

**OFFICE OF INSPECTOR GENERAL**  
**EXPORT-IMPORT BANK OF THE UNITED STATES**  
**OPERATIONS PLAN IN THE ABSENCE OF CURRENT YEAR APPROPRIATIONS**

**1. PURPOSE**

This is general guidance in the event of a funding hiatus caused by the absence of current year appropriations, either through failure to pass a regular appropriations bill or a continuing resolution (CR). It will be supplemented by more specific guidance for any specific funding hiatus. For example, the designation of excepted, funded and other employees and use of available funding may vary depending on the circumstances of a specific funding hiatus.

**2. AUTHORITY**

Office of Management and Budget (OMB) Circular A-11, Section 124, Agency Operations in the Absence of Appropriations.

**3. REFERENCES**

Guidance and information regarding furloughs based on unforeseeable conditions can be found under “Guidance and Information on Furloughs” at <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/>.

**4. BACKGROUND**

OMB Circular A-11 requires agencies to develop and maintain “shutdown plans” for an orderly suspension of agency operations during a funding hiatus. Agency shutdown plans must designate “excepted” and “funded” employees who will be retained to perform “excepted” or “funded” activities and requires the agencies to furlough all other employees.

In its appropriations for FY 2018, the Office of Inspector General (OIG) of the Export-Import Bank of the United States (EXIM Bank) received \$5,700,000 for administrative expenses, of which \$855,000 (or 15%) remain available until September 30, 2019.<sup>1</sup> The carry over funds received in FY 2018 have already been appropriated and remain available for use in FY 2019, regardless of the status of new annual appropriations.

EXIM Bank OIG intends to use the unobligated amounts from the FY 2018 administrative expense appropriation for necessary expenses of the OIG in carrying out the provisions of the Inspector General Act of 1978, as amended, up to a maximum of \$855,000. EXIM Bank OIG

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<sup>1</sup> See Consolidated and Further Continuing Appropriations Act, 2018, Public Law 115-141, incorporating the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2018

anticipates that those funds will cover expenditures for at least six weeks during any lapse in current year appropriations and **therefore, the OIG does not expect to furlough any of its staff at this time.**

## **POLICY**

- A. Any lapse in funding is expected to be temporary and of short duration. If the EXIM Bank OIG was to suspend its operations during a funding hiatus, the Inspector General (IG) has determined that only law enforcement agents (also known as 1811s) with pending matters in front of the U.S. Department of Justice (or U.S. Court Systems) are reasonably necessary for the protection of human life and property and, in particular, are required to ensure that the continuity of the investigated cases and effective prosecutions of individuals who committed fraud against EXIM Bank's programs and operations.
- B. All activities not reasonably necessary for the safety of human life or the protection of property will be suspended. This includes audit work, inspection work and administrative support for general OIG operations, Congressional relations activities, and others.

## **5. DEFINITIONS**

- A. **Excepted activities** – Excepted activities are military activities, law enforcement activities, the direct provision of health care and other activities that are reasonably necessary for the safety of human life or the protection of property in general. There must be some reasonable and articulable connection between the activity to be performed and the safety of human life or protection of property and 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 activity in question. The threat to human life or property if the activity is not performed must reasonably be said to be near at hand and demanding of immediate response.
- B. **Excepted employees** - Excepted employees are employees who perform excepted activities. Excepted employees continue to report to work during a shutdown.
- C. **Funded activities** – Funded activities are activities that are not excepted activities and that, at the discretion of the IG, continue to fund with two-year appropriated funds. As stated before, the OIG has a two-year appropriation and, in the absence of current year appropriations, may use any funding remaining available from the immediately preceding fiscal year to continue operations in furtherance of the IG Act.
- D. **Funded employees** – Funded employees are OIG employees who are authorized to continue to report to work during a shutdown to perform funded activities.
- E. **Furlough** - A 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.

## 6. OMB CIRCULAR A-11 REPORTING REQUIREMENTS

In accordance with the reporting requirements in OMB Circular No. A-11, Section 124.2, the following information is provided:

### A. Estimate of the time (to the nearest half day) to complete the shutdown:

One half day for all non-excepted employees. This will enable an orderly shutdown of all non-excepted activities.

### B. Number of employees expected to be on-board before the implementation of the plan:

The OIG has 28 employees currently on rolls. All of the OIG employees are located at EXIM Bank headquarters in Washington, D.C.

### C. Total number of employees to be retained under the Plan because:

(1) They are engaged in military, law enforcement or direct provision of health care activities: 5 special agents engaged in law enforcement activities.

(2) The Acting Inspector General, who due to a vacancy in the Inspector General position, is currently performing the duties of the Presidentially-appointed Senate-confirmed position.

### D. Number of employees, not otherwise exempt, to be retained to protect life and property: None

### E. EXCEPTED AND FUNDED EMPLOYEEES

(1) The following are the categories of employees who will not be furloughed in the event of a lapse in funding:

(A) **Presidential appointed Senate-confirmed positions** – IG (Acting).

(B) **Employees engaged in law enforcement** – 5 special agents (series 1811)

(2) **Employees required during the shutdown process** - The “shutdown” process is not a permanent shutdown of the agency or its operations. It is a suspension of normal regular operations during a lapse in appropriations. The Office of Management and Budget has determined that the normal winding down of operations should take no more than four hours. During the winding down time, the activities of employees who are not excepted or funded employees must be wholly devoted to closing down their regular functions and, upon completion, these employees will be furloughed.

#### EXAMPLES:

- Performing payroll functions for the period just prior to the appropriation lapse.

- Completing inventories of property and records to assure protection of the Government's interests and claims of affected private entities and individuals.
- For "partially excepted" activities, the transferring of any ongoing work necessary to support an "excepted" activity.
- Personnel functions to process furlough/reduction-in-force notices.
- Finalize audit and inspection activities.

## **7. ORDERLY SHUTDOWN OF NON-EXCEPTED AND NON-FUNDED ACTIVITIES**

- A. The IG will advise employees of a funding hiatus as soon as possible after FY 2019 appropriations lapse. The OIG will communicate with employees regarding its plans if it becomes necessary to effect an orderly suspension of agency operations.
- B. The IG will designate which positions are "excepted," "funded" or "non-excepted" and notify employees of their individual designation. See section E.
- C. The IG will prepare draft "emergency" furlough decision notices for distribution to employees to the extent possible within the limited time available.
- D. An immediate hiring freeze begins on the first workday of the hiatus. No new job offers will be made, and any firm or tentative job offers are suspended until the funding hiatus is over.
- E. On the first workday of the hiatus, all employees should report to work as scheduled and the agency will proceed with the orderly shutdown of operations. Supervisors will inform non-excepted, non-funded employees of the status of funding and instruct them to limit their work activities to those functions necessary for the orderly cessation of operations.
- F. Non-excepted, non-funded employees should perform only those tasks necessary to safeguard property, records and information and to complete administrative functions such as processing payroll up to the beginning of the funding hiatus. In addition, non-excepted and non-funded personnel should (1) take measures to secure files, (2) make external contacts necessary to communicate the office's status, such as notifying parties of the cessation of normal business and canceling non-essential meetings, conferences and other previously arranged business, (3) document the status of cases and projects so that they can be resumed, transferred or otherwise appropriately handled when the Ex-Im Bank OIG operational status is resumed, (4) perform those tasks necessary to protect confidential information, and (5) perform necessary functions to process all unpaid bills in hand for obligations incurred prior to the first day of the funding hiatus. It is anticipated that these activities will take approximately four hours for most employees. Since it is assumed that such a hiatus will be temporary and of short duration, no action will be taken that will impede the orderly resumption of operations once funds are available.

- G. Personnel and payroll records and processing – The OIG will take necessary personnel actions to release employees in accordance with applicable law and regulations of the Office of Personnel Management with support of EXIM Bank personnel office (due to small size of the OIG). The OIG, with support of EXIM Bank personnel office, must prepare employee notices of furlough and process personnel and pay records in connection with shutdown furlough actions. These functions are to be performed by employees who are retained for orderly termination of agency activities as long as those employees are available.
- H. After performing the functions necessary for an orderly suspension of non-excepted operations, non-excepted and non-funded employees will be furloughed.
- I. All staff training will be suspended.
- J. General services, transportation, supplies and acquisition staffs will be curtailed and will be available only to support excepted activities.
- K. Unless otherwise authorized by the IG on the basis of legal advice provided by the Legal Counsel, furloughed employees may not perform voluntary services for the agency, come to the office, perform work-related activities from their home or use cell phones or VPN services to access IT systems.
- L. Supervisors will be responsible for notifying absent employees of the furlough as soon as possible after a lapse in current year appropriations occurs. All pre-approved paid leave (annual, sick, court or military) is canceled for the duration of the shutdown. No requests for paid leave will be granted during the shutdown. Those on pre-approved leave without pay (LWOP) may remain on LWOP for the duration of the shutdown.
- M. Employees should listen to public broadcasts and view the OPM website to stay informed on the status of agency funding during the hiatus. Furloughed employees are expected to report to work as scheduled on the first workday after the enactment of an appropriation or continuing resolution that makes funds available to the agency.
- N. The status of Bank assets and obligations will be reviewed on a regular basis and any other adjustments in personnel status will be made as needed.

## **8. EMPLOYEE BENEFITS**

- A. Employee benefits – See link <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/> for detailed benefits information regarding retirement, health benefits, life insurance, unemployment compensation, holiday and other leave entitlements, continuation of pay, performance awards and within-grade increases, etc.
- B. Unemployment benefits - It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. Each state's unemployment compensation requirements differ. Employees should submit their questions to the appropriate state office.

- C. Health and life insurance coverage and premiums - Federal Employee Health Benefit (FEHB) premiums are deducted from the employee's pay. If the employee's pay is insufficient to cover the FEHB premium, the agency must forward the full premium to the Employee Health Benefits Fund. The employee can pay the premium directly to the agency or have it withheld from pay when he or she returns to regular duty. The enrollment continues for up to 365 days of non-pay status.
- D. Federal Employee Group Life Insurance (FEGLI) coverage continues, and contributions made by the employee and the employee's agency continue if the employee's salary in each pay period is sufficient to cover deductions. If the employee's salary is insufficient to cover his or her withholding, the employee's coverage will continue for up to 12 months without cost to the employee or the employee's agency.
- E. Leave accrual - For each full pay period of non-pay status (80 hours), employees will not accrue annual or sick leave. Employees will accrue leave during the first and last pay periods as long as there is a period of time in a pay status.
- F. Service credit - Periods of non-pay status of less than 6 months will have no impact on most benefits. Only leave accrual, length of trial period, waiting periods for within-grade increases and TSP agency matching contributions may be impacted under a short term furlough.

## **9. TRAVEL**

- A. Only essential travel in the U.S. and overseas may be approved and it must be limited to the lowest level consistent with carrying on excepted activities. Essential travel will be judged by standards such as protecting life and property, maintaining excepted post operations, directly supporting major activities constituting excepted activities, emergency visitations and medical or other ordered evacuations.
- B. Other personnel in TDY status not performing "excepted" activities must stop work and await further instructions. Because any hiatus is expected to be temporary, personnel in non-essential travel status should not initially be instructed to return to their home duty stations.

## **10. CONTRACTS**

- A. Funding gaps due to lapses in appropriations raise particularly difficult issues in the area of contractual commitments, where generally applicable Anti-Deficiency Act requirements may be in apparent conflict with orderly shutdown activities and with continuation of excepted functions. The following guidance is directed toward providing a framework for consistent treatment of contractual commitments that is consistent with the overall shutdown plan and that will minimize ultimate costs and disruptions.
- B. Excepted activities - Contracts that are required to carry out excepted activities may, to the extent that the contract has been funded, continue to be performed during a funding hiatus

and should not be suspended. If the funding for such a contract is exhausted, additional funding may be obligated in accordance with paragraph 12.E. below.

- C. Non-excepted activities - Contracts that are not required for excepted activities may continue to be performed during a funding hiatus and should not be suspended if they are fully funded prior to the beginning of the funding hiatus and either:
  - (1) they require no oversight or input from OIG employees; or
  - (2) they require oversight or input by OIG employees, but suspending the contract would cause the agency to lose permanently a significant portion of the benefits under the contract.
- D. Previously awarded contracts and leases that would, in the absence of funding, require renewal or modification during a lapse in appropriations to obligate additional funds for continued performance may be authorized to continue only for excepted or funded activities.
- E. Personnel may continue to work or be brought in under the necessary implications exception to the extent that they are needed to oversee or provide input on contracts that have not been suspended.
- F. New contractual commitments may be made during the funding hiatus only if required to carry out excepted activities or if they are for funded activities approved by the IG.

## **11. OBLIGATIONS AND PAYMENTS**

- A. Obligations - During any lapse in current year appropriations, obligations against lapsed appropriations may continue to be incurred for excepted and funded activities. Financial management and certifying officers have the responsibility to ensure that only authorized obligations are recorded.
- B. Payments - During any lapse in current year appropriations, the OIG generally may not make payments even for valid obligations established against prior year annual appropriations or for current fiscal year obligations established prior to the beginning of the funding hiatus. Financial management and certifying officers have the responsibility to ensure that only payments that are permitted to be made against authorized obligations are certified and forwarded for payment. Specific guidance is as follows:
  - (1) Payments against obligations established prior to the beginning of the funding hiatus may be made only if the payment is reasonably necessary to protect life or property or Congress intends the activity to continue and not making payments would harm or impair the activity. In all other cases, payment must be deferred.
  - (2) The OIG may not certify or authorize payments for obligations established after the beginning of the funding hiatus for excepted activities. Obligations can be incurred

for excepted activities but cannot be posted (formally recorded) in the Agency's financial systems until funding becomes available.

- (3) U.S. direct hire salaries, benefits and allowances - While obligations can continue to be established for payrolls for persons performing excepted activities, payments for salaries and allowances may only be made for services rendered through the beginning of the funding hiatus.
- (4) Travel - Only travel in fulfillment of excepted activities can be initiated after a lapse of appropriations. Per guidance above, even in cases of travel in this category, obligations made after any lapse of appropriations should not be recorded on official bureau or post accounts even though obligations have been incurred. Blanket travel orders issued prior to the beginning of the funding hiatus are not valid during the lapse period, unless in the case of overseas travel, travel commenced or any cost was incurred for that travel prior to the shutdown. No travel advances can be issued unless the obligation for overseas travel was incurred prior to the beginning of the funding hiatus. Travel voucher reimbursements can be processed only if against obligations incurred and recorded for prior years (including obligations incurred after the beginning of the funding hiatus from multi-year or no-year appropriations that remain available) or for the current year if obligated prior to the beginning of the funding hiatus. Travelers who hold Citibank Travel Cards may charge advances against these cards for any approved trips as travel card advance charges do not create advances to official accounts. As part of GSA Smart Pay cards, Citibank Travel Cards will continue to function normally and banks will continue to provide service. Cardholders, as usual, should contact the bank customer service organization should they experience problems with their cards.
- (5) Purchase order payments - Generally, purchase order obligations and payments are to be governed by the above guidance. Obligations for purchase orders prior to the beginning of the funding hiatus should have been recorded. Payments against these obligations can be processed following the "Disbursements" guidance above. Obligations incurred for purchase orders after the beginning of the funding hiatus for excepted activities other than out of prior year appropriations cannot be recorded and payments against these obligations cannot be made.
- (6) Absolutely necessary payments - If it is necessary to make payments in emergency situations (e.g., to protect life or property) against obligations incurred after the beginning of the funding hiatus, the OIG should send a memo or email, on a case-specific basis, to request use of carryover funds that the IG in collaboration with EXIM Bank Chief Financial Officer determines may be available for such purpose. Each request should provide details of the date the funds are needed, the amount, the justification and any other relevant information. Requests of this type should be limited to extreme cases and must be approved by the IG.