



# Operations during a Lapse in Appropriations

**Final**

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# BBG Shutdown Guidance

## Table of Contents

- I. Background
- II. Excepted Activities and Positions
  - A. Definition
  - B. Protection of Human Life and Property
  - C. Conduct of Foreign Relations Activities
  - D. Other Activities
- III. Shutdown Preparation Activities
  - A. Orderly Shutdown of Non-excepted Activities
  - B. Personnel
    - 1. Furlough Decision Notice
    - 2. Hiring and Recruitment During the Furlough
    - 3. FSNs/Personal Services Agreements/Foreign National Personal Services Contracts
    - 4. Part-time and Intermittent Employees
    - 5. Rotation of Personnel
  - C. Time and Attendance Reporting
  - D. Contracts
  - E. Obligations and Disbursements
  - F. Travel
  - G. Training
  - H. Representation Events
  - I. Communications

# BBG Shutdown Guidance

## **I. Background**

The United States Constitution provides that “[n]o money shall be drawn from the Treasury, but in consequence of appropriations made by law.” U.S. Const. article I, § 9, cl. 7. The Anti-deficiency Act (ADA) seeks to ensure proper implementation of this constitutional requirement by prohibiting all officers and employees of the federal government from entering into obligations in advance of an appropriation. To that end, the ADA restricts the acceptance of services from federal personnel, entering into contracts and executing grants, except in cases of emergencies or as otherwise authorized by law. *See* 31 U.S.C 1341 et seq.

In absence of an appropriation to continue operations, the ADA would prohibit many but not all government functions. The Office of Legal Counsel (OLC), the Office of Management and Budget (OMB), and the Government Accountability Office (GAO) recognize various activities that are excepted from the general prohibition against incurring obligations that would otherwise apply under the ADA (hereinafter, “excepted activities”). In respect of such excepted activities, Agencies may continue to incur obligations during a funding gap.

The ADA provides for the possibility of imposing significant criminal penalties for any employee or government official who knowingly and willfully violates the Act, including by continuing to incur obligations from non-excepted activities during a funding gap. These penalties may include fines of up to \$5,000 and imprisonment of up to two (2) years per violation. The Department of Justice has historically taken the position that it may seek to impose these penalties under appropriate circumstances against federal officials or employees who fail to cease applicable government functions during a funding gap (43 U.S. Op. Atty. Gen. 224, 229 (1980)). In addition to criminal penalties, the ADA also has significant administrative penalties for failure to comply.

## **II. Determination of Excepted Activities and Positions**

### **A. Definition of Excepted Activities**

Excepted activities that may be continued in an absence of appropriations include those activities which are (i) necessary to execute an orderly shutdown of affected operations, (ii) necessary for *the safety of human life or the protection of property*, and (iii) necessary for *conducting foreign relations essential to the national security*. Employees performing excepted activities will continue to report to work and perform their duties.

Please note that the definition of an employee of the federal government only includes those individuals who are directly employed by the U.S. Government. The definition does not include contractors, such as purchase order vendors, stringers and other individuals or entities who maintain contractual relationships with the Agency. The treatment of contractual services is covered in a later section of this guidance.

## BBG Shutdown Guidance

### **B. Essential Activities for the Protection of Human Life and Property**

To qualify as an essential activity for the protection of human life and property, there must be some reasonable connection between the activity and the safety of human life or the protection of property. There must also be some reasonable likelihood that such safety and protection would be compromised to some degree by delay in the performance of the function in question. At BBG, this would include the protection of all government property, including headquarters, domestic and overseas transmitting stations, overseas bureaus, and equipment used in BBG operations. The Office of Security and guards will continue to protect domestic facilities and personnel in the event of a shut down. It would also include reasonable support services related to the protection of human life and property. As many BBG employees are stationed overseas or may be on travel status and may need to be recalled, BBG should maintain minimal operations to protect such personnel in case emergency travel is warranted or to the extent required to recall personnel to their duty stations or to the United States. Activities that fall under this category represent approximately 2% of the BBG workforce or an estimated 39 staff.

### **C. Conduct of Foreign Relations Activities Essential to the National Security**

The BBG Office of General Counsel (OGC) has issued a memorandum establishing that there is a sufficient legal basis for the Board's determination that United States international broadcasting activities of the BBG qualify as "foreign relations essential to the national security" and are, therefore, excepted activities which may continue during the appropriations lapse. These excepted activities represent the minimum activities necessary to produce and distribute Voice of America (VOA) and Office of Cuba Broadcasting (OCB) programming and to distribute programming of the BBG. Federal employees who are covered by this exception include the minimum VOA, OCB and International Broadcasting Bureau (IBB) employees required to produce and distribute relevant programming.

Similarly, the BBG Office of General Counsel has determined that the grantees (Radio Free Asia (RFA), Radio Free Europe/Radio Liberty (RFE/RL), and Middle East Broadcasting Network, Inc. (MBN) also engage in core broadcasting activities for the Agency that qualify as "foreign relations essential to the national security" and are, therefore, excepted activities which may continue during the appropriations lapse. Accordingly, the Agency may incur obligations in support of the grantees' core broadcasting activities.

The scope of this excepted activity is based on the following programming assumptions:

- Minimum operations necessary to keep the BBG global distribution network operational;
- Current programming schedule remains, with minimum operations necessary to stay on the air;
- Highest priority live news programs continue;

## BBG Shutdown Guidance

- Breaking news is covered;
- No new programs or projects are initiated;
- Evergreen and pre-recorded material will be used to the highest extent possible;
- Internet and new media operations continue as appropriate; and
- Excepted employees are those essential to produce and distribute these programs.

Activities that fall under this category represent 57% of the BBG workforce or an estimated 999 staff.

### **D. Other Categories of Excepted Activities**

The BBG is not planning on and does not maintain any activities that engage in military law enforcement or health care. In addition, the BBG is not requesting an exemption to continue operations for employees whose compensation is financed by resources other than the annual appropriation. As such, no BBG employees fall into this category.

### **III. Shutdown Preparation Activities**

*Managers/Supervisors are responsible for ensuring they have contact information from all of their assigned personnel. Managers/Supervisors are also responsible for ensuring that the contact information of their personnel is updated regularly and provided to HR and required offices.*

The Chief Financial Officer (CFO) will update shutdown plans and submit those plans to OMB, as required.

BBG upper management will be provided a prepopulated list of essential functions, and personnel associated with those functions, to review and update as necessary. In the event of an actual shutdown, the CFO will request the list of the names of employees who will be reporting to work in support of excepted activities in accordance with the shutdown plans.

The list should be accompanied by a certification from the BBG CEO, VOA Director, OCB Director, IBB Director of Management Services, or CFO as appropriate, indicating, "Obligations for salaries for the attached list of employees are necessary to carry out excepted activities, as outlined in the BBG shutdown plans, in the absence of an appropriation." Office of the CFO (OCFO) will also provide the list of employees to the Office of Human Resources (OHR) so that appropriate employee notices may be prepared.

### **A. Orderly Shutdown of Non-Excepted Activities**

## BBG Shutdown Guidance

**All employees scheduled to work on the first workday following a lapse in appropriations should report to work.**

Non-expected employees (employees receiving furlough notices) should perform those tasks necessary to safeguard property, records, and information for an orderly shutdown. In addition, non-expected personnel should 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; cancel non-essential meetings, conferences, travel, and other previously arranged business; document the status of cases and projects so that they can be resumed, transferred, or otherwise appropriately handled when the Agency's operational status is regularized; complete, approve, and record time and attendance for all employees through last day before the shutdown; perform those tasks necessary to protect confidential information; and perform necessary functions to process all unpaid and due bills on hand for obligations incurred prior to the shutdown. It is anticipated that these activities will take approximately four (4) hours.

Non-expected employees who are not scheduled to work on the first workday following a lapse in appropriations (e.g., Saturdays or Sundays) should contact with their first-line supervisors immediately to obtain instructions on receiving their furlough notice.

After performing the functions necessary for an orderly suspension of non-expected operations, employees performing "non-expected" activities will be furloughed. Managers are reminded that the Federal Government cannot accept voluntary services; therefore, no employee may work if he or she is in a non-expected status. These employees should listen to the news for information about the appropriation. The BBG will post information about the status of the shutdown on the BBG website, [www.BBG.gov](http://www.BBG.gov), and provide information about when furloughed employees should report to work. If another continuing resolution or an appropriation bill is enacted (passed by the House and the Senate and signed by the President), employees will be directed to report back to work on their next scheduled workday, unless otherwise told to do so earlier (e.g., in rare cases recalled from furlough for excepted work).

### ***B. Personnel***

The Office of Human Resources (OHR) will distribute furlough notices to BBG offices. The notices should be given to individual furloughed employees as quickly as possible on the first work day of the shutdown. If a shutdown occurs, managers are responsible for forwarding a copy of the furlough letter to non-expected domestic employees who are not at work. Managers should also distribute furlough notices to affected overseas employees and are requested to advise OHR of the names of those non-expected employees on leave or travel in the U.S. who are not expected back within the following two weeks. Managers should confirm that each non-expected employee has received a furlough notification letter. Employees are required to sign the furlough notice to indicate receipt and return it to the Manager. Managers are responsible for returning the signed copies to OHR. If there is difficulty in delivering furlough notices, managers

## BBG Shutdown Guidance

should notify OHR and request assistance in delivering the notices and getting acknowledgement of receipt. Managers should cite this guidance in support of their respective requests.

For non-excepted employees who are unreachable within two (2) weeks due to lack of a contact address, managers should advise OHR of those employee and their expected date of return to the Agency or duty station. OHR will try to locate these employees, if possible.

The CFO will examine the text of any subsequent appropriation or continuing resolution to determine if Congress has authorized retroactive pay for employees.

### **1. Furlough Decision Notice Due to Lapse of Appropriations (5 CFR PART 752)**

The text of the notice of furlough appears below.

*In the absence of either a Fiscal Year (FY) 2017 appropriation, or a continuing resolution for the Broadcasting Board of Governors (BBG), no further financial obligations may be incurred by BBG, except for those related to the orderly suspension of BBG operations or performance of excepted activities as defined in Office of Management and Budget guidance. Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective four (4) hours after the beginning of your first daily tour of duty on or after December 10, 2016. This furlough, i.e., nonduty, nonpay status, may be short (1-4 days in length) or may extend for a longer term. You should monitor public broadcasts and the Internet for further information. When you hear that a continuing resolution or a Fiscal Year 2017 appropriation that covers BBG has been approved, you will be expected to return to work on your next regular duty workday.*

*This action is being taken because of a 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). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) has been waived due to a sudden emergency requiring curtailment of activities..*

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

*During the furlough period, you will be in a non-pay, non-duty status and you may not work at your workplace or other alternative worksite unless and until recalled. You are not permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is hereby cancelled.*

#### **WHO MAY FILE**

*Employees in the competitive service who have completed a probationary or trial period or one (1) year of current continuous employment in the competitive service under other than a temporary appointment limited to one (1) year or less may appeal this action to the Merit Systems Protection*

## BBG Shutdown Guidance

*Board (MSPB). Employees in the excepted service who have veteran preference may appeal to the MSPB if they have completed one (1) year of current continuous service in the same or similar positions as the one now held. Employees in the excepted service who do not have veteran preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two (2) years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two (2) years or less.*

*Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action in the Office of Human Resources from 10 a.m. to 1 p.m., Monday through Friday.*

### NOTICE OF APPEAL RIGHTS

*The following is provided regarding your rights to appeal this decision. You may file an appeal with one of the following: the U.S. Merit Systems Protection Board (MSPB), the Office of Special Counsel, the Equal Employment Opportunity Commission or if your position is within either the AFGE, Local 1812 or AFSCME, Local 1418 bargaining units, you may file a grievance under the negotiated grievance procedure contained in the Negotiated Labor Management Agreement (NLMA) between your exclusive representative (i.e., union) and this Agency.*

*You have the right to appeal this action to the U.S. Merit Systems Protection Board (MSPB). If you elect to appeal to MSPB, your appeal must be filed in writing no later than thirty (30) calendar days after the effective date of this action. Your appeal should give the reasons for contesting the action, with any offer of proof and pertinent documents that you are able to submit. Filing may be made by mail, facsimile, commercial overnight delivery, or personal delivery to the following address if your duty station is located in*

*Washington, D.C., North Carolina or elsewhere not listed below:*

*U.S. Merit Systems Protection Board  
Washington, DC Regional Office  
1800 Diagonal Road, Suite 205  
Alexandria, VA 22314-2840  
Fax: (703) 756-7112*

*or in Florida to:*

*U.S. Merit Systems Protection Board  
401 W. Peachtree Street, NW  
10th Floor  
Atlanta, GA 30308-3519  
Fax.: (404) 730-2767*

## BBG Shutdown Guidance

*or in New York to:*

*U.S. Merit Systems Protection Board  
Northeastern Regional Office  
1601 Market Street  
Suite 1700  
Philadelphia, PA 19103  
Fax: (215) 597-3456*

*or in Los Angeles or Pacific overseas to:*

*U.S. Merit Systems Protection Board  
Western Regional Office  
201 Mission Street Suite 2310  
San Francisco, CA 94105-1831  
Fax: (415) 904-0580*

*You may file an appeal electronically through the MSPB website ([www.mspb.gov](http://www.mspb.gov)). If you opt to file in this manner, you should follow the link to e-Appeal. The date of filing shall be determined by the date the appeal is postmarked, the date of the facsimile transmission, the date it is delivered to a commercial overnight delivery service, the date you send it electronically, or the date of receipt, if you deliver it personally. You may obtain a copy of the MSPB Appeal Form (MSPB Form 185) and a copy of the MSPB regulations through the MSPB's website (<http://www.mspb.gov>). If you are unable to access this information through the internet, please contact the Office of Human Resources, at (202) 382-7500, and arrangements will be made to provide you with this information.*

*You may seek corrective action before the Office of Special Counsel (OSC), [www.osc.gov](http://www.osc.gov). If you choose to seek corrective action concerning whistleblowing activities directly with the OSC and not as affirmative defense to a MSPB appeal, OSC will notify you of its decision, including providing any appeal rights to the MSPB you may have at that time. Any appeal to the MSPB at that time must be filed within 60 days of notification that OSC has terminated its investigation or 120 days after seeking corrective action and OSC has not notified you that it shall seek corrective action on your behalf. If you appeal to the MSPB after first going to the OSC, the MSPB may only consider whether the Agency's action was taken against you in retaliation for making prohibited whistleblowing disclosures. You are prohibited from raising other affirmative defenses in this corrective action appeal.*

*You have the right to contact the Agency's Office of Civil Rights to initiate a complaint within forty-five (45) calendar days from the date of receipt of this letter if you believe that the Agency is taking this action because of your race, color, religion, sex, national origin, disability, age, genetic information, or in retaliation for your previous participation in the EEO process. You may either pursue discrimination allegations through the EEO process or you may raise discrimination based upon race, sex, religion, national origin, color, disability, age or retaliation as a defense in the MSPB appeal, but not both.*

## BBG Shutdown Guidance

*If you are a bargaining unit employee covered by the AGFE, Local 1812 or AFSCME, Local 1418 Negotiated Labor Management Agreement (NLMA), you may file a grievance regarding this action under the applicable grievance procedures of the NLMA between your exclusive representative and this Agency or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. You may contact your AFGE or AFSCME Local officials for more information on filing a grievance under the negotiated grievance procedure. Filing a grievance will not extend the time limit for filing an appeal with the Board. These rights are described in the Code Federal of Regulations, 5 C.F.R. § 1201.21.*

*If you are an AFSA bargaining unit member, you may use the grievance procedures under 3 FAM 4400.*

*If you are an AFGE, Local 1812 bargaining unit member, selection of the Negotiated Grievance Procedure does not prejudice your right to request MSPB review of the final decision pursuant to 5 U.S.C. § 7702. If you are an AFSCME bargaining unit member and you allege that this action is based on discrimination as discussed above, you must appeal to either the MSPB or the EEOC.*

*Any communication from the MSPB, including the Acknowledgement Order and a copy of the appeal, should be sent to:*

*Broadcasting Board of Governors  
Office of General Counsel  
330 Independence Ave., SW, Suite 3349  
Washington, DC 20237  
202-203-4550  
202-203-4585(fax)*

*Employees have a right to representation in this matter and may be represented by their union, an attorney or other person of their choosing.*

*We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available.*

### **Other Information**

*If you have questions about any of the information in this notice, you should contact the Office of Human Resources at (202) 382-7500.*

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*Deciding Official*

*Date*

# BBG Shutdown Guidance

*I acknowledge receipt of this decision.*

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

\_\_\_\_\_  
*Date*

## **2. Hiring and Recruitment During the Furlough**

An immediate hiring freeze will apply during a lapse in appropriations. Entry-on-duty dates for prospective employees with employment offers are suspended until the funding lapse is over. No new job offers may be made.

All non-excepted personnel support activities are suspended.

## **3. Foreign Service Nationals/Foreign National Personal Services Contracts**

Foreign Service Nationals (FSNs), Personal Service Agreements (PSAs), or Foreign National Personal Services Contracts personnel (FS PSCs) may, under local foreign law, be required to be paid whether or not work is performed. FSNs, PSAs, and FS PSCs may continue work if they can be supervised properly. Supervisory American staff may not be justified as “excepted” employees during a furlough solely on the basis of their supervisory role; their “excepted” status must be independently justified based on the categories of excepted activities discussed above. If supervisory staffs are not excepted and FSNs, PSAs, and FS PSCs cannot operate without such supervision, these employees must be put on administrative leave.

## **4. Part-Time and Intermittent Employees**

For part-time employees, time spent in non-pay, non-work status will be prorated based upon the number of hours normally worked during a pay period.

Intermittent employees are non-full-time employees without a regularly scheduled tour of duty. This group of employees may be called to work during a furlough only to perform excepted functions.

## **5. Rotation of Personnel**

In the past, shutdowns of the Agency based on a lapse of appropriations have been of a short duration. Therefore, the BBG does not foresee the necessity for the rotation of personnel. In addition, rotations are discouraged for several reasons, including that rotations may affect the eligibility of individuals for unemployment compensation, may impair continuity in BBG functions, and may entail an unnecessary administrative workload required to bring employees in and out of furlough status.

## BBG Shutdown Guidance

Personnel rotated into and out of furlough status require the processing of two (2) SF-52 forms, Request for Personnel Actions: an SF-52 Furlough action to take the employee out of pay status and an SF-52 Return to Duty action to enable the employee to return to an excepted function. Offices are responsible for producing SF-52 forms, obtaining authorizing signatures, and submitting these forms to the Office of Human Resources each time an employee is rotated into or out of furlough status. OHR will provide a copy of the SF-52 to OCFO, which will be used to update the master employee status list.

Should the shutdown extend longer than a few days, VOA, OCB or IBB senior management should be consulted regarding whether rotations of personnel are warranted. Any such requests should be provided in writing. These decisions will be made on a case-by-case basis. Decisions on rotations must be made on the basis of the BBG's needs related to the positions needed to carry out the excepted activities and the qualifications of individual employees in those positions. Any rotation of personnel decisions will be made by the BBG CEO, VOA Director, OCB Director, or IBB Director of Management Services and will be based solely on the requirement for providing continuing services of the BBG.

### ***C. Time and Attendance Reporting***

During a lapse of funding, appropriations are not available for the payment of any obligation, including payroll. A subsequent continuing resolution or the FY 2017 appropriations bill must contain a provision that authorizes payments for payroll obligations incurred during the shutdown period. Until the appropriation is passed, the exact terms of the provision, including retroactive compensation for furloughed employees, remain unknown.

Accurate time and attendance records should be maintained for all excepted employees utilizing processes in place in each office to record time worked and each excepted employee must badge in and out of the building. This includes the requirement that excepted employees continue the normal time and attendance documentation process maintained in their offices, including signing in and out on a daily basis, if appropriate.

## BBG Shutdown Guidance

**The following guidance should be utilized only if a subsequent continuing resolution or the FY 2017 appropriations bill contains provisions for retroactive compensation for furloughed employees. Additional guidance will be provided if no appropriations bill or continuing resolution is passed to provide retroactive compensation.**

Additional guidance for timekeepers will be transmitted to the CFO Timekeepers group email distribution.

### **Pay for the Furlough Period**

For the furlough period, employees must receive the same compensation they would have received had they performed their normal duties. Once new legislation is enacted, we will inform you whether to implement this guidance. Therefore, allowances, differentials, and other payments will be paid as if an employee actually continued to work. Unless the new legislation overrides existing statutes and regulations, the only exception to this rule would be Sunday Premium Pay, which is only paid to eligible employees who are scheduled to work during Sunday and actually worked on that day.

### **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 compensatory time off) during that period. Normal hours worked during the furlough period by excepted employees should be reported as regular duty hours. Except as provided below, absences resulting from the furlough of non-excepted employees should be reported as administrative leave. These absences should not be charged to regular duty hours or any form of paid leave (i.e., annual leave, sick leave, other paid leave or compensatory time off). If an excepted employee had an emergency which precluded them from working, the absence should be reported as time in a furlough status.. In the case of employees who were on approved leave without pay during the lapse of appropriations, these absences must continue to be charged to leave without pay.

### **Reporting Time for the First Workday of a Lapse and Subsequent Days with a Lapse in Appropriations**

Special attention should be paid to reporting time and attendance for employees for the first workday of a lapse since the shutdown may occur during the workday and non-excepted employees may have worked varying periods of time before departing on furlough. A determination should be made on the amount of time each non-excepted employee worked on the first furlough day. The remaining period of time in the employee's duty day would then be considered furlough time and must be reported as furlough time (for timekeepers hour type code "KE"), even if the employee had been previously scheduled to take paid leave later in the day.

## BBG Shutdown Guidance

### ***D. Contracts***

As the GAO has long recognized, funding gaps due to lapses in appropriations raise particularly thorny issues in the area of contractual commitments, where generally applicable ADA requirements may be in apparent conflict with orderly shutdown activities and with continuation of excepted functions.

The following guidance provides a framework for consistent treatment of contractual commitments by BBG during a shutdown that will minimize ultimate costs and disruptions.

1. Previously awarded contracts 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 adequate oversight of contractor performance during a shutdown period cannot be accomplished or the goods or services are not deemed necessary during a shutdown. 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 or if the contractor will negotiate such a suspension or reduction. Care should be taken not to incur unnecessary costs or jeopardize the BBG'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. In conjunction with the respective Contracting Officer, offices should review contracts to determine whether suspension or reduction in performance of non-excepted services is authorized by the terms of the contract. Contracting Officers should coordinate any such adjustments to the contracts, as appropriate.
2. For previously awarded contracts and leases that (in the absence of funding) require renewal or modification during a lapse in appropriations, obligation of additional funds for continued performance may be authorized only if necessary to support excepted activities authorized for continuance under the BBG's shutdown plan. The necessity for such renewals or modifications must be certified to the Contracting Officer by the BBG CEO, VOA Director, OCB Director, IBB Director of Management Services, as appropriate, and authorized on a case-by-case basis by the CFO. Requests must be accompanied by a written statement/justification of the basis for such necessity as well as the statement signed by the appropriate Director: "The obligation is necessary to carryout excepted activities in the absence of an appropriation." Incurring unfunded obligations for such services during a funding gap does not violate the ADA, but payment of such unfunded obligations must be deferred until appropriations are provided by the Congress. Unfunded contractual commitments should be kept to the minimum cost and duration that will meet the essential need.
3. New contractual commitments during a lapse in appropriations may be made only if necessary to support excepted activities authorized for continuance under the BBG's shutdown plan. The necessity for such renewals or modifications must be certified to the

## BBG Shutdown Guidance

Contracting Officer by the BBG CEO, IBB Director of Management Services, VOA Director or OCB Director, as appropriate, and authorized on a case-by-case basis by the CFO. Requests must be accompanied by a written statement/justification of the basis for such necessity as well as the statement signed by the appropriate Director: “The obligation is necessary to carryout excepted activities in the absence of an appropriation.” Unfunded contractual commitments should be kept to the minimum cost and duration that will meet the essential need.

4. No new grants or cooperative agreements may be entered into during the period of a lapse in appropriations. This includes travel grants.
5. Foreign national personnel with personal services contracts/agreements should be treated in the same manner as FSN direct hires, where local labor law necessitates. Any Personal Services Contractors should be treated in the same manner as similarly situated civil service or Foreign Service employees, retaining only if necessary to perform an excepted activity.

### ***E. Obligations and Disbursements***

No obligations, or adjustments to existing obligations, may be incurred against BBG annual accounts during any lapse of appropriations. However, during a funding lapse, obligations may continue to be incurred for excepted activities only and must only be incurred for the minimum amounts necessary. All BBG personnel must operate under strict constraints that ensure the BBG is in compliance with GAO and OMB guidelines.

While the BBG has legal authority to incur obligations to continue excepted activities during a lapse in appropriations, obligations cannot be formally recorded in our accounting system, as there are no appropriations to record the obligations against. Such obligations must be kept to a minimum and must be manually tracked and immediately recorded in the financial management system when Agency appropriations are received. All paper documents are official records and must be scanned and attached to the financial transaction in the financial management system when appropriations are received.

Payments will not be processed or disbursed during the lapse period, as the Treasury will be suspending all payment transactions.

All obligations, adjustments to obligations, and obligating documents issued during the lapse period must be approved by the BBG CEO, IBB Director of Management Services, VOA Director, OCB Director, or CFO, as appropriate, and have the following statement affixed and signed by the appropriate Director: “This obligation is necessary to carry out excepted activities in the absence of an appropriation.” This should be accompanied by a written justification on how the transaction qualifies under the “excepted” activities. All paper documents are official records and must be scanned and attached to the financial transaction in the financial management system when appropriations are received.

## BBG Shutdown Guidance

### ***F. Travel***

Travel should be limited to that absolutely necessary for emergencies involving the safety of human life or the protection of property or that considered absolutely necessary for the creation, production or distribution of BBG programming which has been deemed to constitute the conduct of foreign relations essential to the national security. All other travel plans (non-excepted activities) should be suspended.

All travel authorizations must be approved by the BBG CEO, IBB Director of Management Services, VOA Director, OCB Director, or CFO, as appropriate.

Travel should not be initiated unless clearly in support of an excepted activity. If personnel are in travel status overseas 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 is incurred for the travel (i.e., prior to the lapse), and because it is likely that any hiatus in funding will be temporary, managers should not instruct personnel in non-excepted travel status abroad to return to their home duty stations, unless otherwise directed. If such personnel are not performing excepted activities, they should be furloughed.

Personnel in domestic travel status who are not performing excepted functions should make arrangements to return to their duty station city as soon as practicable. Personnel in domestic travel status who are performing excepted functions may continue.

Please note that during a lapse in appropriations, it is anticipated that U.S. Department of State Passport and Visa operations will be suspended, except for emergency reasons.

### ***G. Training***

In accordance with the shutdown plan, employees enrolled in training should not attend class. This applies to all training, whether conducted by BBG employees or contractors.

Those domestic personnel in training who are designated as necessary to perform “excepted functions” should return to their positions; those not so designated will be furloughed.

### ***H. Representation Events***

It is important to consider the perception of a representation event during a government shutdown.

# BBG Shutdown Guidance

## **1. Domestic Representation**

As a general rule, no domestic representation events should be held during the shutdown period. Events already scheduled should be cancelled and no new events planned until the shutdown is over. The CFO may authorize a domestic representation event only if it is necessary to support excepted activities. Any such request for representation funds must be previously approved by the BBG CEO, IBB Director of Management Services, VOA Director or OCB Director, as appropriate.

## **2. Overseas Representation**

As a general rule, no overseas representation events should be held during a shutdown period. The CFO may authorize a representation event abroad only if it is necessary to support excepted activities. Any such request for representation funds must be previously approved by the BBG CEO, IBB Director of Management Services, VOA Director or OCB Director, as appropriate.

### **I. Communications**

If there is no resolution of the budget situation on the last day before a lapse in appropriations and as directed by Office of Management and Budget, a house announcement will be issued via e-mail and a notice will be placed on [www.bbg.gov](http://www.bbg.gov) with an update. If a government shutdown is ordered at midnight, all employees must report to work on the first regularly scheduled workday to ensure an orderly closure of non-excepted activities.

Non-excepted employees will perform only those tasks necessary such as:

- Completing and submitting your timesheet for work performed through December 9, 2016;
- Safeguarding property, records, and information;
- Securing files; making external contacts necessary to communicate the office's status, such as notifying parties of the cessation of normal business;
- Cancelling non-essential meetings, conferences, and other previously arranged business and travel;
- Documenting the status of cases and projects so that they can be resumed, transferred, or otherwise appropriately handled when the agency's operational status is regularized;
- Performing those tasks necessary to protect confidential information;

## BBG Shutdown Guidance

- Approving and processing all timesheets;
- Processing contractual stop work orders as needed, and
- Processing all unpaid and due bills on hand for obligations incurred prior to the shutdown.

It is expected that these activities will take four (4) hours.

Those who work atypical schedules, such as Saturdays/Sundays or weekday hours outside of 8:15 AM to 5:00 PM, should confer with their first-line supervisors to obtain a shutdown notice and carry out shutdown activities.

A contractor may continue to work provided that the contract or order has sufficient funds, and that an excepted employee is available to accept the supplies or services that are required by the contract or order and they have not been notified by the office of contracts to stop work.

After performing the functions necessary for an orderly suspension of non-excepted operations, employees designated as non-excepted will be furloughed. Managers are reminded that the Federal Government cannot accept voluntary services; therefore, work cannot be accepted from any non-excepted employees during a furlough. The agency will create a standard out-of-office message for use on the e-mail accounts of all furloughed employees.