



NUMBER: Directive 0921.1

SUBJECT: Orderly Shutdown in the Event of a Lapse in Appropriations

DIRECTIVE OWNER: Office of Financial Management, Planning and Evaluation

EFFECTIVE DATE: December 9, 2022

1. **PURPOSE.** This directive establishes responsibilities and guidance to perform an orderly shutdown of the CPSC in the event of a lapse in appropriations, the continuation of excepted activities, and the orderly re-opening of the CPSC when the lapse in appropriations ends.
2. **AUTHORITIES.**
 - a) U.S. Const., art. I, § 9, cl. 7.
 - b) Antideficiency Act (31 U.S.C. §§ 1341 and 1342).
 - c) OMB Circular A-11, Section 124 (as updated).
 - d) Memorandum Opinion for the Director of the Office of Management and Budget, *Government Operations in the Event of a Lapse in Appropriations* (August 16, 1995).
 - e) Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations, 5. Op. O.L.C. 1 (1981), 43 Op. Atty. Gen. 293.
 - f) Memorandum Opinion for the Counsel to the President, *Authority to Employ White House Office Personnel Exempt from the Annual and Sick Leave Act Under 5 U.S.C. §6301(2)(X) and (XI) During an Appropriations Lapse* (April 8, 2011).
 - g) *Copyright Royalty Tribunal—Commissioners’ Pay During Funding Gap*, 61 Comp. Gen. 586 (1982), B-208333 (1982).



3. **SCOPE.** The provisions of this directive apply to all employees of the agency, including the Chairman, Commissioners, and their staff.
4. **DEFINITIONS.**
 - a) **Lapse in Appropriations:** A lapse in appropriations, also known as a funding gap or hiatus, refers to the period between the expiration of an appropriation and the enactment of a new one, during which time an agency or program experiences a lapse in funding. When there is a lapse in appropriations, the Antideficiency Act (31 U.S.C. § 1341) prohibits government officers and employees from obligating the government, unless specifically authorized by law.
 - b) **Lapse Plan:** OMB Circular A-11 Section 124 requires agencies to develop and maintain plans for an orderly shutdown in the event of a lapse in appropriations. Plans must be submitted to OMB. See Attachment for plan template.
 - c) **Voluntary Services:** The Antideficiency Act (31 U.S.C. § 1342) prohibits the government from accepting voluntary services. Generally, employment of government personnel during an absence of appropriations is considered to be an acceptance of voluntary services, and thus, is prohibited. Exempt employees and non-exempt employees engaged in excepted activities are not providing voluntary services.
 - d) **Activities:** In the event of a lapse in appropriations, three activities are authorized: (i) conducting orderly shutdown activities, (ii) performing exempted activities, and (iii) carrying out excepted activities.
 - i. **Orderly Shutdown Activities:** All non-exempt employees will engage in shutdown activities in the event of a lapse in appropriations. Activities should generally be completed within 4 hours, and may be done in the office and/or by telework, unless otherwise specified.
 - ii. **Exempt Activities:** Activities permitted during a lapse in general appropriations and include:
 - (1) Activities that are funded by appropriations that have not lapsed, *i.e.*, multi-year appropriations and indefinite appropriations.
 - (2) Activities performed by those who are otherwise authorized by law to continue to work as defined in Sec. 4(e)(1). Such employees may engage in the ongoing, regular functions of government, so long as their work does not create any new obligation from the lapsed appropriation on behalf of the government.



- iii. **Excepted Activities:** Activities are those non-exempt activities that are:
 - (1) Necessary to ensure an orderly shutdown of operations;
 - (2) Necessary to perform activities expressly authorized by law;
 - (3) Necessary to perform activities necessarily implied by law;
 - (4) Necessary to the discharge of the President’s constitutional duties and powers;
or
 - (5) Necessary to address imminent threats to the safety of human life and the protection of property.
- iv. **Non-excepted Activities:** All activities not defined as orderly shutdown, exempt, or excepted activities in this sub-section. Non-excepted activities may not be performed, nor may obligations be incurred, during any lapse in appropriations.
- e) **Employee Categories:** In the event of a lapse in appropriations, employees fall into one of two categories:
 - i. **Exempt Employees:** This category of employees is exempt from the requirement to cease incurring obligations during a lapse in appropriations. They are:
 - (1) Employees whose salaries are funded by appropriations that have neither lapsed, nor been exhausted, such as salaries funded by multiyear or indefinite appropriations.¹
 - (2) Employees who are otherwise authorized by law to continue to work, such as those who are exempt from provisions of the Annual and Sick Leave Act (5 U.S.C. § 6103). At CPSC, only the Chairman and Commissioners are covered by this exemption.
 - ii. **Non-Exempt Employees:** Employees who are not defined as exempt under the definition at Section 4(e)(i), are designated as non-exempt. However, non-exempt employees may be designated as “excepted” for a short time or for the duration of the funding lapse.
 - (1) **Excepted Employees:** Non-exempt employees may be designated as

¹ At the effective date of this Directive, employees on VGBA funding and ARPA funding are exempt employees.



“excepted” in order to perform activities in response to imminent threats to the safety of human life and the protection of property. See Section 4(d)(iii).

(2) **Non-excepted Employees:** Non-exempt employees who are not designated as excepted will be furloughed in the event of a lapse in appropriations. However, non-exempt employees may later be designated as excepted, should a need for their services arise to perform excepted activities.

f) **Orderly Re-Opening:** When the lapse in appropriations ends, the agency initiates an orderly re-opening. Staff are expected to return to duty and the agency will resume normal activities at the start of the next day following the end of the lapse in appropriations

5. **EXCEPTED RESPONSIBILITIES (non-exhaustive).**

a) **Chairman**

- i. Ensuring an orderly shutdown of agency operations.
- ii. Overseeing the orderly re-opening of the agency.

b) **Office of the Executive Director (OEX)**

- i. Implementing the provisions of the agency shutdown procedures when notified of a lapse in appropriations.
- ii. Making necessary adjustments to the lapse plan during a lapse in appropriations.
- iii. Overseeing exempted and excepted activities during the lapse.
- iv. Overseeing the orderly re-opening of the agency when the lapse in appropriations ends.

c) **Director, Office of Financial Management, Planning and Evaluation (EXFM)**

- i. Maintaining the agency’s policies and procedures for a lapse in appropriations.
- ii. Developing the agency lapse plan with assistance from Office of Human Resources (EXRM), in consultation with OEX and the Office of the General Counsel (OGC), and submitting the lapse plan summary (see Attachment) to OMB.
- iii. Monitoring the availability of appropriations and notifying the Executive Director of a lapse in appropriations necessitating an orderly shutdown.



iv. Ensuring that the agency stops incurring new obligations other than those supporting excepted or exempted activities and shutdown operations.

(1) Should any obligation of appropriated funds be necessary, other than excepted employee payroll, each such obligation must be approved in advance by the Executive Director and reported to the Director, EXFM before the obligation is incurred.

(2) Maintaining proper accounting of all obligations incurred during a lapse in appropriations.

v. Notifying the Executive Director when the lapse in appropriations ends.

vi. Ensuring an orderly reopening can be initiated.

d) Director, Office of Communications (OCM)

i. Notifying the public of closure and reopening of the agency through the CPSC public website.

ii. Ensuring the website remains operational during the lapse in appropriations for the purpose of providing such notifications.

iii. Ensuring that the CPSC Hotline is provided with the current status of agency operations and instructions for the public on how to contact the agency during the lapse in appropriations.

e) Director, Office of Human Resources Management (EXRM)

i. Assisting the Director of EXFM in developing the agency lapse plan in consultation with OEX and OGC.

ii. Notifying each employee of the implementation of shutdown procedures by memorandum, email, or other available telecommunications or media. Official notification should provide employees with any available information or explanations that may be helpful in clarifying the nature and expected duration of the shutdown action.

iii. Informing each employee whether they are exempt, or non-exempt, and whether they are required to perform excepted activities. Issuing furlough notices to each employee not designated as exempt.



f) Commission Secretary

- i. Canceling all Commission meetings, including briefings, hearings, and decisionals previously scheduled for the day the shutdown begins, and for the next seven (7) days.
- ii. Providing the Executive Director, through OGC, with a list of upcoming agency meetings and instructions on how to cancel them, if necessary.

g) General Counsel, OGC

- i. Taking such actions as are necessary to seek cancellation or postponement of federal court actions involving the agency for the duration of the shutdown.
- ii. Providing the Executive Director with a list of scheduled proceedings in litigation involving the agency.
- iii. Providing legal advice on excepted activities, the Antideficiency Act, and other legal matters pertaining to the lapse in appropriations, and filing, prosecuting, or defending legal actions with respect to products that create an imminent threat to the safety of human life.

h) Chief Information Officer, Office of Information and Technology Services (EXIT):

- i. Removing remote access to the agency's technology for all non-exempt employees. EXIT will post a banner to the remote access Web page for e-mail access, reiterating that employees are prohibited from performing non-excepted work during a lapse in appropriations.
- ii. Suspending all non-excepted development activities performed by CPSC employees, including deferring planned system updates or releases.
- iii. Ensuring continuity of agency security activities necessary for the protection of agency information systems and data, including monitoring of agency threat-detection solutions and messages from the U.S. Department of Homeland Security (DHS) that require agency action during a lapse in appropriations.

i) Director, Office of Facilities Services (EXFS)

- i. Maintaining minimum operations to support excepted and exempted functions in a safe, sanitary, and secure manner.
- ii. Maintaining physical security for facilities, including guard service, building access



controls, and monitoring of facilities, as necessary.

5. **Superseding Guidance:** Any element of this directive can be superseded or amended during a lapse in appropriations by new or clarifying guidance issued by OMB, OPM, or other relevant agencies that have government-wide responsibilities for providing guidance or direction during a lapse in appropriations (e.g., OPM's Frequently Asked Questions During a Lapse in Appropriations).
6. **Cancellation:** This directive cancels and supersedes Directive 601 and parts of IP601, dated August 6, 2019.

Alexander Hoehn-Saric
Chair

Date



Attachment: OMB Lapse Plan Template

| CPSC Lapse Plan Summary Overview | |
|--|---------------------|
| 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>X FTEs</i> |
| Total number of employees to be retained under the plan for each of the following categories: | |
| Compensation is financed by a resource other than annual appropriations (includes Exempt Employees): | <i>X FTEs</i> |
| Necessary to perform activities expressly authorized by law: | <i>X FTEs</i> |
| Necessary to perform activities necessarily implied by law: | <i>X FTEs</i> |
| Necessary to the discharge of the President's constitutional duties and powers: | <i>X FTEs</i> |
| Necessary to address imminent threats to the safety of human life and the protection of property | <i>X FTEs</i> |
| Total Retained Employees During the Lapse: | <i>X FTE</i> |
| Brief summary of significant agency activities that will continue during a lapse: | |
| | |
| Brief summary of significant agency activities that will cease during a lapse: | |
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