

Office of the United States Trade Representative

Contingency Plan for Shutdown of Agency Operations
in the
Absence of Appropriations

November 2023



Introduction

This plan, required by the Office of Management and Budget (OMB) Circular A-11, Section 124, supplements the Executive Office of the President (EOP) plan. The latter, a consolidated plan for all EOP components, is submitted by the Assistant to the President for Management and Administration (M&A) to the Office of Management and Budget (OMB). The Office of the United States Trade Representative (USTR) plan shall be implemented by the Agency upon determination that funds availability will be interrupted because the Congress has failed to enact or the President has vetoed a regular appropriation, a continuing resolution, or required supplemental appropriation. This determination shall be made in consultation with the Office of Administration (OA)/EOP and the OMB. USTR will use available no-year funds to either keep the Agency operating at normal levels and/or supplement the number of excepted employees allocated by White House M&A until either those funds are expended or appropriations restored.

Shutdown Process

OMB is responsible for issuing instructions to agencies on implementing a federal shutdown, including the furloughing of "non-excepted" federal employees. OMB's Lapse in Appropriations Communications can be found here: <https://community.max.gov/x/5zZ2Yw>. OA/EOP will provide centralized furlough and check-out/check-in procedures for all components in EOP. Further guidance as to the employment of technology (VoIP desk phones, mobile phones and laptops) will be provided by White House Information Technology (WHIT) as necessary.

Throughout a shutdown period, agencies are apprised of the latest developments in resolving the budgetary impasse. The Office of Personnel Management (OPM) provides guidance and technical assistance to the agencies regarding personnel management issues, especially pay and benefits administration, during a federal furlough.

Preparations – General Procedures

When facing the possibility of such funding interruptions, agencies must take steps to forestall interruptions in operations and assure that they are in a position to limit their activities to those directly related to orderly shutdown of the agencies.

Agencies must limit obligations incurred to those excepted activities under the Antideficiency Act (express statutory authorizations, emergency circumstances, and the President's constitutional authorities). EOP has determined that the following excepted activities are applicable to the EOP components:

- Providing for the national security, including the conduct of foreign relations essential to the national security;
- Protection of personnel and property; and
- Support of the President's discharge of Constitutional duties.

Lapse Plan Summary Overview

Estimated time required to complete shutdown activities (includes detailed planning)	15 days
Total number of agency employees expected to be on board before implementation of the plan	268 FTE [Nov 2023]
Total number of employees to be retained under the plan for each of the following categories:	
Compensation is financed by a resource other than annual appropriations ¹	Up to 6 FTE: Presidentially Appointed, Senate Confirmed Positions (Ambassadors) 10-20 FTE: Three multi-year supplemental appropriations in support of USMCA enforcement [current staffing levels at time of lapse preparation]
Necessary to perform activities expressly authorized by law	No FTE
Necessary to perform activities necessarily implied by law	61 FTE [number authorized by OA/EOP at time of lapse preparations]
Necessary to the discharge of the President’s constitutional duties and powers	4 FTE
Necessary to protect life and property	No FTE

Brief summary of significant agency activities that will continue during a lapse:

During a government shutdown, USTR will continue to perform functions necessary to the discharge of the President’s constitutional duty and power to conduct foreign relations. Hence, USTR will develop a day-by-day list of excepted employees based on the highest priority excepted initiatives/activities at the time as deemed essential by the Agency Head, the United States Trade Representative. Typically, these are World Trade Organization (WTO) disputes, trade negotiations in support of the President’s highest economic and foreign relations priorities, and enforcement of high-priority multilateral trade agreements where failure to engage would place significant disadvantages on American workers, farmers, ranchers, and businesses large and small. The United States Trade Representative and other staff directly involved in conducting foreign relations are excepted as necessary to discharge the President’s constitutional duties. Staff necessary to provide legal and administrative support are excepted by necessary implication of law, and staff performing security functions are excepted as necessary for the safety of human life and the protection of property. In addition, USTR activities that do not rely on expiring appropriations are considered exempt, as long as carryover balances remain. For example, USTR also has 4-year supplemental appropriations that support USMCA enforcement, and those employees and contractors funded by those appropriations can continue to perform their duties.

¹ USTR uses no-year funds, if available, to either keep the Agency operating at normal levels and/or supplement the number of excepted employees allocated by White House M&A until either those funds are expended or appropriations restored.

Brief summary of significant agency activities that will cease during a lapse:

All activities beyond those exempt or excepted. These are routine engagements with foreign trading partners on such initiatives as Bilateral Investment Treaties (BIT) and Trade and Investment Framework Agreements (TIFA), and all routine administrative functions of the agency beyond the minimum necessary to support the exempt or excepted activities.

The following describes specific USTR shutdown activities

Prior to the initiation of orderly shutdown activities, USTR will limit operations to minimum essential activities and will allocate no-year funds for activities that are essential to operate USTR during an appropriations hiatus. For example, such activities would include those where USTR failure to act would or could result in default by the United States and loss of U.S. legal rights detrimental to our international trade and foreign relations generally.

USTR will follow the OA, EOP contingency plan periodically updated and provided to OMB (latest example Appendix 1 supplemented with Appendix 2). It states:

“Specifics of EOP Component Contingency Plan

Each EOP component has carefully considered the number of personnel required not only to complete orderly shutdown activities but also to ensure that the emergency or excepted operations of each EOP component can be carried out during shutdown. The chart below summarizes component-by-component the Excepted Staff that will be required to sustain minimal emergency or excepted operations.”

The current FTE and excepted staff FTE will be updated to specific conditions at the time of shutdown preparations.

Beyond USTR determined essential functions, orderly shutdown activities will begin. USTR determines the specific actions that will be taken. However, all actions must contribute to the orderly shutdown of the agency and give primary consideration to protecting life and safeguarding government property and records. Such actions will be accomplished in a way that will facilitate reactivation when funds are made available. USTR will notify OA/EOP immediately when shutdown activities are being initiated.

Necessary personnel actions will be taken to release employees in accordance with applicable law and OPM regulations. Preparation of employee notices of furlough and processing of personnel and pay records in connection with furlough actions are essential shutdown activities. These functions will be performed by OA employees who are retained for orderly termination of EOP activities. OA will except sufficient employees to manage the process of returning employees to work and placing back on furlough according to EOP components’ shutdown contingency plans.

Access to physical workspaces will be limited to only those employees who are excepted for that day. The daily list of excepted employees will be provided to USTR Office of Security and the supervisor of the FPS Protective Security Officers (PSOs). PSOs on duty will be provided the daily lists with instructions that only these listed will be afforded facility access. Any non-compliance will be immediately reported to the AUSTR for Administration and the on-duty USTR security specialist for action.

The Assistant United States Trade Representative (AUSTR) for Administration has the overall responsibility for requesting input from all offices and then developing draft excepted staff plans for USTR leadership decision. The following steps prepare for the orderly shutdown of USTR:

Office of the United States Trade Representative Shutdown Action Plan

Schedule from Potential Shutdown Date (working days)	Action	Responsibility
+ 15 days	<ul style="list-style-type: none"> Determine the status of no-year funds and how many days USTR can function with no or limited furloughs; USTR CFO will work with OA CFO and USTR's OMB Reviewer to achieve agreement on how long the agency will operate before implementing shutdown activities, should the lapse in appropriations continue after no-year funds have been depleted; this "recommended continue normal operations plan" will be presented to the CoS by AUSTRA for approval or modification. Once the decision is made, AUSTRA will notify all offices of how long USTR will continue fully-funded operations and any further actions that may be necessary to prepare for the potential to implement the shutdown plan. AUSTRA request AUSTRs to identify and justify essential activities and excepted employees to cover the first two weeks of a potential shutdown (Appendix 3); develop spreadsheet and align against shutdown FTE authorized by WH M&A; submit to CoS for approval or modification as necessary. 	Chief of Staff (CoS) & AUSTR for Administration (AUSTRA)
+ 5 days	Notify by Agency Head memorandum to all employees of possible furlough due to insufficient appropriated funds	OA/EOP
+ 5 days	AUSTRA provide the approved first two-week period list of essential activity and excepted employee to AUSTRs for dissemination to their staffs (as adjusted for available no-year funds)	USTR Office of Administration
+ 5 days	<ul style="list-style-type: none"> Identify actions and employees required to continue operations supporting shutdown and/or other activities required to protect life, property and records Provide notice of furlough to employees (Appendixes 4, 5 & 6) 	USTR Office of Administration & OA/EOP
+ 5 days	<ul style="list-style-type: none"> Provide list of employees authorized pay to OA HR for the anticipated shutdown period Provide employees preparation for shutdown instructions (Appendix 7) 	USTR Office of Human Capital and Services
+ 3 days	Chief Security Officer contact all offices and identify any additional physical security requirements for classified information, materials, equipment and SCIFs that may be required if/when the agency enters shutdown; based on this information, recommendations for additional security, such as enhanced FPS contract security guards and revised security protocols, will be provided to AUSTRA for approval and implementation.	USTR Office of Security
+ 1 day	<ul style="list-style-type: none"> Instruct individual employees on their specific actions to conduct an orderly shutdown Commence those actions immediately required 	All AUSTRs
Last work day of funding ¹	<ul style="list-style-type: none"> Complete shutdown actions Notify those employees that are to report for duty to carry out operations supporting shutdown and/or other excepted activities, such as those required to protect life, property and records 	AUSTRs & USTR Office of Administration
0 day (shutdown)	<ul style="list-style-type: none"> Notify EOP of shutdown Non-exempt employees report to work, execute furlough letters and return home¹ 	USTR Office of Administration & OA/EOP
Each day of shutdown	<ul style="list-style-type: none"> Provide list of excepted employees to OA/EOP and USTR Office of Security and Supervisor, FPS PSOs. Confer with OA/EOP & OMB on any requested exceptions to the authorized number of excepted employees 	AUSTR for Administration
Date funding is appropriated	Notify furloughed employees to return to work	OA/EOP & AUSTR for Administration

Subsequent to appropriations	Process furlough/return to duty actions	Office of Administration, EOP
------------------------------	---	-------------------------------

1. This action can take place on the first day without funding as part of the authorized shutdown procedures. Complete within the first four (4) hours of the workday; may be completed remotely as necessary.

**Activities and Designation of Excepted Personnel
Required for Orderly Shutdown and
Performance of Essential Management and Support Services after Shutdown**

Office/Position	Excepted Personnel	Description & Justification
<p style="text-align: center;">USTR Leadership Office of Administration</p>	<p style="text-align: center;">Chief of Staff AUSTR for Administration One OHCS Staff Member¹</p>	<p>Oversee orderly shutdown of Agency; notify all employees of suspension of operations; provide advice and assistance to Agency leadership; disseminate guidance from OA, EOP, OMB, & OPM; notify EOP when shutdown is complete; implement changes to the plan (further identify essential activities and excepted employees) if lapse in appropriations is prolonged (beyond the initial two weeks planning).</p>
<p style="text-align: center;">Office of Information Technology and Communications</p>	<p style="text-align: center;">One Staff Member¹</p>	<p>Provide continuing information systems and technology services to USTR leadership consistent with essential functions. To include:</p> <ul style="list-style-type: none"> • Secure voice calls from SCIF • Secure video calls to Geneva from SCIF • Secure network (i.e. SIPRNET support) • UNCLAS videoconference calls • Mobile phone <p>Conduct shutdown of non-emergency activities.</p>
<p style="text-align: center;">Office of Security</p>	<p style="text-align: center;">One Executive Protection Detail One Staff Member¹</p>	<p>Oversee proper storage and securing of classified materials; close and lock all offices; change building physical security system to “after working hours” configuration 7x24; provide continuing facility security and executive protection detail functions.</p>
<p style="text-align: center;">Office of Finance and Budget</p>	<p style="text-align: center;">One Staff Member¹</p>	<p>Provide travel services support to assist TDY employees’ return to permanent duty station; contact employees in TDY, cancel scheduled travel arrangements; cancel scheduled delivery of goods and services.</p>
<p style="text-align: center;">Front Office Administration</p>	<p style="text-align: center;">Executive Secretary</p>	<p>Provide administrative support to six exempted presidential-appointed ambassadors.</p>
<p style="text-align: center;">Office of the General Counsel</p>	<p style="text-align: center;">GC AGC AUSTR M&E</p>	<p>Case litigation management and general direction to the excepted attorneys working on WTO litigation deadlines and ongoing multilateral negotiations.</p>
<p style="text-align: center;">Office of Congressional Affairs</p>	<p style="text-align: center;">One Staff Member¹</p>	<p>Consult with Congress on WTO litigation deadlines and ongoing multilateral negotiations.</p>
<p style="text-align: center;">Office of Public/Media Affairs</p>	<p style="text-align: center;">One Staff Member¹</p>	<p>Provide advice/support to USTR</p>

1. One employee required. Rotate on a daily/weekly basis until appropriations enacted.

Methods for notifying employees that the shutdown furlough has ended or they must return to work to perform excepted activities:

Information provided in Appendix 7. Employees directed to the USTR Employee Furlough Information MAX page for the following:

USTR and the Federal Government's operating status:

- USTR Employees Only - <https://ustr.gov/> or call USTR's Information Line **202-395-9500**
- Government wide - www.opm.gov

Instructions for potential recall or contact upon end of furlough:

As furloughed employees are not permitted to use work issued mobile devices, laptops or access government email, in preparation for shutdown activities on [date], please ensure:

- Your supervisor has your alternate contact information (i.e., personal phone number (home/cell) or email).
- Your alternate contact information is updated in the EOP's [EPIC Contact Manager](#). This system is used to notify EOP employees of important information. Employees receive automated emails from OA/EO to update contact information every 90 days.
- Should you expect a possible call back to work for intermittent periods not previously scheduled, please leave personal contact information with your supervisor or a member of your office who is currently excepted and will be at work during the lapse. Contact information must be personal email address, home phone and/or personal cell phone.

Flexibilities available to supervisors if employees have problems with retuning to work on the day specified by the agency:

USTR Office of Human Capital and Services provides ongoing advice to supervisors should any of their employees experience such problems. USTR has a full array of leave, alternative work schedules and max teleworking capabilities that provide substantial flexibilities for these situations. Information is posted on the USTR Office of Administration Intranet.

Procedures for resuming program activities, including steps to ensure appropriate oversight and disbursement of funds:

Chief of Staff will provide detailed guidance to all AUSTRs as to priorities and necessary actions as the Agency resumes full operations. The AUSTR for Administration, an excepted employee, who retains complete oversight of all funds disbursements during the shutdown, will consult with the USTR Director of Finance and Budget and the CFO, OA/EOP as USTR begins full operations. A comprehensive review will be performed on the status of funds and pending invoices and obligations that were suspended during the lack of appropriations. All such requirements will be prioritized for processing and full payment, especially reimbursements due to employees on travel and local vouchers.