

U.S. OFFICE OF GOVERNMENT ETHICS

PLAN FOR SHUTTING DOWN OPERATIONS IN THE EVENT OF A LAPSE OF APPROPRIATIONS

Background

The Constitution provides that “no monies shall be drawn from the treasury, but in consequence of appropriations made by law.” The treasury is further protected through the Anti-Deficiency Act which, among other things, prohibits all officers and employees of the federal Government from entering into obligations in advance of appropriations, prohibits employing federal personnel except in emergencies, or accepting voluntary services unless otherwise authorized by law.

OMB Bulletin 80-14, dated August 28, 1980 (and amended by the OMB Director's memorandum of November 17, 1981) requires all agencies to maintain contingency plans to deal with a possible appropriations hiatus. The bulletin requires agency plans to be consistent with the January 16, 1981 opinion of the Attorney General on this subject. The Office of Legal Counsel of the Department of Justice has subsequently issued an opinion dated August 16, 1995 that updates the 1981 opinion.

Definitions

Furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons. For most employees, there are two basic categories of furloughs, each involving different procedures. A furlough of 30 calendar days or less is covered under 5 CFR Part 752, adverse action procedures. A furlough of more than 30 calendar days is covered under 5 CFR Part 351, reduction in force procedures. All furloughs for Senior Executive Service members are covered under 5 CFR Part 359, Subpart H.

Excepted Employees refers to employees who are exempt from a furlough by law because they are (1) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) supporting the discharge of the President's constitutional duties to nominate and appoint officers of the Government.

Note: Individuals appointed by the President, with or without Senate confirmation, who otherwise are not subject to 5 U.S.C. section 6301 and attendant regulations governing leave in the Federal service, are not subject to furlough.

Plan

Specific information required by OMB Circular No. A-11, Section 124.2, follows:

- Estimated time to complete shutdown:

This shut-down could be completed in half a workday.

- Number of employees expected to be on-board before implementation of plan:

65 employees on-board before implementation of the plan.

- Total number of employees to be retained under the plan because:

- They are engaged in military, law enforcement, or direct provision of health care activities:

None

- Their compensation would be financed by a resource other than annual appropriations:

None

- Number of employees, not otherwise exempt, to be retained to protect life and property:

Two

In the event of an appropriations hiatus, OGE will proceed with the orderly shutdown of operations beginning with the first workday of the hiatus and will limit work activity to actions necessary for such a shutdown. It is estimated that such actions will require not more than one-half workday. No action will be taken that will impede the orderly commencement of operations once funds are available. OGE's full staff of 65 FTE employees are expected to be on-board the agency before implementation of this plan.

The Director or his designee will notify the Program Counsel, the General Counsel and all Deputy Directors of a possible funding hiatus as soon as such an event is deemed likely, as well as which activities and personnel are designated as "emergency" and therefore exempt from the furlough.

The Director shall send out a preliminary communication to all employees when there is a real possibility of an appropriations lapse. The preliminary communication will provide the most current information available on the status of funding as well as the tentative dates that a furlough may take place.

The Program Counsel, the General Counsel and all Deputy Directors are responsible for notifying their respective staffs regarding which activities and personnel are designated as emergency and therefore exempt from the furlough as well as the expected duration of each exemption. Managers and supervisors will communicate with employees regarding OGE plans to

affect an orderly suspension of agency operations. Supervisors will be responsible for notifying absent employees of the funding hiatus as soon as possible.

NOTE: All paid leave during a furlough is canceled because the necessity to furlough supersedes leave rights. Non-excepted employees will be furloughed for the full hiatus period and, when funds are restored, either returned to duty or placed on annual leave, as appropriate. Supervisor must make every effort to reschedule the annual leave cancelled due to a shutdown for use before the end of the current leave year, especially if such leave may be subject to forfeiture at the beginning of the subsequent leave year.

The Internal Operations Division will prepare draft emergency furlough decision notices for distribution to employees to the extent possible within the limited time available. The notices will provide all relevant information regarding their furlough status and other relevant information, including but not limited to, the following:

- Health Benefits
- Life Insurance Benefits
- Thrift Savings Plan Contributions/Loans
- Retirement contributions
- Leave
- Pay
- Travel
- Training
- Unemployment Benefits

On the first workday of the hiatus, all employees should report to work as scheduled. Supervisors will inform employees of the status of funding and instruct them to limit their work activities to those functions necessary for the orderly cessation of operations. Supervisors will direct employees to listen to public broadcasts and view OPM's and OGE's websites to monitor the operating and funding status of the agency. Unless designated as excepted personnel below, OGE employees may not perform work on behalf of OGE until funds are appropriated for the agency's normal operations. Employees are required to return to work on the first regular duty day after the funding hiatus is terminated.

OGE Excepted Personnel

In accordance with the guidance and opinions provided by the Office of Legal Counsel of the Department of Justice and the Office of Management and Budget, the following positions will be considered exempt from furlough:

- The Director;
- The Chief of the Presidential Nominations Branch and such member(s) of the Nominee Financial Disclosure staff as the Director may designate; and
- IT Specialist.

These positions are exempt to perform emergency work involving the protection of property or supporting the discharge of the President's constitutional duties to nominate and appoint officers of the Government.

- The following positions are exempt to

(1) support the discharge of the President's constitutional duties to nominate and appoint officers of the Government:

- The Director;
- The Chief of the Presidential Nominations Branch and such member(s) of the Nominee Financial Disclosure staff as the Director may designate; and

(2) protect Government property and to maintain OGE's IT and information resources infrastructure:

- IT Specialist; and
- an IT Program Manager