GENERAL INFORMATION

This document provides guidance for identifying those missions and functions of the Department of Defense (DoD) that may continue to be carried out in the absence of available appropriations. The information provided in this document is not exhaustive, but rather illustrative, and is intended primarily to assist in the identification of those activities that may be continued notwithstanding the absence of available funding authority in the applicable appropriations (excepted activities). Activities that are determined not to be excepted, and which cannot be performed by utilizing military personnel in place of furloughed civilian personnel, will be suspended when appropriated funds expire. The Secretary of Defense may, at any time, determine that additional activities shall be treated as excepted.

Components should consult the Office of Management and Budget website (http://www.whitehouse.gov/omb/memoranda_default) for the latest guidance issued on operations during a lapse in appropriation and the Office of Personnel Management website (http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Overview) for the latest guidance on civilian furloughs during a government shutdown.

Antideficiency Act Compliance

The Antideficiency Act prohibits Federal agencies from incurring obligations that are in advance of, or that exceed, an appropriation. Thus, with certain limited exceptions, a Federal agency may not incur obligations when the funding source for the obligation is an appropriation that has lapsed (i.e., no longer available for new obligations). Also prohibited is the acceptance of voluntary services. Federal agencies may not accept services from employees, whose salaries are set by law without the obligation of appropriations for their compensation, except for emergencies involving the safety of human life or the protection of property.

After operating appropriations have lapsed for new obligations, the Department may incur costs in advance of an appropriation *only* for those activities that have been designated as "excepted." Such excepted situations include: (1) statutes that expressly authorize incurring obligations in advance of appropriations, (2) emergencies involving the safety of human life or the protection of property, and (3) functions necessary to discharge the President's constitutional duties. No disbursements may be made to liquidate obligations incurred for excepted activities *until* Congress provides an appropriation to cover these obligations. No obligations may be made to support a non-excepted activity during a lapse in appropriations, as that is a violation of the Antideficiency Act.

New obligations may be charged to appropriation accounts or funds that do not expire for new obligation on September 30th to the extent sufficient unobligated balances exist. For DoD, after operating appropriations lapse, unobligated balances exist in accounts for procurement; research, development, test and evaluation; military construction; working capital funds; and other revolving and management funds.

Where funds were obligated in a prior fiscal year or are obligated during the lapse from an unexpired account, such funds may be disbursed if funds are available for continued program

administration and program payment processing, or if the administration and payment activities for the programs themselves are excepted as necessary by implication. *Thus no costs may be incurred in a lapsed appropriation account/fund to support the activities funded with unobligated balances unless these activities are supporting designated "excepted" activities.*

Military Personnel

Military personnel on active duty, including reserve component personnel on Federal active duty, will continue to report for duty and carry out assigned duties. This includes duty involving excepted and, to the extent they can be performed without incurring new obligations, non-excepted activities. Military personnel on active duty may be assigned to carry out non-excepted activities in place of furloughed civilian personnel only to the extent that the non-excepted activity is capable of performance without incurring new obligations. As is always the case, military personnel may not exercise the functions of a Presidentially-appointed, Senate-confirmed official. See 10 U.S.C. section 973(b).

Reserve component personnel performing Active Guard Reserve (AGR) duty will continue to report for duty to carry out AGR authorized duties for the period of their AGR tour. Reserve component personnel will not perform inactive duty resulting in the obligation of funds, except where such duty directly supports an excepted activity, and may not be ordered to or extended on active duty, including AGR duty, except in support of military operations and activities necessary for national security or disaster response, including fulfilling associated pre-deployment requirements. The list of military operations and activities necessary for national security will be provided separately. Orders for members of the National Guard currently performing duties under 32 U.S.C. 502(f) (other than AGRs) will be terminated unless such duties are in support of excepted activities.

Movement of military personnel associated with permanent change of station will be limited as follows:

1) Moves TO an excepted activity will continue.

2) Moves FROM an excepted activity will continue only to the extent the commander of the excepted activity determines it essential to mission (e.g., overburden of local infrastructure), or required to enhance support of excepted activities.

3) Accession and training moves associated with recruitment and initial entry training will continue, along with subsequent movement to first station when required by "1" above.

4) Movement to comply with separation instructions will continue *only* if the funds were obligated prior to the appropriations lapse; no costs may be incurred unless it is already funded in the Permanent Change of Station order.

Civilian Personnel

Civilian personnel, including military technicians, who are not necessary to carry out or support excepted activities, are to be furloughed using lapse in appropriations (often called emergency shutdown) procedures and guidance provided by the Office of Personnel Management. Only the minimum number of civilian employees necessary to carry out excepted activities will be excepted from furlough. Positions that provide direct support to excepted positions may also be deemed excepted if they are critical to performing the excepted activity. Determinations regarding the status of civilian positions will be made on a position by position basis, using the guidance in this document. Determinations shall be made for all positions, including those in the Senior Executive Service or equivalent, as well as those located overseas.

Individuals who are needed to support excepted activities generally should only work on excepted activity work. Once the excepted activity work is completed, the individual should be furloughed using government emergency shutdown procedures. If the excepted activity is to be performed intermittently during the day, management should consolidate excepted activities to the maximum extent possible for performance by the fewest number of employees. Management needs to determine if military personnel vice civilians can provide the needed support to the "excepted" activity.

Following the expiration of appropriations, a minimum number of civilian employees may be retained as needed to execute an orderly suspension of non-excepted activities within a reasonable timeframe. *Reminder: at no time may contractors perform inherently governmental work; this includes during a government shutdown.*

Senate-confirmed officials appointed by the President are not subject to furlough. Their immediate office personnel necessary to support excepted activities may be excepted from furlough at the discretion of the appointee.

Foreign national employees paid with host country funds are not subject to furlough; if the Department reimburses the host nation for foreign national employee labor costs, then they are subject to furlough unless they support an excepted activity. However, foreign national employees governed by country-to-country agreements that prohibit furloughs are exempt from furlough. Foreign national employees may not engage in any activities that incur new obligations, unless in support of an excepted activity. *Reminder: No disbursements may be made to liquidate obligations incurred for foreign nationals until Congress provides an appropriation to cover these obligations (i.e., no pay may be made unless the individuals are paid from appropriation accounts/funds with unobligated, unexpired balances).*

Civilian personnel whose salaries are reimbursed from a non-DoD source (e.g., the Foreign Military Sales Trust Fund) are not exempt from furlough solely on that basis; if the appropriation account into which reimbursements are to be made has lapsed, such employees will be furloughed unless they are working on excepted activities. Personnel whose compensation is paid from a DoD appropriation or fund that has sufficient budgetary authority (e.g., multiyear appropriations with available balances from prior years) may not be furloughed using the rules for emergency shutdown furloughs as long as there are sufficient balances in the accounts to pay all

compensation costs for these civilians. Normal reprogramming rules remain in effect for these multiyear accounts. Prior to exhaustion of such appropriations, civilians funded in multiyear appropriations or funds may be furloughed *only* if the rules for an administrative furlough are applied; prior notification is required unless suspended or shortened based on emergency. Heads of activities may, on their authority, require the return to work of civilian personnel in the event of developments (natural disasters, accidents, etc.) that pose an imminent danger to the safety of human life or the protection of property.

Permanent change of station (PCS) for civilian personnel will continue only to the extent expenses are chargeable to a funded PCS order issued prior to the funds lapse. Expenses for movement of civilian personnel chargeable to lapsed appropriations will be limited as follows:

1) Moves TO an excepted activity that cannot be delayed will continue.

2) Moves FROM an excepted activity will continue only to the extent the commander of the excepted activity determines it essential to mission (e.g., overburden of local infrastructure), or required to enhance support of excepted activities.

Temporary Duty (TDY) Travel and Conference Participation

In the absence of appropriations, TDY travel and conference participation scheduled to begin after the shutdown occurs should be cancelled, except as noted below. Any TDY travel or conference participation that began prior to the shutdown should, except as noted below, be terminated (i.e., return to one's official duty station) as quickly as possible, but in an orderly fashion. This includes TDY travel and conference participation associated with professional military education training.

All TDY travel and participation in conferences in direct support of military operations in Afghanistan and to counter the Islamic State of Iraq and the Levant, including TDY travel of reservists on active duty, may be undertaken or continue. Attendance at such conferences remains subject to applicable conference attendance policies. Other travel/conference participation directly related to safety of human life or the protection of property, including national security, as well as foreign relations (e.g., negotiating international agreements), may be undertaken or continued *only if* approved, in writing, by the appropriate approval authority listed below and only in the most limited circumstances. The approval authority (which may be delegated to appropriate senior officials) for any such TDY travel or conference participation is the:

- Secretary of a Military Department for personnel assigned to that Military Department
- Head of a Defense agency for personnel assigned to that Defense agency
- Chairman of the Joint Chiefs of Staff for personnel assigned to the Joint Staff
- Combatant Commander for personnel assigned to that combatant command
- Principal Staff Assistant (PSA) for personnel assigned to that office

Notwithstanding the approval authority stated above, all TDY travel/conference participation by Presidential Appointed – Senate Confirmed (PAS) personnel must be approved by the Deputy Secretary of Defense.

Approving officials will implement a mechanism within their organizations for approving such travel and conference participation.

Contracts

Contractors performing under a fully funded contract (or contract option) that was awarded prior to the expiration of appropriations may continue to provide contract services, whether in support of excepted activities or not. However, new contracts (including contract renewals or extensions, issuance of task orders, exercise of options) may not be executed, nor may increments of funding be placed on incrementally funded contracts or to cover cost overruns, unless the contractor is supporting an excepted activity. No funds will be available to pay such new contract or place additional increments of funding on contracts until Congress appropriates additional funds.

The expiration of an appropriation does not require the termination of contracts (or issuance of stop work orders) funded by that appropriation unless a new obligation of funds is required under the contract and the contract is not required to support an excepted activity. In cases where additional funding is required and/or oversight, engagement, or inspection by Federal employees who have been furloughed is critical to successful performance under the contract and the contract is not required to support an excepted activity, the issuance of a stop work order or the termination of the contract may be required.

The Department may continue to enter into new contracts, or place task orders under existing contracts, to obtain supplies and services necessary to carry out or support excepted activities even though there are no available appropriations. It is emphasized that this authority is to be exercised *only* when determined to be necessary - where delay in contracting would create an imminent risk to the safety of human life or the protection of property, including endangering national security.

Additionally, when authorized by the Secretary of Defense, contracts for covered items may be entered into under the authority of the Feed and Forage Act.

SAFETY OF HUMAN LIFE OR PROTECTION OF PROPERTY (NATIONAL SECURITY)

Excepted	• Military operations and activities authorized by deployment or execute orders, or otherwise approved by the Secretary of Defense, and determined to be necessary for national security, including administrative, logistical, medical, and other activities in direct support of such operations and activities; training and exercises required to prepare for and carry out such operations. • Activities of forces assigned or apportioned to combatant commands to execute planned or contingent operations necessary for national security, including necessary administrative, logistical, medical, and other activities in direct support of such operations; training and exercises required to prepare for and carry out such operations. • Activities necessary to continue recruiting for entry into the Armed Forces during contingency operations (as such term is defined in 10 U.S.C 101(13)), including activities necessary to operate Military Entrance Processing Stations (MEPS) and to conduct basic and other training necessary to qualify such recruited personnel to perform their assigned duties. • Command, control, communications, computer, intelligence, surveillance, and reconnaissance activities required to support national or military requirements necessary for national security or to support other excepted activities, including telecommunications centers and phone switches on installations, and secure conference capability at military command centers. • Activities required to operate, maintain, assess, or disseminate the collection of intelligence data necessary to support tactical and strategic indications and warning systems, and military operational requirements. • Activities necessary to carry out or enforce treaties and other international obligations.
Footnotes	• Activities involving technical intelligence information collection, analysis and dissemination functions not in direct support of excepted activities (e.g., general political and economic intelligence unrelated to ongoing or contingency military operations, support of acquisition programs, support to operational test and evaluation, intelligence policy security promulgation and development, systems development and standards, policy and architecture) are not excepted activities. • Emergency & Extraordinary Expense (EEE) authority expires when O&M accounts lapse at the end of the fiscal year, to include Official Representation Funds. • Death gratuities may not be paid during a lapse of appropriations because the military personnel appropriations expire on September 30th.

SAFETY OF HUMAN LIFE OR PROTECTION OF PROPERTY

Excepted	• Response to emergencies, including fire protection, physical and personnel security, law enforcement/counter terrorism, intelligence support to terrorist threat warnings, Explosive Ordnance Disposal operations, emergency salvage, sub-safe program, nuclear reactor safety and security, nuclear weapons, air traffic control and harbor control, search and rescue, utilities, housing and food services for military personnel, and trash removal. • Emergency repair & non-deferrable maintenance to utilities, power distribution system buildings or other real property, including bachelor enlisted quarters (BEQ), bachelor officers' quarters (BOQ), and housing for military personnel. • Repair of equipment needed to support services for excepted activities, including fire trucks, medical emergency vehicles, police vehicles, or material handling vehicles. • Monitoring and maintaining alarms and control systems, utilities, and emergency services. • Receipt/safekeeping of material delivered during shutdown. • Control of hazardous material and monitoring of existing environmental remediation. • Oil spill/hazardous waste cleanup, environmental remediation, or pest control, only to the extent necessary to prevent imminent danger to the safety of human life or the protection of property. • Safe storage or transportation of hazardous materials, including ammunition, chemical munitions, photo processing operations. • Emergency reporting response and input to the National Response Team and coordinating with Environmental Protection Agency (EPA) and other agencies on fire, safety, occupational health, environmental, explosive safety for vector borne disease management. • Activities, both in the Continental United States (CONUS) and overseas, required for the safety of DoD or other U.S. Government employees or for the protection of DoD or other U.S. Government property. • Commissaries located overseas, and any determined to be in remote U.S. locations where no other sources of food are reasonably available for military personnel. • Defense support to civil authorities in response to disasters or other imminent threats to human life or property, including activities of the U.S. Army Corps of Engineers with respect to responsibilities to state and local governments that involve imminent threats to human life or property. • Foreign humanitarian assistance in response to disaster or other crises posing an imminent threat to human life. • Emergency counseling and crisis intervention intake screening and referral services. • Counseling and other services and support for victims of sexual assault. • Religious, suicide, or substance abuse counseling and services. • Counterdrug activities determined to be necessary for the safety of human life or the protection of property. • Operation of mortuary affairs activities and attendant other services necessary to properly care for the fallen and their families. • Other activities authorized by the Secretary of Defense to provide for the safety of human life or the protection of property.
Footnote	Activities in support of environmental requirements, which are not necessary to prevent imminent threat to human life or property, are not excepted activities.

MEDICAL/DENTAL CARE

Excepted	• Inpatient care in DoD Medical Treatment Facilities and attendant maintenance of patient medical records. • Acute and emergency outpatient care in DoD medical and dental facilities. • Private Sector Care under TRICARE. • Certification of eligibility for health care benefits. • Medical care for Wounded Warriors, including surgery to continue recovery of function/appearance.
	• Veterinary Services that support excepted activities (i.e., food supply and service inspections).
Footnotes	• Contingency planning in medical command headquarters not immediately necessary to support excepted activities is not an excepted activity. • Elective surgery and other elective procedures in DoD medical and dental facilities are not excepted activities.

ACQUISITION AND LOGISTIC SUPPORT

Excepted	• Contracting, contract administration, contract payment (for contracts funded with prior year funds), or logistics operations in support of excepted activities. • Activities required to contract for and to distribute items as authorized by the Feed and Forage Act (e.g., clothing, subsistence, forage, fuel, quarters, transportation, and medical and hospital supplies). • Central receiving points for storage of supplies and materials purchased prior to the shutdown.
Footnote	Once individuals are no longer needed to implement the orderly shutdown; they are to be furloughed unless they are needed to support excepted activities.

EDUCATION AND TRAINING

Excepted	• Education and training necessary to participate in or support excepted activities. • DoD Education Activity (DoDEA) educational activities for the regular school year.
Footnotes	• DoDEA summer school activities generally are non-excepted activities unless required by law. • DoDEA sporting events and extracurricular activities are non-excepted; an event or activity may only continue during a lapse in appropriations if the event or activity is fully funded with non-appropriated funds.
	• Installation education centers may continue to operate utilizing military personnel, so that private agencies such as colleges and universities may provide courses for which payment has already been made. • Civilian personnel, including technicians, on TDY for training or education associated with non-excepted activities should be returned to their home stations as part of the orderly closedown of operations. • Civilian personnel on PCS orders attending training or educational activities should remain in place and not attend classes as no cost may be incurred during a lapse in appropriations. If the civilian's compensation is paid by an appropriation account or fund that has unobligated balances from prior year appropriations, then the employee may continue to attend class. • Military personnel on PCS orders attending training and educational activities may continue to attend classes only if the instructor is military or is a contractor paid with prior year funds; no costs may be incurred above what is required for safety of human life or the protection of property. • Students at the military academies may continue to attend classes only if the instructor is military or is a contractor paid with prior year funds; no costs may be incurred above what is required for safety of human life or the protection of property. • Sporting events and extracurricular activities at the military academies are non-excepted; an event or activity may only continue during a lapse in appropriations if the event or activity is ***fully*** funded with (1) non-appropriated funds (NAF), provided that NAF funding for the event is not dependent on Uniform Funding and Management transfers or MWR Utilization Support and Accountability reimbursements from appropriated funds and/or (2) unobligated balances in a statutory gift fund.

LEGAL ACTIVITIES

Excepted	• Litigation activities associated with imminent or ongoing legal action, in forums inside or outside of DoD, to the extent required by law or necessary to support excepted activities. • Legal support for excepted activities, including activities by special victims' counsel and legal assistance for military and civilian personnel deployed, or preparing to deploy, in support of military or stability operations. • Legal activities needed to address external (non-judicial) deadlines imposed by non-DoD enforcement agencies, to the extent necessary to continue excepted activities. • Legal support activities essential to implementation of orderly shutdown of agencies.
Footnote	Once individuals are no longer needed for implementing the orderly shutdown; they are to be furloughed unless they are needed to support excepted activities.

AUDIT AND INVESTIGATION COMMUNITY

Excepted	• Criminal investigations related to the safety of human life or the protection of property, including national security, as determined by the head of the investigating unit, and investigations involving undercover activities. • Counterterrorism and counterintelligence investigations.

MORALE WELFARE & RECREATION/NONAPPROPRIATED FUNDS

Excepted	Morale, Welfare, and Recreation (MWR) and Non-Appropriated Fund (NAF) activities necessary to support excepted activities, e.g., operation of mess halls; physical training; child care activities required for readiness.
Footnotes	• Activities funded entirely through NAF sources will not be affected. • Military personnel may be assigned to carry out or support non-excepted MWR activities, where deemed necessary or appropriate, to replace furloughed employees. • Community and public outreach programs are non-excepted activities; such programs may only continue during a lapse in appropriations if they are ***fully*** funded with non-appropriated funds and such NAFs are not derived from transfers or reimbursements from appropriated funds; this includes jet and jump demonstration teams, band and ceremonial unit appearances, port visits, Service weeks, and nonprofit and corporate leader outreach.

FINANCIAL MANAGEMENT

Excepted	• Activities necessary to control funds, record new obligations incurred in the performance of excepted activities, and manage working capital funds. • Activities necessary to effect upward adjustment of obligations and the reallocation of prior-year unobligated funds in support of excepted activities. • Financial support activities essential to implementation of orderly shutdown of agencies.
Footnotes	• Preparation of financial reports, research and correction of problem disbursements, adjustments to prior-year funds (excepted as noted above) including those related to programs and contracts that do not support excepted activities, and approval of the use of currently available funds to pay obligations against closed accounts are not excepted activities. • Once individuals are no longer needed for implementing the orderly shutdown; they are to be furloughed unless they are needed to support excepted activities. • Disbursing and Paying Agents may not make disbursements to liquidate an obligation (e.g., disburse cash) incurred for an excepted activity chargeable to a lapsed appropriation.

WORKING CAPITAL FUND/REVOLVING FUNDS

Excepted	• Defense Working Capital Fund (DWCF)/Revolving Fund (RF) activities with positive cash balances may continue to operate until cash reserves are exhausted. • When cash reserves are exhausted, DWCF/RF activities must continue operations in direct support of excepted activities. • DWCF/RF activities may continue to accept orders financed with appropriations enacted prior to the current fiscal year or unfunded orders from excepted organizations. Unfunded orders will be posted to accounts receivable and not actually billed until appropriations are enacted.
Footnotes	• DWCFs/RFs generally are not directly impacted by a lapse in annual appropriations. • Management actions should be taken to sustain operations and minimize operational impact resulting from late approval of annual appropriations. • Management actions that could be taken to conserve cash reserves include: delay of training, minimal travel, reduction in supplies, civilian furloughs using the rules for an administrative furlough (i.e., 30-prior notification), and other actions consistent with management objectives. • Inter-DWCF/RF billings will continue unless a suspension request is approved by the Office of the Under Secretary of Defense (Comptroller). • Approval may be requested for advance billing of funded customer orders. • Plan guidance for excepted activities is applicable to DWCF/RF internal operations.

ACTIVITIES FUNDED WITH UNOBLIGATED, UNEXPIRED BALANCES

Excepted	• Any activity funded with appropriation accounts or funds that have unobligated, unexpired balances may continue to execute its mission provided all costs, including the compensation of the employees supporting these activities, are paid directly from these same appropriation accounts or funds.
Footnotes	• Appropriation accounts or funds with unobligated balances that carry over from prior year appropriations generally are not directly impacted by a lapse in annual appropriations. • When the unobligated balances are exhausted, these programs must shut down unless they are supporting excepted activities. • No obligations chargeable to lapsed annual appropriations may be incurred to support an activity/program that is being funded with unobligated carryover balances unless the supporting activity is designated as an "excepted" activity. • Management actions that may be taken to conserve unobligated balances include: delay of training, minimal travel, reduction in supplies, civilian furloughs using the rules for an administrative furlough (i.e., 30-prior notification), and other actions consistent with management objectives.