December 9, 2016

MEMORANDUM FROM THE ASSISTANT INSPECTOR GENERAL FOR MANAGEMENT

TO: All Assistant Inspectors General, Regional Inspectors General, and OIG Country Office Directors

SUBJECT: Guidance on USAID/OIG Operations during a Lapse in Appropriations

The purpose of this memorandum is to provide updated and integrated reference guidance concerning the U.S. Agency for International Development's Office of Inspector (OIG) operations before and during a lapse in appropriations. (This supersedes all the previous guidance.)

For ease of use, this guidance is provided in the following sections:

I. Determination of Expected Functions and Positions
II. Orderly Shutdown of Non-Excepted Functions
III. Personnel
IV. Travel
V. Training
VI. Allowances
VII. Contracts
VIII. Obligations and Disbursements
IX. Time and Attendance Reporting
X. Outside Activities

If you have any questions, please send an email to anunezmattocks@usaid.gov.

I. Determination of Excepted Functions and Positions

Definition of Excepted Functions: "Excepted" functions that may be continued in an absence of appropriations include those necessary to protect life and safeguard government property and records, to conduct foreign relations essential to national security, to carry out the orderly shutdown of operations, and to provide essential administrative support to excepted employees.

Employees performing "excepted" functions will continue to report to work and perform their duties, as will employees performing activities for which funds are still available. For example, functions that USAID/OIG chooses to fund with multi or no-year appropriations or through adequately funded mechanisms. Under a lapse in funding, it is possible that personnel funded through these funding sources may continue to work as long as adequate funding is available and there is adequate oversight/supervision. Similarly, Operating Expense (OE) funded administrative services contracts, which are fully funded through any potential shutdown period, may also continue.

USAID/OIG's Regional Inspector Generals (RIG) and OIG Country Office Directors at post are responsible for providing all due assistance to the Chiefs of Mission and USAID Mission Directors in developing plans for the conduct of business and the attendance of employees in the absence of an appropriation or continuing resolution. In order to facilitate this process, as well as to ensure that USAID/OIG's requirements are fully considered and incorporated, USAID/OIG RIGs and OIG Country Office Directors are expected to participate fully with the Chiefs of Mission, USAID Mission Directors, and representatives of other agencies in this country team task. Only those operations determined to be excepted pursuant to the above, criteria would be excluded from the shutdown and permitted to operate with only the minimum staff necessary during the funding hiatus.

In case of Foreign Service National (FSN) personal service contractors, if host country labor laws provide that FNs must be paid regardless of attendance (i.e., local labor law explicitly or in effect prohibits furloughing FSNs); these employees may be authorized to report to work and treated as excepted employees or they may be placed on administrative leave if OIG is unable to provide adequate supervision with other excepted staff. U.S. direct hire personnel who supervise FSNs may not be automatically excepted on the basis of their supervisory role. Their excepted status must be independently justified based on the above mentioned criteria.

The following chart depicts USAID/OIG’s Washington-based U.S. Direct Hires (USDHs) in support of excepted staff. It is expected that USAID/OIG Washington will operate at minimum levels necessary to maintain, support, and provide guidance for ongoing overseas operations. Individual(s) listed in item #2 of Chart #1, have been identified as excepted because of the direct support they provide to the OIG excepted staff. These employees will also have overlapping responsibilities to execute orderly shutdown of all OIG operations and activities. It is estimated that shutdown of all OIG operations will take a maximum of 4 hours.

USAID/OIG
A-11 List of Excepted Employees
FY 2017 Potential Funding Hiatus
Washington-Based Employees Only

The total number of USAID/OIG direct hire personnel expected to be on board on/about December 8, 2016, is 156 and the excepted staff expected to be on board after December 9, 2016 is 14. The following information is based only on Washington- based U.S. direct hire personnel. The overseas calculations will be included in the Chief of Mission's plan.

Chart #1:

#1	#2	#3
156	14	0

#1. Number of employees expected to be on board before implementation of the plan.

#2. Total number of employees to be retained under the plan because:

- They are responsible for orderly shutdown and provide support to excepted employees.

Chart #2:

# of Excepted Employees by Justification Type	
J-1 Presidential Appointees =	1
J-2 Protect life and property =	0
J-3 Support Excepted Employee =	4
J-4 Orderly Shutdown	6
J-5 National Security =	3
Total J-1 thru J-5 =	14

#3. Number of Employees, <u>not otherwise excepted</u>, to be retained to protect life and property.

From excepted spreadsheet – J-2 retained to protect life and property

****** **Estimated time to complete shutdown = 4 hours**

II. Orderly Shutdown of Non-Excepted Employees

All employees scheduled to work on the first workday following a lapse in appropriations should report to work. Non-excepted employees should perform only those tasks necessary to safeguard property, records, and information and to complete administrative functions such as processing payroll for pay through the last workday before a lapse in appropriations. In addition, non-excepted personnel are expected to take measures to secure files; make external contacts necessary to communicate the office's status, such as notifying parties of the cessation of normal business; and cancelling non-essential meetings, conferences, and other previously arranged business; taking necessary action to protect confidential information; and processing unpaid bills for obligations incurred prior to the last workday before a lapse in appropriations. These activities should take approximately four hours for most employees.

After performing the functions necessary for an orderly suspension of non-excepted operations, employees performing non-excepted functions will be furloughed. Managers are reminded that the Government cannot accept voluntary services; therefore, no employee may work if he or she is in a non-excepted status. Employees are advised that "work" includes reporting to work as well as accessing the Agency's network using a remote access token or hand-held electronic device, or teleworking. These employees should be advised to monitor the news for information on an additional continuing resolution or appropriation and should report back to work on their next scheduled workday once a continuing resolution or appropriation bill is enacted (passed by the House and the Senate and signed by the President), unless told to do so earlier (i.e., for rotation or other purposes).

OIG Office of Management Human Capital Division (OIG/M/HC) staff will electronically send furlough notices and Form SF-8 - Unemployment Compensation for Federal Employees Program, to individual non-excepted employees as quickly as possible on the day of the furlough. OIG/M/HC will also direct employees to acknowledge receipt of the furlough notice on the last page, retain a copy of the acknowledgement of receipt for their records, and provide OIG/M/HC with a copy.

OIG/M/HC will be instructed to send a copy of the furlough notice and Form SF-8 to non-excepted employees who are not at work. The AIG/M will advise the Director of OIG/M/HC of the names of non-excepted employees on leave or travel in the United States who will not return to Washington within 2 weeks of the furlough. OIG/M/HC will also forward the furlough notice and Form SF-8 to these employees via mail and/or their personal email addresses. OIG/M/HC will confirm with each of these employees as they return to Washington, D.C., that they have received notification of the furlough and will obtain a signed acknowledgement of receipt. If any employees are on temporary duty at other overseas posts, the OIG/M/HC Director will contact that mission for assistance in delivering the furlough notice and getting an acknowledgement of receipt, citing this guidance in support of the request.

For other non-excepted employees who cannot be notified within 2 weeks due to lack of a contact or e-mail address, OIG/M/HC will advise AIG/M of their names and will continue to attempt to contact these employees in consultation with other excepted employees as needed.

III. Personnel

American Employees

An immediate hiring freeze will apply during a lapse in appropriations.

Entry-on-board dates for prospective employees with employment offers will be suspended until the funding lapse is over. No new job offers may be made.

A review of the text of any subsequent appropriation or continuing resolution will be required to determine if Congress has authorized retroactive pay and allowances. All non-excepted personnel support activities should be suspended including unfunded security investigations.

Foreign Nationals (FSNs)

Under local labor law, if FSN personal services contractors are required to be paid, whether or not they work, they may work if they can be properly supervised. Supervisory American staff may not be justified as excepted employees merely because of their supervisory role; their excepted status must be independently justified. If supervisors are determined to be non-excepted and FSN staff cannot operate without such supervision, FSNs must be placed on administrative leave. During any lapse of appropriations, missions should obligate benefits and allowances for those FSNs who are required to work. However, any such obligations will be liquidated only after USAID/OIG receives a new appropriation covering their activities.

Part-Time Employees

In defining the number of furlough days for part-time employees, the furlough days are computed in the same proportion to those days scheduled for fulltime employees, based on work schedules. (The hours might be computed as a percentage of the work schedule for full-time employees.)

Intermittent and When Actually Employed (WAE) Employees

Intermittent and WAE employees are non-fulltime employees without a regularly scheduled tour of duty and called to duty, as needed. Intermittent and WAE employees who are not non-excepted will also be furloughed. If an intermittent or WAE employee is called into work during a furlough, it must be to perform excepted functions.

Employees on Alternative Work Schedules (AWS)

Employees under AWS would be furloughed for the number of hours they were scheduled to work on the days for which there was a lapse in appropriations.

Rotation of Personnel

Managers may rotate personnel to perform excepted functions. However, the following factors should be considered when making a decision on staff rotations:

- Managers should take into account the impact the rotation schedule may have on unemployment compensation eligibility for the employee, based on local jurisdictions unemployment insurance policies.

- Decisions on rotations for specific positions should balance the Agency's need for continuity and equity to the employees.

- Managers should determine on what basis rotations will occur (i.e.,-daily or for longer periods), but due consideration should be given to continuity and fairness.

- Personnel rotated into and out of an excepted function must have the requisite qualifications to perform the function.

Management decisions to rotate personnel into and out of an excepted function must be documented in writing.

IV. Travel

Travel should be limited to that necessary for emergencies involving the safety of human life or the protection of property, or that necessary for the conduct of foreign affairs essential to national security. This may include, but is not limited to, attending significant bilateral or multilateral meetings; maintaining excepted post operations; disaster relief efforts, emergency visitation, medical, other ordered evacuation, or providing food, medicine, or other essential services to displaced persons. All travel authorizations must be approved by the RIGs or OIG Country Office Directors.

Reassignment of personnel already planned may be continued, such as changes in posts of assignments, only if funds have been previously obligated.

Personnel in domestic or overseas travel status who are performing excepted functions may continue to do so. If personnel are in travel status at the time of the lapse but are not performing excepted activities, they should stop work and await further instructions. Because funding for overseas travel is obligated when the travel commences or when any cost was incurred for the travel (i.e., prior to the lapse) and because it is expected that any hiatus in funding will be temporary, personnel in non-excepted travel status should be instructed not to return immediately to their home duty stations. If such persons are not performing an excepted activity, they should be furloughed. Per Diem will be payable on furlough days when in authorized travel status. However, salary will not be paid.

Employees in training and on authorized travel orders should make arrangements to return to their regular work site as soon as informed by the Foreign Service Institute or other training entity. On a limited basis, some training may continue if it otherwise pertains to the safety and security of personnel.

V. Training

In accordance with the Department of State's Guidance on Operations during a Lapse in Appropriations, the Foreign Service Institute (FSI), and other domestic facilities will be closed, except those portions of the Diplomatic Security Training Center and FSI's National Foreign Affairs Training Center campus housing employees performing excepted functions.

On a limited basis, training may continue if it otherwise pertains to the safety and security of personnel. The Department of State has indicated that the following training may remain open:

- Crisis Management Training and Antiterrorism Assistance Training that has already started at overseas posts may continue if posts are open, subject to the approval of the Chief of Mission since this pertains to the safety and security of personnel.

- Domestically, the following courses will continue as scheduled since they pertain to the safety and security of personnel going to Afghanistan, Iraq and other posts of heightened danger: the Afghanistan PRT Orientation (AR421); Afghanistan Familiarization (RS4IS); Iraq Familiarization (PT6IO); Iraq PRT Orientation (AR 420) and the Interagency Integrated Civilian-Military Training Exercise for Afghanistan (RSSI 0); the Diplomatic Security Training Security/Non-Traditional Operation Environments course (SNOE OT401) and for those deploying to posts where it is mandatory, the Foreign Affairs Counter Threat Course (OT610).

All other class attendance, domestically and overseas, will be suspended. Those employees in training who are otherwise designated as necessary to perform "excepted functions" should return to their positions and regular duty status. Those employees not so designated will be furloughed.

VI. Allowances and Differentials under the Standardized Regulations

USAID/OIG adheres to Department of State Standardized Regulations (DSSR) pertaining to allowances and differentials. Section 030 of the DSSR states that: "Any provision in these regulations that limits the payment of allowances to an employee because the employee is in a non-pay status shall not apply to any employee who is in a non-pay status solely due to a lapse of appropriations."

Allowances for persons in excepted positions will continue, except for the following allowances, which will be suspended:

- Education Allowance
- Educational Travel will be provided only if necessary for human safety (e.g. if the school closes for a holiday and the student must vacate the dorm)

For persons in non-excepted positions, allowances related to the protections of life or property will continue. This mean that, for persons in non-excepted positions the following allowances will continue during a furlough:

- Living Quarter Allowance
- Post Allowance (COLA)
- Home Service Transfer Allowance
- Foreign Transfer Allowance
- Temporary Quarters Subsistence Allowance (TQSA)
- Separate Maintenance Allowance
- Subsistence Expense Allowance (paid in the event of an evacuation)

For persons on non-excepted positions, the following allowances will not be paid during a furlough:

- Post Differential
- Danger Pay (The Agency assumes that all or nearly all positions at danger pay posts would be excepted.)
- Education Allowance
- Educational Travel will be provided, as is the case for persons in excepted positions, only if necessary for human safety (e.g. if the school closes for a holiday and the students must vacate the dorm)

VII. Contracts

As the Government Accountability Office has long recognized, funding gaps due to lapses in appropriations raise particularly thorny 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 contract commitments by Agency Operating Units that is consistent with the overall Agency shutdown plan and that will minimize ultimate costs and disruptions.

Existing Contracts

Previously awarded contracts (including leases) that continue in performance during a lapse in appropriations and have adequate funding previously obligated to permit continued performance during a shutdown period should generally be permitted to continue unless the Operating Unit cannot provide "adequate oversight of contract performance" during a shutdown period or there is no need for the supplies or services during this period. If adequate monitoring of contractor performance cannot be provided, suspension or reduction in performance of non-excepted services should be considered if authorized by the terms of the contract. Care should be taken not to incur unnecessary costs or jeopardize the Government's future contractual rights by unilateral stop work orders or directions to reduce the scope of work that are not authorized by the terms of the contract or that will cause the contractor to incur costs that could subsequently be charged to the Government. If circumstances require further guidance, consult the OIG's Legal Counsel.

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 if necessary to support excepted activities authorized for continuance under the Agency's shutdown plan or if genuinely needed to protect Government property or human safety. Before the Contracting Officer may obligate additional funds under this circumstance, OIG's, Office of Management Financial Resources Division (OIG/M/FR) must certify that funds are available within the annual financial plan targets. Incurring unfunded obligations for such services during a funding gap does not violate the Anti-Deficiency Act, but payment of such unfunded obligations must be deferred until appropriations are provided by the Congress. See Section VIII - Obligations and Disbursements for additional certification requirements and further guidance on funding excepted contracts.

The chart found at Attachment 1 outlines the general process for determining whether to continue performance of an existing contract.

New Contracts

New contractual commitments (including leases) during a lapse in appropriations may be made only if necessary to support excepted activities authorized for continuance under the Agency's shutdown plan or if genuinely needed to protect Government property or human safety. The same principle applies to exercising options. Before making a final decision to not exercise an option that could expose the Government to delays or disruptions, the contracting" officer should consult with OIG's Office of Legal Counsel. Before the Contracting Officer may obligate additional funds under this circumstance, OIG/M/FR must certify that funds are available within the annual financial plan targets. Unfunded contractual commitments should be kept to the minimum in cost and duration that will meet the essential need. See Section VIII Obligations and Disbursements for additional certification requirements and further guidance on funding excepted contracts.

VIII. Obligations and Disbursements

Obligations

During any lapse of appropriations, obligations may continue to be incurred for excepted activities. OIG Washington-based offices, RIGs, and Country Offices must operate under strict constraints that ensure USAID/OIG is in compliance with OMB and GAO guidelines. Specific guidance is as follows:

During a lapse in appropriations, USAID/OIG has legal authority to incur obligations to continue excepted activities. However, the incurred obligations should not be formally recorded (posted) in GLAAS and/or Phoenix as there is no appropriations against which to record the obligations. Per OMB guidance, payments cannot be disbursed against lapsed appropriations for obligations incurred after the lapse begins. Disbursements may be made for obligations incurred before the lapse; however payment operations are not deemed essential to meet payment terms.

All obligations and obligating documents issued during the lapse period must be approved by the AIG/M for each respective operating unit and the following statement shall be affixed and signed by the RIGs and OIG Country Office Directors, as applicable: This obligation is necessary to carry out excepted activities in the absence of an appropriation or to perform activities for which funds are otherwise available.

Washington-based offices, RIGs, and Country Offices should maintain detailed records of all obligations incurred that cannot be recorded during the lapse period. As soon as obligation authority is obtained, all obligations should be recorded immediately.

Disbursements

Authorized certifying officers may certify vouchers and authorize payments against valid obligations established against available prior year annual, no-year, or multi-year appropriations, and for FY 2017 obligations established by December 9, 2016.

Upon determination that a lapse in appropriation is imminent and furloughs may be executed, the Chief Financial Officer (CFO) will exercise a waiver of the Prompt Payment Act to advance all approved and certified vouchers for payment. While emergency payments may be executed against valid obligations as described in the previous paragraph, payment functions will generally not be deemed "excepted" unless the payments function is essential for an excepted activity to continue.

Specific Situations

The following are typical bureau/mission obligation/payment categories and how they should be handled:

1.**Locally Engaged and FSN pay/allowances:** Standard procedures to process payroll must be followed. Under no circumstances should alternate means be used to pay FNPSC salaries, such as using petty cash. As per the above general guidance for obligations after a lapse of appropriations, no obligations for payroll after that date should be recorded as official accounting transactions, even for excepted activities. More detailed guidance on submitting time and attendance during the period of the lapse will be provided prior to the deadline for the next submission of time and attendance.

2.**American Salaries, Benefits, and Allowances:** While obligations can continue to be established for payrolls for persons performing "excepted" and shutdown activities, payments for salaries and allowances may only be made for services rendered through the lapse of appropriations. Payroll activities for salaries earned prior to lapse of appropriation are deemed "excepted" and therefore, payroll personnel will fully support payment of earned salaries prior to appropriation lapse.

3.**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 in USAID/OIG accounting systems even though obligations may have been incurred. Blanket travel orders issued prior to the lapse of appropriations are not valid during the lapse period, unless in the case of overseas travel commenced prior to the shutdown. No travel advances may be issued unless the obligation for overseas travel was incurred prior to the lapse. Travel voucher reimbursements can be processed against obligations incurred and recorded for prior years, or for FY 2017 (if obligated prior to December 10, 2016) multi-year or no-year appropriations for which funds remain available, however, such processing shall not be an "excepted" activity. 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.

4.**Utilities:** As with other categories of payments, utility payments for obligations established prior to the appropriation lapse, may be processed for payment. Obligations for utility costs after the lapse should not be recorded in USAID/OIG accounting systems even though incurred and utility payments for periods after the lapse cannot be made from lapsed appropriations. USAID/OIG offices confronted with any emergencies in this regard should contact OIG/M/FR as soon as possible.

5.**Purchase Orders:** Generally, purchase order obligations and payments are to be governed by the above guidance. Obligations for purchase orders prior to the lapse should have been recorded.

6.**Certifying Officer Responsibility:** Post financial management and certifying officers have the responsibility to ensure that only authorized obligations are recorded, and only payments against authorized obligations are certified for payment and forwarded for disbursement. Edits in our overseas financial systems should ensure that payments are not processed unless a valid obligation has been recorded. Posts should not de-obligate funds previously obligated prior to the lapse of appropriation, and re-obligate new obligations after the lapse.

7.**Absolutely Necessary Payments:** To reiterate, and to remain consistent with OMB guidance, we have authority to incur some types of obligations during the lapse period. If such obligations require special payment handling during the lapse period, a special request and justification should be coordinated with the CFO.

8.**Emergency Medical Services:** If the concurrence of Department of State Office of Medical Services (MED) is received, emergency medical travel and services obligations can be incurred but not recorded. Accordingly, payments may be made in consultation with the CFO. Please coordinate with MED and follow guidance in paragraph 12 in emergency situations where payment is required immediately. For medical services funding requests the post should cable MED and coordinate with the CFO.

IX. Time and Attendance Reporting

Reporting Hours During the Furlough Period

During the lapse in appropriations, employees must be either (1) at work performing excepted activities, or (2) furloughed. They, therefore, cannot be in a paid leave status (i.e., annual leave, sick leave, other paid leave, or using earned compensatory time off) during that period.

Normal hours worked during the furlough period by excepted employees are reported in USAID/OIG's electronic time and attendance system known as webTA as regular duty hours. Absences resulting from the furlough of non-excepted employees are reported in webTA as "Furlough." The transaction code for "Furlough" is found under the dropdown menu under Annual Leave. FSNs are processed in a separate payroll system but the same reporting requirements and questions and answers below apply.

Questions and Answers Regarding Time and Attendance

The following questions and answers on reporting time and attendance during a lapse in appropriations are based on guidance from the U.S. Office of Personnel Management (OPM).

Q. How should hours worked by excepted employees during the furlough be reported?

A. Hours worked by excepted employees should be reported in webTA as regular duty hours. If an excepted employee is unable to work during the furlough period, he or she must be placed in a furlough status until such time as the employee reports for work.

Q. How should furlough time for non-excepted employees be reported?

A. Absences resulting from the furlough of non-excepted employees should be reported in webTA as "Furlough". This transaction code is found under the dropdown menu under "Annual Leave".

Q. Can annual leave, sick leave, or earned compensatory time off be charged during a furlough?

A. No. Furloughs place employees in non-pay, non-duty status. Employee may not be carried in a paid leave status during the furlough period.

Q. If an employee was on approved leave without pay (LWOP) during the furlough, would LWOP continue?

A. Yes. LWOP will continue and should be reported as LWOP for time and attendance purposes.

Q. How do you record the time for an employee who had previously scheduled sick or annual leave that fell within the furlough period?

A. Employees may not be in a paid leave status during the furlough period. Consequently, all sick and annual leave must be cancelled and is not reported. If an excepted employee is unavailable for work and performing his or her duties, then he or she should be furloughed and the hours for which he or she did not work would be reported in webTA as furlough.

X. Outside Activities

Public Affairs Activities

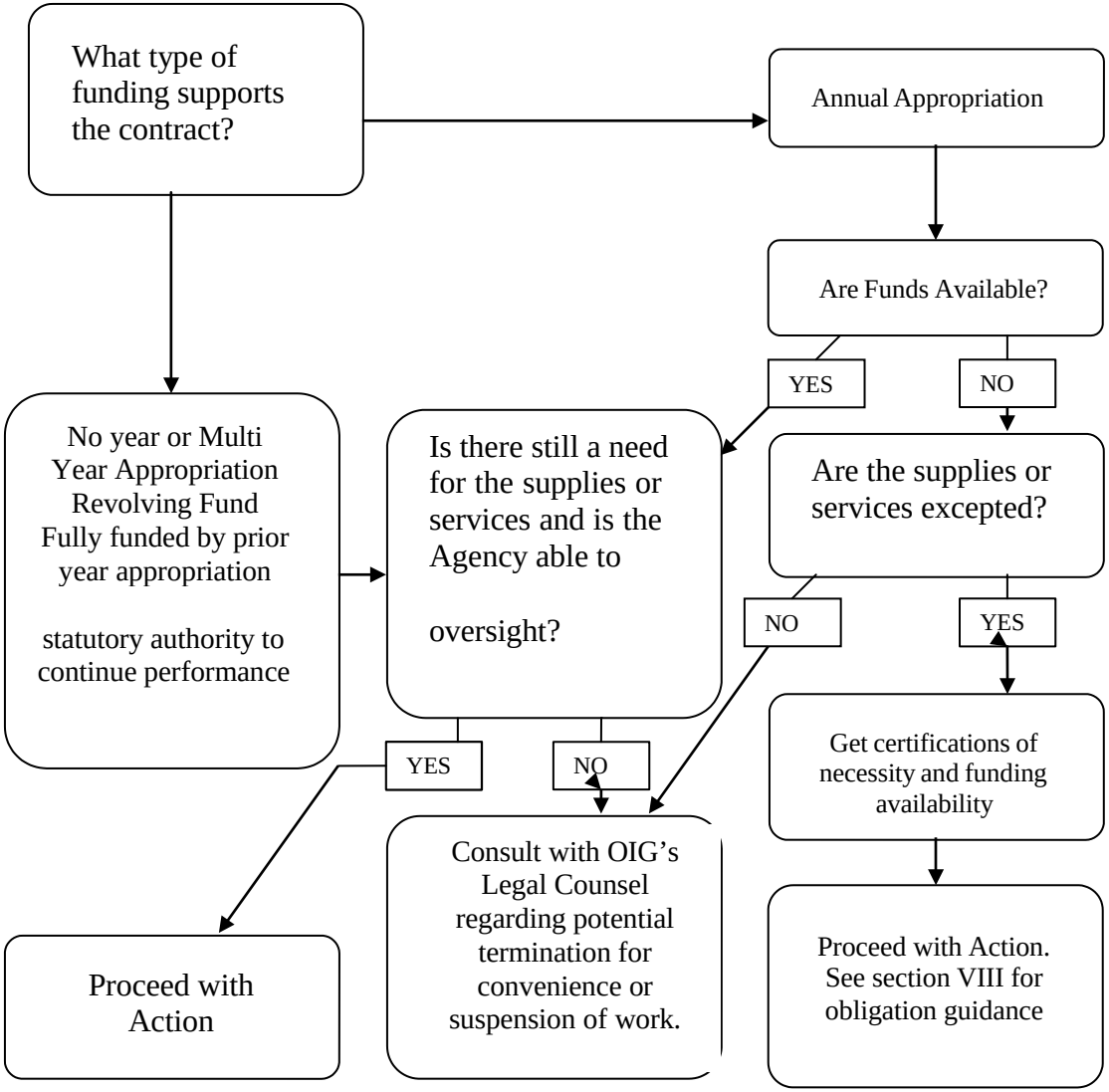
As a general rule, all public affairs and community relations activities such as speeches to the public and participation in university seminars and media events should be cancelled and no invitations for participation in these activities should be excepted during the shutdown period. Any exceptions require the explicit approval of OIG's Legal Counsel.

Outside Employment

Even while on furlough, an individual is an employee of the Federal Government. Therefore, the Executive Branch-wide standards of ethical conduct at 5 CFR Part 2635, which includes rules on outside employment, continues to apply to employees on furloughs. Additionally, there are statutes which prohibit certain outside activities. Employees must consult with and obtain approval from OIG's Legal Counsel before engaging in outside employment.

Attachment 1

Determining Whether to Continue Performance of an Existing Contract



Attachment 2

The text of the Notice of Furlough is as follows:

NOTICE TO ALL AGENCY EMPLOYEES OF SHUTDOWN AND DECISION TO FURLOUGH:

USAID/OIG appropriations expire at midnight on December 9, 2016. We have no indication yet whether Congress will act soon to pass a Continuing Resolution (CR) or appropriation, or that the President will sign it. Therefore, the only financial obligations USAID/OIG may incur are those that are necessary for the orderly suspension of Agency operations or performance of excepted activities as defined in the Office of Management and Budget memoranda for Heads of Executive Departments and Agencies dated November 17, 1981. The excepted activities are extremely restrictive and limited to "1) those necessary for emergencies involving the safety of human life or the protection of property; and 2) those necessary for activities essential to the national security, including the conduct of foreign relations essential to the national security."

This action is being taken because of sudden emergency requiring curtailment of the agency's activities; therefore, 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).

Because your services are temporarily no longer needed and you are not engaged in one of the excepted functions, I must regretfully inform you that you are being placed in a furlough status effective December 12, 2016. OIG/M/HC will inform you of the exact time you are to be released today. This furlough will most likely be short-lived. We do not reasonably anticipate it to last more than a month and are in hopes that a much earlier return will be the case. Accordingly, this current furlough expires on {TBD}, unless funds are appropriated at an earlier date.

If other USAID/OIG employees are being retained in your office, it is because they are required for orderly suspension of Agency operations or they are performing one of the excepted activities (and/or are multi-year or prior-year funded employees, as applicable). The numbers of these individuals have been kept to a minimum and some of them may also be furloughed as activities are suspended.

During the furlough, you are in non-pay, non-duty status. Accordingly, annual, sick, home or court leave which has been approved for anytime during the furlough period is cancelled. During the furlough, you may not volunteer your services to the Agency and must remain away from your workplace. Telework is also prohibited and you should refrain from using any of the work-related electronic devices. Supervisors will not allow employees who are not on the excepted list to be at the work site. You should contact your immediate supervisor if there are questions in this area.

Historically, the pay of furloughed employees has been restored after such a funding crisis was resolved. However, there is no guarantee that such restoration of lost pay will occur this year.

Appeal Procedures for Civil Service Employees

Employees, who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment, may appeal this action to the Merit System Protection Board (MSPB). 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. Other employees in the excepted service who do not have veterans 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 2 years of current continuous service in the same or similar position in other than a temporary appointment limited to two years or less. SES career appointees adversely affected may also appeal. AD and Schedule C employees do not have the right to appeal this furlough. Employees have a right to be represented by an attorney or other person of their choosing.

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 of the effective date of your furlough. If you wish to file an appeal, notify the Director of OIG/M/HC to obtain a copy of the MSPB regulations and appeal form. Following is the address of the MSPB Regional Office having jurisdiction:

Regional Director
Merit Systems Protection Board
Washington Regional Office
1800 Diagonal Rd, Suite 205
Alexandria, VA 22314-2840
https://e-appeal.mspb.gov/

The MSPB regulations require that you be advised that if an employee does not submit an appeal within the time set by statute, regulation, or order of a judge, the appeal will be dismissed as untimely filed, unless a good reason for the delay is shown. The judge will provide the party an opportunity to show why the appeal should not be dismissed as untimely.

If you do not have a right to appeal to the MSPB, you may be eligible to file a grievance under the Agency's Administrative Grievance procedure. OIG Policy Directive 4005, Civil Service Administrative Grievance System.

If you believe that this action is based in whole or in part on discrimination, based on race, color, religion, sex, sexual preference, national origin, age, and/or physical disability, you may elect to appeal the decision in only one of the following two ways:

A. By filing a mixed case appeal to the MSPB; or
B. By seeking redress through the Agency's Office of Civil Rights and Diversity (OCRD);

Grievance Procedures for Foreign Service Employees:
You have the right to grieve this decision under OIG Policy Directive 4001, Foreign Service Administrative Grievance System. Your grievance must be submitted within two years after the effective date of the furlough. You have the right to be represented in this matter by the American Foreign Service Association (AFSA), an attorney, or other person of your choice. Your grievance should be submitted to:

Ms. Pamela Pemberton
Acting Human Resources Officer
USAID/Office of Inspector General
1300 Pennsylvania Avenue, N.W.
OIG/M/HC, RRB, 8.07-024
Washington, D.C. 20523

We fully recognize the difficult personal financial implications of any furlough, no matter how limited its length, and regret that this has come to pass. Please remain alert to announcements in the local media. Responsibility has been placed on individual employees to listen to public broadcasts and when you hear that a CR or an FY 2014 appropriation for USAID/OIG has been approved, you will be expected to return to work on your next regular duty day. Thank you for your cooperation in this matter.

_____ _____
Pamela Pemberton Date
Deciding Official
Acting Director,
IG/M/HC

_____ _____
Employee Acknowledgement of Receipt Date

The following notice will be distributed before the start of the furlough.

USAID/OIG/GENERAL NOTICE
OIG/M/HC
December 9, 2016

SUBJECT: Questions and Answers on Furlough

This Notice provides guidance in a Question and Answer format on various aspects of the furlough. This information responds to the mostly commonly asked questions employees have regarding the furlough.

FURLOUGH

Q. What is a furlough?

A. A furlough is placing employee(s) in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons.

Q. What are the types of furloughs?

A. There are two types of furloughs: "shutdown or emergency" furloughs and "save money" furloughs. We are currently focusing on a possible "shutdown" furlough where the agency no longer has the necessary authority to spend funds that allow it to operate normally and must shut down those activities which are not "excepted" by the Office of Management and Budget (OMB). All employees occupying non-excepted positions will then be placed in furlough status. Those occupying "excepted" positions will continue to work. If, at the end of the current CR (September 30, 2016) the Agency does not have either another CR or an annual appropriation, USAID/OIG would be faced with a funding hiatus which would require a furlough.

Q. What is the difference between an "excepted employee" and an "emergency employee?"

(Note: an "excepted employee" is not be confused with an employee in the excepted service)

A. The term "excepted employee" refers to employees who are excepted from a furlough by law because they are (l) performing emergency work involving the safety of human life or the protection of property, (2) involved in the orderly suspension of agency operations, or (3) performing other functions exempted from the furlough.
The term "emergency employee" is used to designate those employees who must report for work in emergency situations-for example, severe weather condition, air pollution, power failure and other situations in which significant numbers of employees are prevented from reporting for work or which require agencies to close all or part of their activities.

Q. In Washington, who will be "excepted"?

A. In Washington, the position one holds will determine one's "excepted" status. It is the policy of USAID/OIG to ensure equitable treatment of all employees in the positions of both Foreign Service and Civil Service at all grade levels. Positions will be reviewed and determinations of status made based on specific criteria issued by OMB on designation of excepted and non-excepted positions.

Q. When does all this happen?

A. Immediately upon an Agency's determination that a "shutdown" furlough will be necessary. In the case of absence of funding due to lack of an appropriation or a CR, there may be NO time between the Agency's determination of the need for furlough and its implementation.

Q. In the event of lapsed appropriations, can an employee be furloughed without first receiving a written notice of decision to furlough?

A. Yes. While an employee must ultimately receive a written notice of decision to furlough, it is not required that such written notice be given prior to effecting the furlough. When prior written notice is not feasible, then any reasonable notice (telephonic, electronic, oral or other) is permissible.

WHO MAYBE FURLOUGHED?

Q. How do I find out if I have been excepted and will continue to work or will be furloughed?

A. You will be notified if you have been designated by your Office or Mission as a non-excepted employee. Civil Service (CS), Administratively Determined (AD) and Schedule C employees: All may be furloughed. Procedures for the furlough of CS employees are provided under 5 CFR 752 (Adverse Actions) for periods of 30 calendar days or less (22 workdays). FS employees: All may be furloughed. In the overseas field, the requirement to protect life and property may require a greater number of designated "excepted" employees than in Washington. FNs: Host country laws and regulations determine whether FNs can be furloughed.

Q. Does furlough affect Senior Executive Service (SES) appointees?

A. SES career appointees are covered under 5 U.S.C. 3595a and Subpart H of 5 CFR 359. Regulations for SES provide for a 30 day advance written notice, when possible, which must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the place where the appointee may inspect the regulations and records pertinent to the action; for a

probationer, the effect (if any) on the duration of the probationary period; and, the appointee's appeal rights to the MSPB. An SES career appointee may appeal a furlough of any length. .

Q. Are Presidential appointees subject to furlough?

A. Presidential Appointees, with or without Senate confirmation, are not subject to furlough. The salary of such an appointee is an obligation incurred by the year, without consideration of hours of duty required. Thus, the Presidential appointee cannot be placed in a non-duty, non-pay status.

Q. What about persons working for Federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA)?

A. USAID/OIG policy is that IPA's will be furloughed unless they have been designated as excepted. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignment. However, the specific authority for furloughing persons who are working under mobility agreements pursuant to the IPA, either inside the Federal government or with other organizations, will depend upon the nature of individual agreements, the status of the appointment, and/or the funding arrangements for the assignments.

- Personnel from non-Federal organizations on appointments to the Federal Government are subject to furlough in the same manner as other employees.

- Personnel on detail to Federal agencies from non-Federal organizations may continue working, provided that the non-Federal organizations pay the total costs of the detail.

- Personnel on detail to Federal agencies from non-Federal organizations which share part of the costs of the detail may continue to work if the Federal portion of the cost has been obligated from prior appropriations at the time of the IPA mobility agreements. In the event the furlough takes place in the second year of the agreement when no funds are appropriated, the assignment should be terminated.

- Personnel on detail to Federal agencies from non-Federal organizations which do not pay or share the costs of the detail are subject to furlough in the same manner as other employees.

Q. Would employees who are detailed or assigned outside the agency during funding hiatus be subject to furlough?

A. Employees on a reimbursable detail from the agency would not be subject to furlough if full reimbursement continued. If reimbursement were reduced or eliminated, the employee would be subject to furlough. Federal employees who are on leave without pay from their Federal positions who are working for non-Federal organizations may continue working.

Q. How would the agency schedule a furlough for part-time employees?

A. Non-excepted part-time employees would also be furloughed. Furlough of part-time employees must comply with the procedures of 5 CFR Part 752. In scheduling such furloughs, it is equitable to compute the furlough days in the same proportion to those days scheduled for fulltime employees, based on work schedules.

Q. What about employees who work on an intermittent basis?

A. Intermittent employees who are non-excepted would also be furloughed.

Q. How should an agency determine the number of furlough hours for alternative work schedule (AWS) employees during a "shut-down" furlough?

A. Employees would be furloughed for the number of hours they were scheduled to work on the days for which there was a lapse in appropriations.

Q. May employees be furloughed on a holiday?

A. Yes.

Q. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during furlough days, do the furlough days count towards the l2-week entitlement to FMLA leave?

A. No. An employee cannot take leave (either paid or unpaid) under the FMLA during furlough. Therefore, the furlough days cannot count towards the 12-week entitlement to FMLA leave.

DOCUMENTATION OF FURLOUGH

Q. How is time on furlough or leave without pay documented?

A. A SF-50, Notification of Personnel Action, must be prepared for each direct hire employee subject to furlough. A return to duty SF-50 will be prepared when the furlough is over.

HOW WILL FURLOUGH AFFECT ME?

Q. Is furlough or leave without pay (LWOP) a break in service?

A. No, it merely places employees in non-pay status.

Q. To what extent does non-pay status affect employee benefits and programs?

A. Non-pay status (which includes furlough, LWOP, absence without leave and suspension) is credited as follows. Unless otherwise stated, this information is applicable for both GS and FS:

- For career tenure the first 30 calendar days of each non-pay period is creditable service. (Civil Service - CS)

- For completion of probation, an aggregate of 22 work days in a non-pay status is creditable service. (CS)

- For retirement purposes, an aggregate non-pay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a non-pay status.

- Furlough will have no effect on the high-3 salary average calculated for annuity, unless it causes the employee to be in a non-pay status for more than 6 months during the calendar year. This is true for the Civil Service Retirement System, Federal Employees Retirement System (FERS), the Foreign Service Retirement and Disability System and the Foreign Service Pension System.

- For health benefits, enrollment continues for up to 365 days in a non-pay status. Employees are liable for payment of their share of enrollment costs during such periods, payable upon return to pay status.

- For life insurance, coverage continues for 12 consecutive months in a non-pay status without cost to the employees (5 CFR 870.4 (c)) or to the agency (5 CFR 870.40I (d)).

- For within-grade increases, an aggregate of two work-weeks non-pay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6 and 7; and six workweeks for advancement to steps 8,9, and 10 (5 CFR 531.406(b)). For FS employees' entitlement to within-class increase remains unchanged by time in a furlough status.

- For annual and sick leave, when an employee accumulates 80 hours of non-pay status, no credit of annual or sick leave will be made that pay period, and each additional full pay period in non-pay status. For purposes of computing annual leave accrual rates, creditable service is limited to an aggregate of 6 months non-pay status in a calendar year (5 U.S.C.6303 (a) and 8332(f)).

- Thrift Savings Plan (TSP), Employees participating in the TSP will not be allowed to make any contributions to their accounts for days spent on furlough. FERS and FSPS employees will not receive the one percent automatic basis for Government-matching contributions during furlough days. Employees will not be allowed to make up any employee or Government contributions missed during furlough days.

- For military duty or workers' compensation, non-pay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

- For Civil Service qualification standards, there is no requirement to extend qualifying periods by the amount of non-pay status. However, the Agency may require such extensions in some circumstances, such as to meet training requirements or ability to perform. (CS)

- For time-in-grade requirements, non-pay status is creditable service.

- Time-in-Class Calculations, time spent in furlough status will count toward time-in-class calculations.

- Limited Appointments, limited appointments will not be extended by the number of days in furlough status, nor may the appointment be extended beyond the five year maximum.

FURLOUGH UNDER ADVERSE ACTION PROCEDURES (30 Days or Less)

Q. What procedural rights would apply in a furlough of 30 calendar days or less for Civil Service employees (CS) (those covered under 5 CFR 752)?

A. For a short furlough of Civil Service employees, the law (5 U.S.C. 7513) gives them the following rights:

- Except under emergency conditions, 30 days advance written notice by the agency, where possible, stating the specific reasons for the proposed action.

- At least seven days for the employee to answer orally and in writing to the proposal notice and to furnish documentary evidence in support of his or her answer.

- The right of the employee to be represented by an attorney or other representative.

- The right to appeal the Agency's action to the Merit System Protection Board (MSPB).

- If the Agency is furloughing some but not all employees in a competitive level, the notice of proposal must state the basis for selecting the particular employee as well as the reasons for the furlough.

Q. What about Foreign Service (FS) employees?

A. Except under emergency conditions, FS employees will be given 30 days advance written notice stating the specific reasons for the furlough and its duration. The advance notice of a proposed furlough shall include, but is not limited to:

(1) The reason for the furlough;

(2) The maximum length of the furlough; when some, but not all employees in a particular class are being furloughed, the basis for selecting a particular employee for furlough;

(3) Notice that regulations and records pertinent to the action are available and the location of such regulations and records;

(4) The right of employees to respond within 10 days to the proposed furlough; extension of the 10 calendar day time limit will may be approved with sufficient justification;

(5) Entitlement to a reasonable amount of official time to prepare a response;

(6) Entitlement to representation; and,

(7) Prohibition of unpaid voluntary services.

EFFECTS OF FURLOUGH ON OVERSEAS ALLOWANCES AND DIFFERENTIALS

USAID/OIG follows Department of State Standardized Regulations (DSSR) guidance pertaining to allowances and differential issued in Section 030 during a lapse of appropriation. For employees in overseas positions or TDY, allowances and per diem will continue to accrue, except for representational allowances.

INJURY DURING FURLOUGH/CONTINUATION OF PAY (COP)

Q. If employees are injured while on furlough or LWOP, are they eligible for workers' compensation?

A. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in duty status for this purpose and are therefore not covered. However, overseas personnel remain covered by the Department of State Medical Program while on furlough.

Q. If employees are receiving Continuation of Pay (COP) due to job-related injuries; can the COP be terminated or interrupted by furlough?

A. No. According to the Department of Labor, employees must be maintained on COP status during periods of furlough.

EMPLOYMENT DURING FURLOUGH

Q. May employees take other jobs while on furlough?

A. Even while on furlough, an individual is an employee of the Government. Therefore, the Executive Branch-wide standards of ethical conduct (the standards) at 5 CFR Part 2635, which includes rules on outside employment, continues to apply to employees on furloughs. Additionally, there are statutes which prohibit certain outside activities. In USAID/OIG, employees must consult with and obtain approval from the OIG/LC, before engaging in outside employment. Questions in this regard should be directed to the AIG/M for coordination with OIG/LC; he can be reached on (202) 712-1331.

Q. May an employee volunteer to do his or her job on an unpaid basis during a furlough period?

A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual (see 31 USC 1342). Therefore, employees who are not on the "excepted list" are not to report to work on furlough days. If an employee is called in to work on a furlough day for a bona fide emergency involving a threat to health or property, he/she must be placed on "excepted" duty status for the hours involved. All employees are reminded that violations of the Anti-deficiency Act, as amended (such as allowing employees to work when furloughed), may be subject to criminal penalties not to exceed $5000, up to 2 years imprisonment or both.

REQUESTS FOR LEAVE DURING FURLOUGH

Q. If employees request paid leave-for example, annual, sick, court, military leave, or leave for bone marrow or organ donation-after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough? If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employee furloughed on the days that coincide with the dates of furlough?

A. The answer to both questions is yes, and this guidance applies whether it is a "shut-down or "emergency" furlough or a "save money" furlough. However, if it is a "save money"' furlough the agency may choose to furlough the employee at a given time or in a given order. In addition, the agency may designate whichever days it chooses as furlough days.

In a "shut-down" or "emergency" furlough, all paid leave during a furlough is canceled because the necessity to furlough supersedes leave rights. The Anti-deficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the Government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.
Q. May excepted employees take previously approved paid leave during a furlough caused by a lapse in appropriations? May excepted employees be granted new requests for paid leave during the lapse in appropriations?

A. No. When an employee is not at work and performing the duties determined by the employing agency to be allowable activities in compliance with the Antideficiency Act, he or she cannot be in a paid leave status. Therefore, the agencies must take one of the following actions:

(1) Cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or

(2) Furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be charged with insubordination.

UNEMPLOYMENT COMPENSATION

Q. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that employees may be eligible for unemployment compensation, and especially so if the furlough days are consecutive. All USAID/OIG employees assigned to headquarters, even though they might work physically in Maryland or Virginia, are located in Washington, D.C. for this purpose. Therefore, employees are only eligible for District of Columbia unemployment compensation. Employees may apply for D.C. unemployment compensation in the state they live in, and in the District of Columbia. Compensation is not paid retroactively, so it is suggested that employees apply as soon as they are unemployed. Being furloughed is considered being unemployed, so the rule that applicants must be able, available and seeking work stands.

GENERAL ITEMS REQUIRED: A Form SF-8, Unemployment Compensation for Federal Employees (UCFE) Program, or an SF-50, Notification of Personnel Action (if available) of your non-pay status is required. Also take your Social Security Card; and a copy your last Statement of Earnings and Leave is also helpful but not required. Information on unemployment insurance for the District of Columbia, Maryland and Virginia may be accessed at:
http://swz.salary.com/salarywizard/layotltthtmls/swzlunemploymentDC.html

The following notice will be distributed before the start of the furlough providing instructions to staff.

NOTICE TO ALL AGENCY EMPLOYEES OF IMPENDING SHUTDOWN AND DECISION TO FURLOUGH (before funding expires):

Subject: Possible Furlough

By December 12, 2016 if the Congress and the Administration have not agreed on the terms for authorization and appropriation of FY 2017 funding for USAID/OIG or a continuing resolution, USAID/OIG's funding may be temporarily interrupted. If this happens, it would be necessary for most of OIG's operations in Washington and many of those overseas to be suspended. At such time, all employees who have not been designated as "excepted" from furlough, or those employees performing those function for which funding is still available and which the Agency has determined should continue, will be placed in "non-duty and non-pay status".

The approved list of "excepted" personnel will be provided to each Assistant Inspector General (AIG) Office. Any changes to this list must be approved by the Deputy Inspector General (DIG), Justin Brown. The approved list of overseas staff is available from the USAID Mission Director, EXO Office, and the AIG/M. Any changes to the overseas list must be approved by the Deputy Inspector General and changes will be disseminated to the Chiefs of Mission and Mission Directors. Changes must be communicated to the OIG/M/HC.

Instructions to staff: If USAID/OIG funding is temporarily suspended and residual balances of multi-year and no-year funds are insufficient for continued operations, all employees "non-excepted" employees will be furloughed and may take up to 4 hours to shut down their activities. This should occur no later than 12 noon on December 12, 2016.

Employees who wish to complete shutdown by December 9, 2016 evening, the next workday, or by telework on December 12, 2016 may exercise one of those options. Those not on the excepted lists will be required to safeguard property, records and information and otherwise secure their work sites in collaboration with their supervisors. Non-excepted staff will also receive their official notice of furlough from the Director of OIG/M/HC. After performing the functions above, non-excepted personnel must depart the workplace and cannot perform any further work, even on a voluntary basis, until funding is received.

"Excepted" employees must report to work on December 12, 2016.

As in the past, it is difficult to predict how long an interruption in funding might last. It could be for only a few days or for a longer period. Employees are encouraged to review the Questions and Answers on Furloughs in the USAID/OIG Notice issued, as well as the Questions and Answers on Furloughs at the OPM web page at https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough .

For further information concerning this Notice, please contact Pamela Pemberton in OIG/M/HC,
(202) 712-5851.

The following notice will be posted once OIG has received instructions to begin the shutdown of operations.

NOTICE TO ALL AGENCY EMPLOYEES OF AGENCY SHUTDOWN AND FURLOUGH NOTIFICATION (date TBD)

SUBJECT: Furlough Notice

We have been advised by the Director, Office of Management and Budget, to close down operations by 12:00 Noon today, due to an interruption in government funding. This closure will be carried out promptly and in an orderly manner by each USAID/OIG AIG Office.

Prior to departure, all non-excepted personnel must consult with their AMS in order to receive their official furlough notification and Form SF-8, Unemployment Compensation for Federal Employees (UCFE) Program. Employees must acknowledge receipt by signing and dating the last page of their furlough notification.

Further developments concerning the resumption of normal operations will be announced by the news media.

POINT OF CONTACT: Questions regarding this Notice may be directed to
Pamela Pemberton, OIG/M/HC, on (202) 712-5851.