

# **Treasury Inspector General for Tax Administration (TIGTA)**



## **Bureau Shutdown Plans During Periods of Lapsed Appropriations November 2011**

Dated: November 29, 2011 (Version 21)

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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's (TIGTA) when the 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**

1. An estimated time (to the nearest half-day) to complete shutdown activities	Not in excess of half a day
2. Total number of agency employees expected to be on-board before implementation of the plan	825
3. Total number of employees to be retained under the plan for each of the following categories: <ul style="list-style-type: none"><li>a. Their compensation is financed by a resource other than annual appropriations;</li><li>b. They are necessary to perform activities expressly authorized by law;</li><li>c. They are necessary to perform activities necessarily implied by law;</li></ul>	<ul style="list-style-type: none"><li>a. 3*</li><li>b. 0</li><li>c. 19</li></ul>

d. They are necessary to the discharge of the President's constitutional duties and powers; or e. They are necessary to protect life and property.	d. 1  e. 275**
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\* This number represents employees hired under American Recovery and Reinvestment Act of 2009.

\*\* This number may fluctuate slightly depending on the actual threat environment at the time of shutdown and IRS operational requirements.

## SHUTDOWN PLAN REQUIREMENTS

### **Shutdown Preparation**

Bureau Contact: Name, phone number and fax number for TIGTA for shutdown planning and coordination is: Larry A. Koskinen, Associate Inspector General for Mission Support (AIGMS)/Chief Financial Officer (CFO), 202-622-8482, 202-622-5624 (fax), in consultation with the Inspector General (IG) and Principal Deputy Inspector General.

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 will probably vary. We anticipate full cessation of audits, inspections and evaluations during a shutdown period of 1 – 5 days, or longer than 5 days. Statutorily excepted activities, as described below, will continue during the shutdown period.

### **Current List of Functions**

A list of “excepted” and “non-excepted” organizational functions are included at the ATTACHMENT. 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 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 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. See detailed information below on shutdown notification.

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 on-going basis or upon their return to duty.

### **Shutdown Implementation**

#### Shutdown Procedures

- When a lapse occurs, all normal operations will cease and all further efforts will be devoted solely to closing down operations, protection of 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 nondisciplinary reasons.”

- All functions will shutdown 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 Agent will stay on duty and provide for the needed coverage.
- If a lapse in appropriations is likely to occur, the following actions will be taken within four hours:

1. Upon receiving official notice of a lapse in appropriations, the Associate Inspector General for Mission Support will take the following actions:

- a. Immediately notify the Inspector General and the Principal Deputy Inspector General;
- b. Give the Office of Human Capital the go ahead to validate TIGTA's lists of excepted and non-excepted positions;
- c. The Office of Human Capital will validate this list with the responsible function head;
- d. Initiate the TIGTA phone tree to ensure all function heads and employees are notified that the shutdown will occur;
- e. Initiate the generation and mailing of official written notifications for all affected employees; and
- f. Provide list of employees not affected by furlough to the Bureau of Public Debt (BPD) Administrative Resources Center (ARC).

2. Other actions that will be taken include the following:

- a. The Deputy Inspector General for Investigations will activate the TIGTA Emergency Information Line, **(202) 927-7186**. The information line will include a scripted message that provides instructions to all employees;
- b. This scripted message will be periodically updated as appropriate; and
- c. The Chief Information Officer (CIO) will initiate the shutdown of access to all systems for furloughed employees.

3. See Attachment A, 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 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 Principal Deputy Inspector General, contact of recalled employees will be made by the appropriate function head via phone call.

### **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. Other sources of communications will be made available such as:

1. TIGTA Hotline;
2. TIGTA phone tree; and
3. TIGTA Emergency Information line.



**Attachments:**

Attachment A – Actions Required to Plan for Lapse in Appropriation of Funds

Attachment B – Listing of Functions by Shutdown Category

Attachment C – List of All Employees and Positions to be Furloughed and Positions not to be Furloughed (*to be retained by the Office of Human Capital*)

Attachment D – List of all Employees with Personal Contact Information (*to be retained by the Office of Human Capital*)

Attachment E – Notice of Furlough Letter to Senior Executive Service Employees

Attachment F – Notice of Furlough Letter to General Schedule Employees

Attachment G – Notice to Report to Duty to Excepted Employees

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

Task	Activity	Responsible Official/Office
1	Provide official notice of lapse in appropriations.	Treasury Budget Office
2	Identify a bureau contact for shutdown planning and coordination.	Associate IG for Mission Support
3	Determine which positions and activities are excepted and non-excepted.	IG, Principal Deputy IG and Function Heads
4	Determine which contracts will continue work under the shutdown.	Associate 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 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 prior approved leave requests for the shutdown period are cancelled and will include other benefit information.	Human Capital
10	<b>OMB through Treasury Directs Lapse in Appropriation</b>	<b>Within 4 hours of notification</b>
11	Human Capital will validate list of excepted and non-excepted employees with TIGTA Function Heads.	Human Capital
12	Memorandum to all Function Heads with necessary instructions.	Human Capital
13	Notify individual employees of their excepted status for lapse in appropriations.	Function Heads using TIGTA phone tree
14	Send the furlough memorandum to the appropriate employees notifying them that all operations will cease.	Associate IG for Mission Support
15	Notify employees on leave of shutdown procedures and that all prior approved leave requests for the shutdown period are cancelled.	TIGTA Managers
16	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
17	Notify employees that will be in training status to return to duty station.	TIGTA Managers
18	Notify all contract personnel of expected actions ( <i>i.e.</i> , stop work or continue).	Contracting Officer
19	Complete payroll actions for the prior pay period.	BPD/ARC
20	Close-out critical budget and acquisition issues.	Director Finance & Accountability/Contracting Officer
<b>REACTIVATION</b>		
21	Monitor news and other communications channels for resumption in appropriations and return to duty	TIGTA Function Heads
22	Declare reactivation and return to duty	IG, Principal Deputy IG
23	Provide official notice of resumption of functions	Treasury Budget Office
24	Notify employees and contractors that the lapse in appropriation has ended and work should resume; or recall employees on limited or extended basis	Associate IG for Mission Support
25	Notify employees and contractors that work should resume.	TIGTA Managers
26	Notify NFC of Mass Action Process to Return to Work.	Human Capital, BPD/ARC

## ATTACHMENT B

### Listing of Functions by Shutdown Category Headquarters

Function/Office	Category	
	<u>Excepted</u>	<u>Non-Excepted</u>
<u>Immediate Office of the IG</u>		
Inspector General <sup>1</sup>	X	
Principal Deputy <sup>2</sup>	X	
Senior Advisor to the IG <sup>2</sup>	X	
<u>Office of Chief Counsel</u>		
Chief Counsel <sup>2</sup>	X	
<u>Office of Audit</u>		
Deputy IG for Audit <sup>2</sup>	X	
Assistant IG Security and Info Tech Serv		X
Assistant IG Mgt Service & Exempt Ops		X
Assistant IG Compliance & Enforcement Ops		X
Assistant IG Returns Processing & Acc Serv		X
Assistant IG Management Planning and Workforce Development		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 (1) <sup>3</sup>	X	
Special Agent in Charge (12) <sup>3</sup>	X	
Assistant Special Agent in Charge (38) <sup>3</sup>	X	
Special Agent (212) <sup>3</sup>	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



FOR TAX  
ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20005

Criminal Operational Support (9)<sup>3</sup> X

Office of Inspections and Evaluations

Deputy IG for Inspections & Evaluations<sup>2</sup> X

Office of Mission Support

Associate IG for Mission Support/CFO<sup>2</sup> X

Deputy AIGMS/ChOps<sup>2</sup> X

Chief Information Officer<sup>2</sup> X

Director of Finance & Accountability<sup>2</sup> X

Director of Human Capital<sup>2</sup> X

Director Program Management X

Director Acquisitions

& Support Services<sup>2</sup> X

Contracting Officer<sup>2</sup> X

Information Technology Specialist (7)<sup>2</sup> 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 executing the shutdown plan and reactivation efforts, safely interrupting audit, inspections and evaluation activities, 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.



FOR TAX  
ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20005

[signatory office to enter date]

MEMORANDUM FOR ALL EMPLOYEES IN THE CAREER  
SENIOR EXECUTIVE SERVICE

FROM: [enter from text]

SUBJECT: Notice of Furlough

In the absence of either an appropriation or a continuing resolution for the Department of the Treasury and the Treasury Inspector General for Tax Administration (TIGTA), no further financial obligations may be incurred by TIGTA, except for those related to the orderly suspension of TIGTA's operations or performance of excepted activities as defined in guidance issued by the Office of Management and Budget and the Department of Justice Office of Legal Counsel. 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 \_\_\_\_\_. You should listen to public broadcasts and when you hear that a continuing resolution or an annual appropriation for the Department of the Treasury has been approved, you will be expected to return to work on your next regular duty day.

Congress' failure to fund the Agency's work in a timely manner and the resulting curtailment of the Agency's activities qualifies as an emergency. Thus, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR § 359.806(a).

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer at the Agency, but must remain away from your workplace unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

Senior Executive Service career appointees adversely affected may appeal this action to the Merit Systems Protection Board (MSPB). Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.



DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20005

FOR TAX  
ADMINISTRATION

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. If you wish to file an appeal, you may obtain information from the MSPB at <http://www.mspb.gov/appeals/appeals.htm>. If you do not have internet access, please contact Catherine Hickson at 202-927-7036, for a copy of the MSPB regulations and appeal form.

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date



FOR TAX  
ADMINISTRATION

DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20005

[signatory office to enter date]

MEMORANDUM FOR ALL EMPLOYEES IN THE GENERAL SCHEDULE

FROM: [enter from text]

SUBJECT: Notice of Furlough

In the absence of either an annual appropriation or a continuing resolution for the Department of the Treasury and the Treasury Inspector General for Tax Administration (TIGTA), no further financial obligations may be incurred by TIGTA, except for those related to the orderly suspension of TIGTA's operations or performance of excepted activities as defined in legal guidance issued by the Office of Management and Budget and the Department of Justice Office of Legal Counsel. 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 \_\_\_\_\_. You should listen to public broadcasts and when you hear that a continuing resolution or an annual appropriation for the Department of the Treasury has been approved, you will be expected to return to work on your next regular duty day.

Congress' failure to fund the Agency's work in a timely manner and the resulting curtailment of the Agency's activities qualifies as an emergency. Thus, 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).

If employees are being retained in your competitive level, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer at the Agency, but must remain away from your workplace unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.



FOR TAX  
ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20005

Employees who have completed a probationary or trial period or one 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 have a right to representation in this matter and may be represented by an attorney or other person of their choosing. Employees in the excepted service who have veteran's preference may appeal to the MSPB if they have completed one 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 veteran's preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less.

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. If you wish to file an appeal, you may obtain information from the MSPB at <http://www.mspb.gov/appeals/appeals.htm>. If you do not have internet access, please contact Catherine Hickson at 202-927-7036, for a copy of the MSPB regulations and appeal form.

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date





DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20005

[signatory office to enter date]

MEMORANDUM FOR ALL EXCEPTED EMPLOYEES

FROM: [enter from text]

SUBJECT: Notice to Report to Duty

In the absence of either an annual appropriation or a continuing resolution for the Department of the Treasury and the Treasury Inspector General for Tax Administration (TIGTA), you have been identified as “excepted” and are expected to report to duty effective \_\_\_\_\_.

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

- Your compensation is financed by a resource other than annual appropriations;
- 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.

Pursuant to guidance from the Department of Justice, Office of Legal Counsel, as an “excepted” employee, you may not perform any services other than those involved in the orderly suspension of non-excepted activities and excepted activities authorized by law or that protect life and property. Further, during a lapse in appropriations, you are prohibited from using annual leave or otherwise taking time off. You may also incur a disruption in your normal work schedule (e.g., modified, alternate, compressed, Maxiflex). Once the annual appropriation or continuing resolution is approved, you are expected to return to your regular duty status. You may direct any questions to Catherine Hickson, Director Human Capital at 202-927-7036.

\_\_\_\_\_  
Deciding Official

\_\_\_\_\_  
Date

I acknowledge receipt of this decision.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date