

# Treasury Inspector General for Tax Administration (TIGTA)



## Bureau Shutdown Plans During Periods of Lapsed Appropriations

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### **Purpose**

This shutdown plan provides policy guidance and instructions for actions to be taken by the Treasury Inspector General for Tax Administration (TIGTA) when Congress fails to enact regular appropriations, a continuing resolution, or supplemental appropriation bills, resulting in an interruption of appropriated funds available to continue TIGTA's operations.

### **Background**

The Attorney General issued two opinions in the early 1980s that the language and legislative history of the Antideficiency Act unambiguously prohibits 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. In general:

- Employees of affected agencies performing non-excepted activities (as discussed in the Department of Justice opinions) may not perform any services

other than those involved in the orderly suspension of non-excepted activities; excepted activities that may be continued are generally those that are authorized by law or that protect life and property;

- Agencies may not permit voluntary performance of non-excepted services; and
- Agency heads make the determinations that are necessary to operate their agencies during an appropriations hiatus (within the guidance established by the Department of Justice opinions and pursuant to normal agency processes for the resolution of issues of law and policy).

**Information Required by OMB Circular A-11**

| <b>Lapse Plan Summary Overview</b>  |              |
|---|--------------|
| Estimated time (to nearest half day) required to complete shutdown activities:  | <i>½ day</i> |
| Total number of agency employees expected to be on board before implementation of the plan:   | <i>735</i>   |
| <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:<br><small>*This number may fluctuate depending on American Rescue Plan Act (ARPA) (Recovery Rebates) case workload at the time of shutdown and IRS operational requirements.</small>   | <i>15*</i>   |
| Necessary to perform activities expressly authorized by law:  | <i>0</i>     |
| Necessary to perform activities necessarily implied by law:   | <i>21</i>    |
| Necessary to the discharge of the President's constitutional duties and powers:   | <i>1</i>     |
| Necessary to protect life and property:<br><small>**This number may fluctuate slightly depending on the actual threat environment at the time of shutdown and IRS operational requirements.</small>   | <i>119**</i> |
| <b>Brief summary of significant agency activities that will continue during a lapse:</b>  |              |
| The Office of Investigations (OI) will continue law enforcement excepted duties in support of investigations and other activities involving safety of human life and/or protection of property. In addition to the agency head, several TIGTA senior executives, limited senior management and support staff will continue duties required to support law enforcement excepted activities. Lastly, activities related |              |

to oversight of the IRS’s administration of the rebate provisions (*i.e.*, the advance payments) in ARPA will also continue.

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

TIGTA’s Office of Audit and the Office of Inspections & Evaluations will cease performing oversight responsibilities involving IRS programs and operations during the lapse period. The Offices of Chief Counsel, Mission Support, and Information Technology will cease all support operations except to provide support for law enforcement excepted activities.

**Shutdown Plan Requirements**

Shutdown Preparation

Bureau Contact: Name, phone number and fax number for TIGTA for shutdown planning and coordination is: Mervin Hyndman, Deputy Inspector General for Mission Support, [Mervin.Hyndman@tigta.treas.gov](mailto:Mervin.Hyndman@tigta.treas.gov), 202-622-7586 (phone), and 202-622-5624 (fax), in consultation with the Inspector General (IG).

TIGTA is primarily a law enforcement organization, which means that any numeric breakdown of functions will depend significantly on the threat environment at the time of the shutdown. The numbers represented herein are a best professional estimate in theory—in practice the numbers may vary. We anticipate full cessation of audits, inspections and evaluations during the shutdown period.

TIGTA has two-year funds that can be used for all purposes, not limited to law enforcement. In the event that a Treasury appropriations bill or a continuing resolution is not passed, TIGTA would remain open until its two-year funding is exhausted and no TIGTA employees would be furloughed during that time.

Finally, TIGTA has funds that can be used specifically for the purposes of overseeing activities related to the administration of recovery rebates to individuals until September 30, 2023. In the event that a Treasury appropriations bill or a continuing resolution is not passed, TIGTA would continue work in this specific area until this funding is exhausted.

Current List of Functions

A list of “excepted” and “non-excepted” organizational functions are included as Attachment B. Definitions include:

“Excepted” activities are those where positions would not be furloughed as a result of a shutdown, per one of the below statutory exceptions:

1. Funded by other than annual appropriated funds: Some functions are covered by a multi-year, no-year and revolving funds or advance appropriation and, thus, would not be affected by an annual appropriation lapse.
2. Authorized by necessary implication: Certain activities could be implicitly authorized because of their connection with other operations which are mandated to continue by law or for which funds otherwise continue to be available.
3. Necessary for safety of human life or protection of property: The Budget Enforcement Act of 1990 amends Section 1342 of Title 31 of the United States Code to make clear that regular, on-going functions whose suspension would not pose an imminent threat to life and property would not qualify as excepted activities. The risk to life or property must be real, not hypothetical, so that a delay in activities is not permissible. 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 such activities.
4. Discharge of the President’s Constitutional duties: There are some Executive branch functions that are considered instrumental in the performance of the President’s constitutionally assigned duties.
5. Necessary for the orderly shutdown of functions: Agencies may obligate funds during periods of lapsed appropriations to bring about the orderly shutdown of non-excepted activities. Contingency plans which call for winding down operations of an agency after an appropriations lapse should be consistent with the Antideficiency Act. At the same time, the activities of employees during this period must be wholly devoted to shutting down the function and, upon completion, these employees would be released.

“Non-Excepted” activities are all other functions than those designated as “excepted” above. Employees in these positions would be furloughed, where “excepted” employees would remain on duty. This could also include employees that may have to be recalled at a later date, if the furlough continues for more than a week.

#### 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 assured that should a shutdown be necessary, their health and life insurance coverage will not be affected. Employees may arrange to pay their portion of the health benefit costs on an ongoing basis or upon their return to duty.

## Shutdown Implementation

### Shutdown Procedures

- If TIGTA exhausts its two-year funds before Congress has enacted appropriations, a continuing resolution, or supplemental appropriations, TIGTA's appropriations will have lapsed. When a lapse occurs, all normal operations will cease and all further efforts will be devoted solely to closing down operations, protecting human life and health, protecting Government property, and performing essential operations for outside agencies whose operations must continue. Management will determine the number of employees required to do this work and **this work only**. These activities are typical of those identified with the "excepted" category.
- Routine operations already in process at the time the lapse begins should be carried forward to completion, or to a point where they can safely be interrupted, in order to avoid losing the investment in the work, which has already started. The invested work is a form of Government property, which should be protected from loss.
- Employees in travel status will be notified by management, whether to return home or to continue with their off-site business.
- Managers should 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 cancelled and they will be placed in a furlough status. According to 5 CFR § 752.402(c), a furlough means: "the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other non-disciplinary reasons."
- All functions will shut down as required by law. Upon notification of the shutdown, specific names will be provided based on the role individuals play in the emergency programs, open/active threat cases, and other sensitive investigations TIGTA has ongoing at the time of the shutdown as these issues drive which Special Agents will stay on duty and provide for the needed coverage.
- If it is likely that Congress will not enact regular appropriations, a continuing resolution, or supplemental appropriations before the funding lapse, the following actions will be taken:
  1. Upon receiving official notice of Congress' failure to enact regular appropriations, a continuing resolution, or supplemental appropriations before the funding lapse, the Deputy Inspector General for Mission Support will:
    - a. Notify, immediately, the Inspector General;
    - b. Give the Office of Human Capital and Personnel Security approval to validate TIGTA's lists of excepted and non-excepted positions;

- i. The Office of Human Capital and Personnel Security will validate this list with the responsible function head;
    - c. Initiate the TIGTA phone tree to ensure that all function heads and employees are notified that a shutdown will occur if TIGTA exhausts its two-year funds before Congress enacts regular appropriations, a continuing resolution, or supplemental appropriations; and
    - d. Initiate the generation and mailing of official written notifications for all affected employees.
2. If TIGTA exhausts its two-year funds before Congress enacts regular appropriations, a continuing resolution, or supplemental appropriations:
  - a. The Deputy Inspector General for Mission Support will provide a list of employees, not affected by the furlough, to the Bureau of the Fiscal Service (BFS), Administrative Resources Center (ARC) at [TreasuryProcessingInquiries@fiscal.treas.gov](mailto:TreasuryProcessingInquiries@fiscal.treas.gov).
  - b. The Deputy Inspector General for Investigations will activate the TIGTA Emergency Information Line, **(202) 927-7186**. This information line will include a scripted message provided by OMS/Office of Chief Counsel that provides instructions to all employees;
  - c. The scripted message will be periodically updated as appropriate; and
  - d. The Deputy Inspector General for Mission Support will ensure notification to all furloughed employee that they may not access TIGTA systems except to check on TIGTA operational status and obtain instructions.
3. See Attachment, Actions Required to Plan for Lapse in Appropriation of Funds, for a complete list of actions required to plan for a shutdown.
  - Actions necessary to transfer real and personal property will require some coordination, within TIGTA and between those agencies associated with TIGTA, as to what action may be continued according to law.

#### 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 determination of this necessity by the Inspector General or function head, contact of recalled employees will be made by the appropriate function head via telephone and an email notification by OMS providing reporting instructions to include the duration of the recall period.

#### Reactivation of Functions Following a Shutdown

Functions are reactivated when funds are appropriated for TIGTA to continue its mission. This means that all employees are expected to return to work. It is often impossible to notify all employees that they should return to work on short notice. In this event,

managers will inform their employees that they should stay tuned to the media for information. The Deputy Inspector General for Investigations will update the TIGTA Emergency Information Line, **(202) 927-7186** with reporting instructions. Other sources of communications will be made available such as:

1. TIGTA Hotline; and
2. TIGTA phone tree.

### **Attachments**

- Actions Required to Plan for Lapse in Appropriation of Funds
- Listing of Functions by Shutdown Category

## Attachments

### Actions Required to Plan for Lapse in Appropriation of Funds

| Task | Activity  | Responsible Official/Office                        |
|------|---|--|
| 1    | Provide official notice of Treasury's lapse in appropriations.  | Treasury Budget Office                             |
| 2    | Identify a bureau contact for shutdown planning and coordination.   | Deputy IG for Mission Support                      |
| 3    | Determine which positions and activities are excepted and non-excepted.   | IG and Function Heads                              |
| 4    | Determine which contracts will continue work under the shutdown.  | Deputy IG for Mission Support                      |
| 5    | Identify employees that will be in leave status on the first day of shutdown.   | TIGTA Managers                                     |
| 6    | Identify employees that will be in travel status or at temporary duty stations, and determine which employees should continue with their off-site business.   | TIGTA Managers                                     |
| 7    | Identify employees that will be in training status on the first day of shutdown.  | TIGTA Managers                                     |
| 8    | Establish a script to be added to the TIGTA Emergency Information Line.   | OMS and Office of Chief Counsel                    |
| 9    | Prepare the furlough memorandum to non-excepted and excepted employees. The memo should instruct employees to call the established TIGTA emergency information line. The memo will also explain that all previously approved leave requests for the shutdown period are cancelled and will include other benefit information. | Human Capital and Personnel Security               |
| 10   | <b>OMB through Treasury Directs Lapse in Appropriation</b>  | <b>Within 4 hours of notification</b>              |
| 11   | Human Capital and Personnel Security will validate list of excepted and non-excepted employees with TIGTA Function Heads.   | Human Capital and Personnel Security               |
| 12   | Issue memorandum to all Function Heads with necessary instructions.   | Human Capital and Personnel Security               |
| 13   | Notify individual employees of their excepted status for lapse in appropriations.   | Function Heads using the TIGTA phone tree          |
| 14   | Send the furlough memorandum to the appropriate employees notifying them that all operations will cease if two-year funds are exhausted before Congress enacts regular appropriations, a continuing resolution, or supplemental appropriations.   | Deputy IG for Mission Support                      |
|      | <b>Shutdown: TIGTA exhausts two-year funds before Congress enacts regular appropriations, a continuing resolution, or supplemental appropriations</b>   |  |
| 15   | Notify employees that appropriations have lapsed, all operations will cease, and non-excepted employees are furloughed. Ensure update of TIGTA intranet/internet of shutdown status.  | Deputy IG for Mission Support                      |
| 16   | Notify employees on leave of shutdown procedures and that all prior approved leave requests for the shutdown period are cancelled.  | TIGTA Managers                                     |
| 17   | Notify employees in travel status or at temporary duty stations, whether they should continue with their off-site business or to return home due to the lapse in appropriations.  | TIGTA Managers                                     |
| 18   | Notify employees that will be in training status to return to duty station.   | TIGTA Managers                                     |
| 19   | Notify all contract personnel of expected actions ( <i>i.e.</i> , stop work or continue).   | Contracting Officer                                |
| 20   | Complete payroll actions for the prior pay period.  | BFS/ARC  |
| 21   | Close-out critical budget and acquisition issues.   | Director Finance & Procurement/Contracting Officer |
|      | <b>REACTIVATION</b>   |  |
| 22   | Monitor news and other communications channels for resumption in appropriations and return to duty.   | TIGTA Function Heads                               |
| 23   | Declare reactivation and return to duty.  | IG   |

|    |  |  |
|----|--|--|
| 24 | Provide official notice of resumption of functions.  | Treasury Budget Office                                 |
| 25 | Notify employees and contractors that the lapse in appropriation has ended and work should resume; or recall employees on limited or extended basis. | Deputy IG for Mission Support                          |
| 26 | Notify employees and contractors that work should resume.  | TIGTA Managers   |
| 27 | Notify NFC of Mass Action Process to Return to Work.   | Director Human Capital and Personnel Security, BFS/ARC |

## Listing of Functions by Shutdown Category

| Function/Office  | Category        | Non-<br><u>Excepted</u> |
|--|-----------------|-------------------------|
|  | <u>Excepted</u> |                         |
| <u>Immediate Office of the IG</u>                                  |                 |                         |
| Inspector General <sup>1</sup>                                     | X               |                         |
| <u>Office of Chief Counsel</u>                                     |                 |                         |
| Chief Counsel <sup>2</sup>   | X               |                         |
| Deputy Chief Counsel <sup>2</sup>                                  | X               |                         |
| Supervisory Attorneys (2)  |                 | X                       |
| Supervisory Government Information Specialist (Disclosure Officer) |                 | X                       |
| <u>Office of Audit</u>   |                 |                         |
| Deputy IG for Audit <sup>2</sup>                                   | X               |                         |
| Assistant IG Security and Info Tech Svcs                           |                 | X                       |
| Assistant IG Mgmt. Services & Exempt Orgs                          |                 | X                       |
| Assistant IG Compliance & Enforcement Ops                          |                 | X                       |
| Assistant IG Returns Processing & Acct Svcs                        |                 | X                       |
| Assistant IG Mgmt. Planning and Workforce Dev                      |                 | X                       |
| <u>Office of Investigations</u>                                    |                 |                         |
| Deputy IG for Investigations <sup>2,3</sup>                        | X               |                         |
| Assistant IG for Investigations (2) <sup>3</sup>                   | X               |                         |
| Deputy Assistant IG for Investigations (2) <sup>3</sup>            | X               |                         |
| Special Agent in Charge (13) <sup>3</sup>                          | X               |                         |
| Director Laboratory (1) <sup>2</sup>                               | X               |                         |
| Assistant Special Agent/Director in Charge (29) <sup>3</sup>       | X               |                         |
| Special Agent (67) <sup>3</sup>                                    | X               |                         |
| Criminal Operational Support (5) <sup>3</sup>                      | X               |                         |
| QA Program Manager   |                 | X                       |
| <u>Office of Inspections and Evaluations</u>                       |                 |                         |
| Deputy IG for Inspections & Evaluations <sup>2</sup>               | X               |                         |
| Director Inspections & Evaluations                                 |                 | X                       |
| Director Special Tax Matters                                       |                 | X                       |

<sup>1</sup> Discharge of President's Constitutional Duties

<sup>2</sup> Authorized by Necessary Implication

<sup>3</sup> Necessary for Safety and Protection of Property

Office of Information Technology

|  |   |
|--|---|
| Chief Information Officer <sup>2,4</sup>             | X |
| Information Technology Specialist (8) <sup>2,4</sup> | X |
| Chief Information Security Officer <sup>2,4</sup>    | X |

Office of Mission Support

|   |   |   |
|---|---|---|
| Deputy IG for Mission Support/CFO <sup>2,4</sup>              | X |   |
| Director of Finance & Procurement <sup>2,4</sup>              | X |   |
| Director of Human Capital & Personnel Security <sup>2,4</sup> | X |   |
| Contracting Officer <sup>2,4</sup>                            | X |   |
| Personnel Security Officer <sup>2,4</sup>                     | X |   |
| Director of Facilities Mgmt. & Support Services               |   | X |
| Director Communications                                       |   | X |

**Description of ‘excepted’ activities:**

- Discharge of President’s Constitutional Duties – agency head
- Activities necessarily implied by law – employees in this category are agency senior executives and senior management/support staff required to manage excepted activities during a lapse in appropriations. These activities include communicating critical information to employees, assist in the execution of the shutdown plan and reactivation efforts, interrupting audit, inspections and evaluation activities in a safe manner, etc.
- Necessary to protect life and property – employees in this category are law enforcement/criminal operational support staff engaged in the protection of IRS employees and property, open/active threat cases, sensitive investigations, etc.
- Necessary for shutdown procedures – employees in this category are required to perform activities necessary to execute the shutdown plan and reactivation efforts (e.g., notifying employees of status, close-out critical budget and acquisition issues, contract personnel notification, secure IT infrastructure, etc.) not in excess of half a day.

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<sup>4</sup>Necessary for the Conduct of Shutdown Procedures