

**Special Inspector General
for the Troubled Asset Relief Program**

SIGTARP Shutdown Plan
During Periods of Lapsed Appropriations
September 3, 2020

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Purpose

During a federal funding hiatus, lapse in appropriations, or lack of available work, the Special Inspector General for the Troubled Asset Relief Program (SIGTARP) 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/ the Act) ¹ may continue during a lapse in appropriations. Similarly, the SIGTARP has the authority to furlough its employees due to lack of work.²

The ADA codifies the Constitutional requirement that “No Money shall be drawn from the Treasury, but in consequence of appropriations made by Law.”³ 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 the Office of Management and Budget’s (OMB) 2019 Circular A-11, “Agency Operations in the Absence of Appropriations,” SIGTARP has developed the procedures outlined in this document as its contingency plan. As specified by the OMB A-11 guidance, the contingency plan includes 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 SIGTARP 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 Deputy Special Inspector General for Management, SIGTARP will implement 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).

Shutdown Preparation Leadership

Contacts: Name, phone number, fax number and email address for SIGTARP shutdown planning and coordination:

Melissa Bruce, Deputy Inspector General for Management: 202-617-4238,
melissa.bruce@treasury.gov

¹ 31 U.S.C. §§ 1341 et seq

² 5 CFR §752.402

³ U.S. Constitution, Article 1, section 7, clause 1.

Definitions

The terms “exempt” and “excepted” are used to describe functions and employees that may be required to continue operating during a federal funding hiatus. 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. 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 and permanent appropriations.

- **Exempt Functions:** 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. 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. 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.

Excepted: Employees or activities funded by lapsed (e.g., annual appropriations) or exhausted appropriations, which may nonetheless continue because 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. Below are examples of excepted activities:

- 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. 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. 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. Of note, the Working Capital Fund (WCF) may require 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.

- 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.”
- 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 SIGTARP is authorized by law to incur obligations for their pay. These appointees may perform normal duties during a lapse.
- 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.
- 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 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. The Deputy Special Inspector General for Investigations shall identify which cases may be irreparably harmed by a cessation of investigative activities during the lapse and such LEOs may be considered exempt after consultation with the Special Inspector General.
- Necessary for the Orderly Cessation of Functions: Funds may be obligated 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.

Non-Exempt: 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.

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.

Employee Notification Procedures

Employees will be advised of the potential shutdown of operations and their “excepted” or “non-excepted” status prior to the implementation phase of shutdown. Employees will be notified of the impending shutdown by email correspondence requesting affirmative receipt confirmation of notification and providing the best method for contact should a shutdown occur (personal cell phone/email). Employees will be directed to the OPM website (<http://www.opm.gov/faqs/topic/furlough/index.aspx>) for information regarding furlough employee benefits and related information.

Shutdown Implementation

Shutdown Procedures

When a lapse occurs, the Deputy Special Inspector General for Management will determine the number of employees required to perform excepted duties.

- Employees in a travel status shall be notified to return to their duty station.
- Managers shall advise employees who are scheduled to be on annual, sick, court, or military leave that if a lapse in appropriations occurs while they are on leave, their leave will be canceled and they will be placed in a furlough status.
- All functions shall shut down as required by law unless functions are determined to be exempt.
- SIGTARP will notify contractors (as identified on the Bureau Contract List maintained for the Office of the Procurement Executive) of an anticipated lapse of government funding or a shutdown event. Through BFS/ARC, contractors will receive notice of intent to continue service or intent to issue a Stop-Work order. SIGTARP’s Procurement Officer will ensure Contracting Officer’s Representatives (CORs) and affected

stakeholders are notified of contractor status. A lapse of government funding will result in Stop-Work orders being issued via contractual modification issues through BFS/ARC and notification made to CORs/Stakeholders.

Recall of Furloughed Employees During a Shutdown

Due to the nature of a position, employees may be recalled for a full or limited duration during a shutdown. After a determination of this necessity by the Deputy Special Inspector General for Management, contact of recalled employees will be made by the appropriate division or office head using the employee’s designated contact information.

Shutdown Reactivation of Functions

Reactivation of agency functions may begin when funds are appropriated to SIGTARP. All employees will be able to return to work. SIGTARP sources of communications will be made available including:

- A central point-of-contact will be established where employees may obtain information.
- SIGTARP phone tree will be activated.
- SIGTARP will notify contractors in a Stop-Work status when funding has been restored and a modification to continue work is authorized by BFS/ARC.

Summary of Shutdown Impacts for Lapse WITHOUT a Determination to Utilize Mandatory Funds

Information required by OMB Circular A-11 (2013)

1. Estimated time to complete shutdown of non-excepted activities	Not in excess of a half day
2. Number of employees expected to be on board prior to implementation of shutdown plan	73*
3. Number of employees to be retained due to:	
a. Compensation is financed by a resource other than annual appropriations	0
b. Necessary to perform activities expressly authorized by law	0
c. Necessary to perform activities implied by law;	4*
d. Necessary to the discharge of President’s constitutional duties and powers	1
e. Necessary to protect life and property	5*
4. Total number of excepted employees	10*

*Excepted employees are engaged in law enforcement/criminal investigative activities or special and emergency situations that cannot be rescheduled. For example: trials and trial preparation (Speedy Trial Act), preparation for and conducting Grand Jury proceedings, and application for and execution of search and arrest warrants, and to monitor incoming communications for threats and information requiring immediate or emergency action and providing an immediate response to protect life and property.

The numbers may vary based on the actual time of the lapse in appropriations and SIGTARP’s operational requirements.

Attachments

List of Excepted Employees

Discharge of the President's Constitutional Duties (1)

- Special Inspector General – Christy Goldsmith-Romero

Necessary to Protect Life and Property (5)

- District of Columbia: Deputy Special Inspector General, Investigations – Thomas Jankowski
- Los Angeles: Assistant Deputy Special Inspector General, Investigations – Norman Embry
- New York: Special Agent in Charge – James O'Connor
- Atlanta: Senior Special Agent – Robert Pollack
- San Francisco: Senior Special Agent – Mary Williams

Necessary to Perform Activities Necessarily Implied by Law / As Needed (4)

- Principal Deputy Special Inspector General – Vincent Micone
- General Counsel – Sidney Rocke
- Deputy Special Inspector General, Management – Melissa Bruce
- Deputy Special Inspector General, Audits – Jenniffer Wilson

Necessary for the Conduct of Shutdown Procedures (1)

- HR Personnel – Aaron Foster

The list of Excepted Employees is based upon an operational assessment as of the preparation of this plan. The list will be reviewed in the event of an actual shutdown based upon the then-current operational needs of SIGTARP. The Deputy Special Inspector General for Investigations and the Deputy Special Inspector General for Audit will further identify any agents or auditors that may be required to return to duty to meet SIGTARP operational needs.

Sample Memorandum for SES and Non-SES Employees

MEMORANDUM

From: _____
Subject: Furlough Decision Notice

In the absence of a Fiscal Year (FY) __ appropriation, a continuing resolution for the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), or a lack of work, no further financial obligations may be incurred by SIGTARP, except for those related to the orderly suspension of SIGTARP's operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) memorandum for Heads of Executive Departments and Agencies, dated November 17, 1981.

Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective, _____. This furlough, *i.e.* nonduty, nonpay status, is not expected to exceed 30 days. Therefore, this furlough notice expires on _____. You should monitor Internet, media, public broadcasts, or other information sources for updates. When a continuing resolution or FY 20__ appropriation for SIGTARP has been approved, you will be expected to return to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR § 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR § 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level, they are required for orderly suspension of SIGTARP operations or they are performing one of the excepted activities defined in the SIGTARP Shutdown Plan and OMB memorandum. SIGTARP will be continuously assessing the situation and you may be recalled at any time if you are needed to perform an excepted activity.

During the furlough period, you will be in a nonpay, nonduty status and you may not work at your workplace or other alternative worksites until recalled. Additionally, during the furlough, you will not be permitted to serve as an unpaid volunteer for SIGTARP, and must remain away from your work place unless and until recalled. Any paid leave (annual, sick, court, etc.) previously approved for use during the furlough period is cancelled.

Notice of Appeal Rights: If you wish to appeal this personnel action, you may elect one of the following options: you may appeal to the Merit System Protection Board (MSPB); you may seek corrective action before the U.S. Office of Special Counsel; or you may file a complaint of discrimination with the agency under 29 C.F.R. Part 1614. Except as described below, you may pursue only one of these options. If you pursue more than one of these options, whichever is

filed first shall be considered an election to proceed in that forum. Once you make your choice by timely initiating one of these options, that choice is irrevocable.

MSPB Procedure: Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Career SES appointees (except rehired annuitants) who believe the requirements of 5 C.F.R. Part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the MSPB. Career SES appointees may inspect the regulations and records pertinent to this action by contacting Aaron Foster, Human Resources, at 202-538-4647 (Aaron.Foster@Treasury.gov).

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice, whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB at <http://www.mspb.gov/appeals/appeals.htm>. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is:

SIGTARP Office	MSPB Office
Washington Field Office	Washington, DC Regional Office
Atlanta Field Office	Atlanta Regional Office
New York Field Office	New York Field Office
Los Angeles or San Francisco Field Office	Western Regional Office

MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. You may wish to check MSPB's website for its operating status during this time. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. If you do not have Internet access, please contact Aaron Foster, Human Resources, at 202-538-4647 (Aaron.Foster@Treasury.gov), or Sidney Rocke, General Counsel, at (202) 927-8938 (Sidney.Rocke@treasury.gov), for a copy of the MSPB regulations and appeal form.

Office of Special Counsel Procedure: If you believe this action is in retaliation for making protected whistleblowing disclosures, you may include that allegation in an MSPB appeal, under the procedures discussed above. You may also seek corrective action from the U.S. Office of Special Counsel (OSC). To seek corrective action from the OSC, you can file your complaint electronically at: <https://osc.gov/pages/file-complaint.aspx>.

You have the option of filing an Individual Right of Action (IRA) appeal with the MSPB after you have sought corrective action from the OSC. You must file the IRA appeal to the MSPB (see address above) within 65 days from the date of the OSC's notification terminating its investigation. Further information may be found at 5 U.S.C. § 1221.

However, if you initially elect to seek corrective action by OSC, your appeal to the MSPB will be limited to whether the agency took one or more covered personnel actions against you in retaliation for making protected whistleblowing disclosures, and you will forgo the right to otherwise challenge this action.

Discrimination Complaint Procedure: If your appeal involves a claim of discrimination, you may raise the issue of discrimination under SIGTARP's grievance procedures or in an appeal to the MSPB, as outlined above.

You also have the option of filing a complaint of discrimination with the agency under the EEO procedures set forth at 29 C.F.R. Part 1614 (which are available at <http://eeoc.gov/laws/regulations/index.cfm>). In order to do so, you must first consult Treasury EEO Counselor Denise Bernfeld. You may contact Denise Bernfeld at (202) 622-9069. You must initiate contact with the counselor within 45 calendar days of the effective date of this action.

If you choose to file a complaint of discrimination with the agency under 29 C.F.R. Part 1614 and are dissatisfied with the agency's final decision, you may seek review of that decision by the MSPB (not the EEOC). For this reason, the agency will process your complaint as a "mixed case." For more information about mixed cases, please see the Frequently Asked Questions at the MSPB website, www.mspb.gov.

If you decide to pursue MSPB review of the agency's decision on your complaint of discrimination, you have the right to do so as follows:

- (1) An appeal must be filed within 30 days after you receive the agency resolution or final decision on the discrimination issue; or
- (2) If the agency has not resolved the matter or issued a final decision on the formal complaint within 120 days, you may appeal the matter directly to the Board at any time after the expiration of 120 calendar days. Once the agency resolves the matter or issues a final decision on the formal complaint, an appeal must be filed within 30 days after the appellant receives the agency resolution or final decision on the discrimination issue.

You are entitled to a representative of your choosing at all phases of the EEO process.

None of the options for challenging this action postpones or otherwise delays the effective date of this action. We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available.

Deciding Official

Date

I acknowledge receipt of this decision.

Employee's Signature

Date

Preferred Personal Contact Information During Lapse of Funding:

Personal Cell Phone: _____

Personal Email Address: _____

Sample Memorandum for Excepted Employees

MEMORANDUM

From: _____
Subject: Notice to Excepted Employees

In the absence of an FY __ appropriation, a continuing resolution to continue the ongoing operations of the Special Inspector General for the Troubled Asset Relief Program (SIGTARP), or a lack of work, no further financial obligations may be incurred by SIGTARP, except for those related to the orderly suspension of SIGTARP operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) memorandum for Heads of Executive Departments and Agencies dated November 17, 1981.

Your position has been identified as “excepted” for one of the following reasons:

- Your compensation is financed by a resource other than annual appropriates;
- Necessary to perform activities expressly authorized by law;
- Necessary to perform activities necessarily implied by law;
- Necessary to the discharge of the President’s constitutional duties and powers; or
Necessary to protect life and property.

As a result, you are expected to work during the shutdown in accordance with your regular work schedule.

During the shutdown, all leave is cancelled. Should you need to be absent from work for any reason, please consult your supervisor. You may request approval to use paid leave for the absence, or else you must be furloughed for the time you are absent. Use of paid leave in this situation is subject to normal rules regarding requesting and approving leave. However, please note that compensation for leave used by excepted employees during a lapse in appropriations is not payable until after the lapse ends.

Please direct questions about the information contained in this memorandum to your supervisor, or to Aaron Foster, Human Resources, at 202-538-4647 (Aaron.Foster@Treasury.gov), or Sidney Rocke, General Counsel, at (202) 927-8938 (Sidney.Rocke@treasury.gov).

We greatly appreciate your unwavering dedication and commitment to serving the public during the shutdown period.

_____	_____
Deciding Official Signature	Date

I acknowledge receipt of this notice.

Employee's Signature

Date