

Office of Management and Budget Issuance

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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 reallocated/ 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).

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