procedures beyond those outlined in this Bulletin may be warranted. In such cases, OMB representatives responsible for the affected agency's budget estimates should be consulted.

2. Background. The Attorney General issued an opinion on April 25, 1980 that the language and legislative history of the Antideficiency Act (31 USC 665) unambiguously prohibits agency officials from incurring obligations in the absence of appropriations. The essential elements of the Attorney General's advice are that:

a. In the absence of new appropriations, Federal officers may incur no obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.

b. Under authority of the Antideficiency Act, Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but no funds may be disbursed.

c. Under its enforcement responsibilities, the Department of Justice will take actions to apply the criminal provisions of the Antideficiency Act in the future when violations of the Act are alleged under such circumstances.

3. Actions required. Agencies faced with funding interruptions must take steps to forestall interruptions in operations and assure that they are in a position to limit their activities to those directly related to orderly shutdown of the agency.

a. Reallocation of funds prior to shutdown. Prior to initiation of orderly shutdown activities, agency heads will limit their operations to minimum essential activities and will reallocate to the extent permitted by law all available funds in order to forestall the fund interruption date as long as possible. Reallocation of funds will be made subject to the following requirements:

(1) Reallocation below the appropriation and fund account level will be accomplished by telephonic revision to allotments and suballotments (such revisions will be documented and immediately reflected in formal written changes to the regular allotment/suballotment documents).

(2) Agencies that have specific statutory authority to reallocate and transfer funds between appropriation and/or fund accounts will effect the transfers in accordance with current standard fiscal procedures. Such transfers generally will be effected on Standard Form (SF) 1151, "Nonexpenditure Transfer of Funds" (see OMB Circular No. A-11, section 21.2, for a description of when expenditure transfers might be required). This Bulletin does not convey new authority to transfer funds.

(3) For this purpose adjustment to amounts contained in OMB apportionments may be made without submission of a reapportionment request.

b. Orderly shutdown activities. When all available funds, including reallotted/reallocated funds, are exhausted, orderly shutdown activities must begin. Each agency head must determine the specific actions that will be taken; however, all actions must contribute to orderly shutdown of the agency and give primary consideration to protecting life and safeguarding Government property and records. Such actions should be accomplished in a way that will facilitate reactivation when funds are made available. Agency heads will notify OMB, OPM, Treasury, and GSA immediately when shutdown activities are being initiated. These central agencies will be responsible for notifying their own regional offices, except as noted in paragraph (3).

(1) Appropriations and funds. Agency heads will limit obligations incurred to those needed to maintain the minimum level of essential activities necessary to protect life and property; to process the necessary personnel actions; to process the personnel payroll for the periods prior to fund interruption; and to provide for orderly transfer of custody of property and records to the General Services Administration (GSA) and the Office of Personnel Management (OPM) for disposition.

(2) Personnel and personnel records. Necessary personnel actions will be taken to release employees in accordance with applicable law and Office of Personnel Management's regulations. Preparation of employee notices of furlough and processing of personnel and pay records in connection with furlough actions are essential shutdown activities. Agencies 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. As soon as agencies determine the date after which they will no longer be able to maintain custody of personnel records, they should notify the Office of Personnel Management to arrange for orderly transfer of custody of the personnel records to OPM and GSA, jointly, for caretaking and protection of the records. If necessary to protect the interests of individual employees during the period when all employees of the agencies are on furlough, OPM will provide access to the appropriate personnel records to retrieve information and/or process personnel actions, e.g., separation-transfer of an employee who secures employment in another agency. Guidance for planning such actions and relevant questions and answers as to employees' benefits will be provided separately by OPM.

(3) Property and nonpersonnel records. Inventories of property and records will be made to assure protection of the Government's interests and the claims of affected private entities and individuals (including vendors and beneficiaries of Federal programs). Upon determination that agency funds are no longer available, agency officials should contact the appropriate Regional Administrators, General Services Administration, for assistance in determining the disposition of agency records, real and personal property, and outstanding requisitions, contracts, grants and related items. Detailed guidance on such matters are contained in:

-- 41 CFR 101-11.4; Dispositions of records.

-- 41 CFR 101-43 and 101-47; Disposition of personal property and real property.

-- FPMR 101-36.5, 101-37.203(c), and 101-37.307-1; Dispositions of automatic data processing, communications, and telephone equipment.

-- GSA motor pool accounting and record system operations guide; Disposition of motor vehicles.

The transfer to the General Services Administration of property and records shall not be made until 30 days have elapsed from the start of shutdown activities and then only after a determination is made that the funding hiatus will continue indefinitely.

c. Planning. Agency heads should develop plans for an orderly shutdown that reflect the policy and guidance provided in this Bulletin. Such plans necessarily will be tailored to each agency's needs in recognition of the unique nature of its funding sources, missions, and authorities. While every agency should have a plan, the scope and detail of the plan should be commensurate with the likelihood that shutdown will be necessary and with the complexity of shutting down the agency.

4. Effective dates. The instructions in this Bulletin are effective immediately and remain in effect until rescinded.

5. Inquiries. Budgetary questions should be directed to the OMB representatives responsible for review of each agency's budget estimates.

Fiscal procedures questions should be directed to the Division of Government Accounts and Reports, Bureau of Government Financial Operations, Department of the Treasury, Treasury Annex #1, Washington, D.C. 20226 (Telephone: (202) 566-5844).

Agency officials may obtain additional information and technical assistance on personnel matters by contacting their agency officer at the Office of Personnel Management.

Property and nonpersonnel records disposition questions should be directed to Office of Plans, Programs, and Financial Management, General Services Administration, Washington, D.C. (Telephone: (202) 566-1807).

James T. McIntyre, Jr.

James T. McIntyre, Jr.
Director

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

Bulletin No. 80-14, Supplement No. 1 August 20, 1982

TO THE HEADS OF EXECUTIVE DEPARTMENTS AND ESTABLISHMENTS

SUBJECT: Agency Operations in the Absence of Appropriations

1. Purpose. This supplement updates OMB Bulletin No. 80-14, dated August 28, 1980, and requires the submission of contingency plans for review by OMB. The purpose of the review is to assure adequate contingency planning and Government-wide compliance with the provisions of the Antideficiency Act.

2. Background. OMB Bulletin No. 80-14 instructed agencies to develop plans for an orderly shutdown in the event of a funding hiatus. It became necessary to carry out these plans during the November 1981 hiatus. In reviewing that experience and the operational plans in effect during the period immediately preceding enactment of the March 31, 1982 Continuing Resolution, certain difficulties were observed:

-- some agencies have not fully complied with the requirements of OMB Bulletin 80-14, and do not have fully operational contingency plans;

-- disparities appear to exist between some agencies as to the definition of activities necessary to protect life and property; and

-- disparities appear to exist between some agencies as to the time necessary to complete the orderly shutdown of nonexcepted activities.

3. Actions required:

a. Amend the date that appears in section 2 to January 16, 1981.

b. Delete the last sentence of subsection 3.c.

c. Add subsection 3.d. as shown in the attachment.

David A. Stockman

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Director

Attachment

Attachment

Material to be added to
OMB Bulletin No. 80-14,
Section 3

d. Reporting. The plans required in subsection c will be submitted to OMB by September 15, 1982.

The following information will be provided with the plans:

(1) Estimated time to the nearest one-half day to complete the shutdown in accordance with the plan.

(2) Number of employees expected to be on-board before implementation of the plan.

(3) Total number of employees to be retained under the plan because (a) they are engaged in military, law enforcement, or direct health care activities, or (b) their compensation is financed by other than annual appropriations.

(4) Number of employees, not otherwise exempt, to be retained to protect life and property.

Within the guidance established by the Attorney General's opinion of January 16, 1981, and this bulletin, agency heads are to make such determinations as are necessary to operate their agencies during an appropriations hiatus, and to do so pursuant to normal agency processes for the resolution of issues of law and policy. Questions that cannot be determined by an agency should be addressed to OMB. All unresolved questions relative to the construction of the Antideficiency Act will be jointly referred to the Office of Legal Counsel of the Department of Justice.

If it is estimated that more than one-half day will be needed to complete the shutdown or that the number of employees to be retained to protect life and property will exceed five percent of the number of employees on board at the beginning of the hiatus less those exempt for reasons specified in item (3) above, agencies will submit policy statements and legal opinions supporting those estimates.