



CONTINGENCY PLAN

Last Updated: August 2020

Scope

This plan of action is developed based on the latest guidance for shutdown planning and activities for this organization, as relayed by the Office of Management and Budget (OMB) and the Department. This plan is subject to amendment as developments require and provided such amendments are consistent with applicable law.

The Department is subject to seasonal variations and at one time up to 80 percent of employees may need to report to work during a furlough, but this would be on an intermittent basis. When Category I funding is no longer available those employees listed in this category will either be furloughed or moved to either Excepted or Exempted and will show in either Category III (Necessary to Perform Activities Implied by Law) or Category IV (Necessary to the Discharge of the President's Constitutional Duties).

The functions and activities described herein are to be executed in accordance with all applicable statutes, regulations, policies, and delegations of authority.

OMB provides guidance on how to prepare for and operate during a funding gap in OMB Circular A-11. The circular establishes two policies regarding the absence of appropriations:

- 1) A prohibition on incurring obligations unless the obligations are otherwise authorized by law; and
- 2) Permission to incur obligations “as necessary for orderly termination of an agency’s functions,” but prohibition of any disbursement (i.e., payment).

The Anti-Deficiency Act (<http://www.gao.gov/legal/lawresources/antideficiency.html>) prohibits agencies from incurring obligations in advance of, or that exceed, an appropriation. Thus, with certain limited exceptions, an agency cannot incur obligations when the funding source for the obligation is an appropriation that has lapsed. Any activities that would incur a new obligation must be suspended and are prohibited. Activities that are under way that would lead to an increased obligation or incurred costs must cease.

There are, however, limited exceptions to this general rule, including obligations incurred performing activities that protect life and/or property, incurred to accomplish an orderly shutdown of the normal functions of the agency, or where such payment activity is necessarily implied.

An agency must otherwise continue certain activities despite a lapse in their appropriations because the lawful continuation of other funded or excepted activities “necessarily implies” that these additional activities will continue as well. A "necessary implication" can arise when an

agency needs to incur obligations, even though there has been a lapse in the appropriation against which those obligations would be charged, in order to implement:

- 1) An “orderly shutdown” when there has been a lapse in appropriations (as the Department of Justice has explained, “authority may be inferred from the Anti-deficiency Act itself for Federal officers to incur those minimal obligations necessary to closing their agencies”);
- 2) "Excepted" activities including functions:
 - a. Authorized by statute or other legal requirement expressly authorizing an agency to obligate funds in advance of appropriations;
 - b. That address emergency circumstances such that the suspension of the function would imminently threaten the safety of human life or the protection of property;
or
 - c. That are necessary to the discharge of the President’s constitutional duties and powers.
- 3) Congressionally authorized or appropriated functions for which Congress has provided funding that remains available during the lapse (including funds already obligated from the current fiscal year) where the suspension of the related activity (during the funding lapse) would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation.

Farm Production and Conservation (FPAC)

Farm Service Agency (FSA)
Natural Resources Conservation Service (NRCS)
Risk Management Agency (RMA)
FPAC Business Center (FPAC BC)

Purpose and Plan Execution

This Contingency Plan for Operations (Plan) is a plan of action to execute an orderly shutdown of certain Farm Production and Conservation (FPAC) Mission Area operations in the event of a funding lapse. This Plan also provides for certain operations to continue. This Plan will be implemented after direction from the U.S. Department of Agriculture (USDA).

The FPAC Mission Area including the Farm Service Agency (FSA), Natural Resources Conservation Service (NRCS), Risk Management Agency (RMA), and the FPAC Business Center (FPAC BC) will begin implementation of this Plan on the morning of the first working day following the lapse of appropriations. All FPAC personnel will be advised to report to their assigned duty stations to prepare for the orderly cessation of operations no longer funded.

Shutdown activities unique to FSA, NRCS, RMA, and FPAC BC are the responsibility of the respective agency heads consistent with this Plan and are reported to the FPAC BC's Deputy Chief Operating Officer who serves as the Mission Area's Plan Coordinator.

The FPAC BC provides a broad range of mission support services and other functions to FSA, NRCS, RMA, and the FPAC BC itself. Any shutdown activities will be coordinated with those agencies.

FPAC Activities During a Lapse in Appropriations

FPAC activities during a lapse in appropriations are designated in one of four categories which indicate his/her responsibilities during shutdown:

Exempt Activities

Employees that are fully funded during a lapse in appropriations are exempt employees. Examples of these funds include mandatory funding and advanced collections of reimbursements. These employees continue working during lapse in discretionary program funding. In addition, employees who are performing functions related to the protection of life or property are "exempted." NRCS classifies Emergency Watershed Program employees (working on disaster response and construction) and Watershed and Flood Prevention Program employees (working on active construction contracts and whose job includes aspects that could have a life and property-related job function) as "exempted."

Partially Exempt Activities

Employees that are funded by multiple funding sources may be partially exempt to the extent their salaries are paid with non-appropriated funding. These employees continue working on exempt activities then revert to excepted, excepted on call, or furlough status.

Excepted and Excepted On-Call Activities

Employees who are regularly performing functions related to the protection of life or property or those with funding that remains available during the lapse in appropriations where the suspension of the related activity would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation even if those activities are not full time (the employee reverts to furlough status when the activities are complete). This category should represent the minimum number of employees required to implement approved excepted work. Generally, supervisors call on these employees to perform excepted activities on an as-needed basis then revert to furlough status.

Furloughed Employees

All other employees will be placed on furlough. Furloughed employees are responsible for monitoring OPM and OMB websites regarding when to report to duty.

See the list that follows of FPAC programs and positions that are exempt, partially exempt, excepted, and excepted on call.

General Provisions

This Plan is a framework to sustain essential activities during a lapse in appropriations.

1. FSA, NRCS, RMA, and FPAC BC agency heads have identified potential exempt, partially exempt, excepted, and excepted on-call activities and communicated that information through their respective Chiefs of Staff (or designee) to the Plan coordinator.
2. Updated phone trees for employee contact information during shutdown should be verified and maintained in preparation of a lapse of funds. Agency Chiefs of Staff (or designee) should maintain call trees at all times including at least one week before a shutdown.
3. Key FPAC leadership including Chief Operating Officer, Administrators, Chief, Deputy Chief Operating Officer, Associate Administrators, Associate Chief, Agency-level Chiefs of Staff, Deputy Administrators, Deputy Chiefs, Division and Center Directors, RMA Regional Directors, State conservationists, and State Executive Directors, and exempted, partially exempted, excepted and excepted on-call employees are authorized to use Government-issued cell phones, laptops, and other devices for authorized Plan purposes. All other employees must leave government-issued cell phones, laptops, and other devices in a secure location at their duty station. As instructed, furloughed employees are not permitted to access government email or use government phones during the period of their furloughed status.

4. All employees will be notified of their status (exempt, partially exempt, excepted or excepted on call, or furlough) prior to a lapse of funds. Notifications may occur through FPAC BC's Human Resources Division (HRD) as they update the status of all employees.
5. All employees are responsible for reporting to his/her supervisor on the first work day of a shutdown to confirm their completion of the shutdown checklist distributed by FPAC BC's HRD. All employees must ensure their space is clean and free of perishable foods and trash, equipment is powered down, windows closed, and documents and equipment secured. In limited circumstances and with prior approval of their supervisor, employees whose physical space is secure and who are on approved telework may confirm completion of the shutdown checklist with their supervisor by telephone. Generally, employees whose telework day falls on the first day of the shutdown will report to the office to complete shutdown procedures.
6. Orderly shutdown is expected to take place as expeditiously as possible, up to four hours, pursuant to this Plan and Department guidance.
7. Chiefs of Staff (or designee) for FSA, NRCS, RMA, and FPAC BC are responsible for confirming that all furloughed employees have completed shutdown activities by 2pm on the first day of a shutdown. The Chiefs of Staff report shutdown confirmation to the FPAC Deputy Chief Operating Officer (DCOO) as Plan Coordinator. Any reporting will be consistent with any requirements established by the Department.
8. Furloughed employees will monitor the status of the Government shutdown and agency operations via USDA's Be Prepared website (<https://www.dm.usda.gov/beprepared>), the Office of Personnel Management website (www.opm.gov), OMB website (<http://www.whitehouse.gov/omb>), and local media.
 - a. On the first business day following enactment of appropriations either through a full-year appropriation or Continuing Resolution (CR), employees are required to return to work. Notification to return to work may be given only through a status update on the USDA Be Prepared, OPM, or OMB website or through local media. Employees should not expect written notification or notification by phone.
 - b. Employees who are unavailable to report to work on the first business day due to scheduled or unscheduled annual leave, illness, or other reason, must notify their supervisor within 24 hours following enactment of appropriations.

Communications Timeline

The FPAC Mission Area has prepared a Plan for continued operations, where appropriate, and an approved shutdown of activities in the event of a lapse in appropriations. These timelines apply across the FPAC mission area; however, these timelines are subject to change based on Departmental guidance and expectations that may arise at the time of the shutdown. Agency specific timelines, instructions, and additional information that follows.

Prior to the shutdown

- 1) **One week prior to possible shutdown.** FSA, NRCS, RMA, and FPAC BC senior leadership and chiefs of staff (or designee) identify employees proposed for exempt, partially exempt, excepted and excepted on-call status with written justification. Each Chief of Staff will relay the names of employees and category to the Plan Coordinator who leads execution of shutdown planning for the mission area to obtain approval and confirmation through the FPAC Under Secretary.
 - a) **All proposed exempt and partially exempt employees are to be identified by the following information** which is needed to ensure notification as applicable by supervisors and/or FPAC BC's HRD:
 - i) Position/Title/Location, Employee Name, Work Email Address, Supervisor, Supervisor Email Address, Building Access Needs at NHQ or other locations where access may be restricted, Whether Activity is fully or partially exempt and related justification; and
 - ii) Employees should be identified in compliance with applicable human resource regulations and notified of their exempt or partially exempt status only after the list has been approved by the FPAC Under Secretary's Office.
 - b) **All proposed excepted or excepted on-call employees** are to be identified by the following information which is needed to ensure notification as applicable by supervisors and/or FPAC BC's HRD:
 - i) Position/Title/Location, Employee Name, Work Email Address, Supervisor, Supervisor Email Address, Building Access Needs at NHQ, Activity Level during Days 1-30 (for excepted and excepted on call) and if they will be engaged in protection of life or property, those activities with funding that remains available during the lapse in appropriations where the suspension of the related activity would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation or whose presence will be required to perform functions associated with the orderly cessation of agency activities; and
 - ii) Employees should be identified in compliance with applicable human resource regulations and notified of their excepted status only after the list has been approved by the FPAC Under Secretary's Office.
 - c) **In instances where a policy decision is made to allow certain employees not engaged in work that protects life or property, those activities with funding that remains available during the lapse in appropriations where the suspension of the related activity would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation or whose presence is not otherwise required to continue work through a shutdown, a special Anti-Deficiency Act (ADA) Exception is needed.** ADA exceptions must be approved by the Office of Budget and Program Analysis (OBPA), and the Office of General Counsel (OGC) and the FPAC

COO or Plan administrator must be notified for implementation purposes. ADA Exceptions do not “automatically renew” and must be reapproved in writing for each shutdown incidence.

- d) **FPAC BC’s HRD will review its internal shutdown procedures and associated guidance, notifications,** and other relevant information to ensure appropriateness for specific circumstances for upcoming possible furlough (i.e. timing within payroll cycle for time and attendance, leave guidance, etc.).
- 2) Two to three working days prior to possible shutdown:
 - a) **When the list of exempt, partial exempt, excepted, and excepted on call employees is confirmed by the Under Secretary’s Office, FPAC employees are notified of their appropriate status and subsequent expectations during shutdown.** Notifications should be completed by supervisors but may also occur through FPAC BC’s HRD as they update the status of all employees.
 - b) **As appropriate, a teleconference should be held with FPAC agency leadership and FPAC BC personnel to provide advance notice to the agency Labor-Management Forum and union leadership regarding their role in preparing bargaining unit employees should a shutdown occur.** Personnel included, but not limited, to this teleconference should include the following: FPAC Chief of Staff, FPAC BC Chief of Staff, Chief Human Capital Officer; Branch Chief, Workforce Operations, and Section Chief, Employee and Labor Relations Services
 - c) **Agencies may conduct shutdown preparation meetings with appropriate levels of management and employees.** The would include NHQ meetings as well as meeting with and/or within regions, districts, and/or States as is appropriate within the respective FPAC agency.
 - 3) When approved by the Department: Notification from or on behalf of each FPAC agency head to employees advising them to make preparations for possible shutdown. The letter will include reminders regarding cancelling planned travel and meetings, completing timesheets, and providing shutdown checklists that will need to be completed as soon as possible upon arriving at work on the first day of shutdown. This activity should not exceed four hours.
 - 4) One business day prior to possible shutdown: FPAC agencies may hold leadership teleconferences and meetings where the appropriate senior leadership will review final preparations and responsibilities/expectations in the event of a shutdown. Agencies can also continue to hold meetings to communicate information received and approved for distribution from the Department, OPM, OMB, and other relevant sources.
 - 5) When provided by the Department: Letter (email) from the Assistant Secretary for Administration, advising employees to make preparations for a shutdown.

During the Shutdown

- 1) Day 1 – First work day of the shutdown after lapse in appropriation: Furlough notice and relevant guidance and attachments sent to all furlough employees (i.e., employees not deemed exempt, partial exempt, excepted, or excepted on call) via email by or on behalf of each FPAC agency head. At the direction of the Under Secretary, each agency head will notify employees to begin shutdown procedures.
 - a) Furlough employees will complete shutdown activities defined on checklists as soon as possible upon arrival at work. When completed, they will be placed on furlough. Exempt, partially exempt, excepted, and excepted on-call employees will be notified by their supervisors of their responsibility to remain for duty, as appropriate, until dismissed.
 - b) Supervisors must complete the supervisor shutdown checklist and report status (email or phone) to their supervisor within four hours of initiating shutdown activities.
 - c) Supervisors notify the FPAC BC’s HRD via email of any employees who did not receive furlough notification due to long term leave, travel outside of the country, or any other reason which prevented receipt.
 - d) Chiefs of Staff (or designee) verify the completion of shutdown activities within their agencies and report status appropriately to the Plan Coordinator who relays shutdown of the mission area to the Under Secretary’s Office.
- 2) Day 2 - Day 4: Only employees who were previously identified as required to perform functions necessary for orderly shutdown of administrative or program activities will report for work as needed. Employees performing work identified as exempt, partially exempt, excepted or excepted on call continue to work.
 - a) As each shutdown function is completed, the excepted employee must notify completion up the chain of command to the appropriate FPAC leadership.
 - b) Each employee whose shutdown function is completed will be furloughed immediately and formally notified by their supervisor or appropriate FPAC leadership if the supervisor is not available or furloughed.
- 3) Day 5 and beyond: Employees performing exempt, partial exempt, excepted, and excepted on-call work will continue operations, as appropriate. As applicable, employees completing shutdown functions continue tasks for each succeeding day until the FPAC agency head determines the shutdown is complete. There will be periodic communications between the agencies and the Under Secretary’s Office on the status of the shutdown.

Prohibited Activities During Shutdown

Unless determined to be exempt, partial exempt, excepted or excepted on call, the following are generally prohibited activities for all furloughed employees:

- 1) Completion of any activities that are mission related.
- 2) Awarding of contracts and/or small purchases.

- 3) Hiring of personnel or extending the appointment of personnel whose appointments have expired if doing so would result in unauthorized obligation of funds.
- 4) Travel of persons and/or transportation of things. Persons in travel status on the first day of shutdown must return to their duty stations as soon as possible.
- 5) Attending or scheduling meetings, conferences, workshops, and seminars.
- 6) New or continued employment of experts and consultants - such actions will incur a financial obligation which is prohibited during shutdown.
- 7) Attending or scheduling training classes and/or other training activities.
- 8) Use of equipment and utilities not related to excepted activities where their use creates liabilities for the government beyond those existing on the date of the funding lapse.
- 9) Use of a government-owned mobile device by furloughed employees is prohibited.
- 10) The use of vehicles by Agency furloughed personnel or non-Federal partners.
- 11) Volunteering for functions related to official duties.
- 12) Smartphone usage – Do not respond to any e-mails unless authorized.
- 13) Laptop usage – Do not use the laptop until authorized.
- 14) Office Phone messages – Do not check your office land line phone or your office cell phone for messages until authorized.
- 15) Any work, of any kind, unless instructed directly from your supervisor as part of a recall or back to work activity.
- 16) Furloughed employees are prohibited from performing official duties and will not be compensated for any unauthorized work. Failure to follow these instructions may result in disciplinary action.

FPAC Mission Area Shutdown Committee

A Shutdown Committee will guide the transition from full operational status to shut down. The Committee is responsible for overseeing the implementation of the Plan; monitoring and responding to exempt, partial exempt, excepted, and excepted on call activities continuing under a shutdown; providing related policy and procedural direction; ensuring coordination and consistency across functional areas. The FPAC Shutdown Committee includes:

- FPAC Chief of Staff to the Under Secretary, Chair
- Deputy COO, FPAC BC, Plan Coordinator and Vice Chair
- Associate Chief, NRCS
- Associate Administrator, FSA
- Associate Administrator, RMA
- Chief Human Capital Officer
- Budget Officer (on call, as appropriate)
- Chief Financial Officer (on call, as appropriate)
- Assistant Chief Information Officer (on call, as appropriate)
- Director, External Affairs Division (on call, as appropriate)
- Director, Management Services Division (on call, as appropriate)
- Director, Acquisitions Division (on call, as appropriate)
- Director, Grants and Agreements Division (on call, as appropriate)
- Director, Homeland Security Division (on call, as appropriate)

Days 1-5 of a shutdown: FPAC Agency Heads and Senior Leadership as identified, and the Shutdown Committee may be designated as excepted or excepted on-call, if not already designated as exempt by Agency needs, and will report to work. Executive Assistants to Agency Heads and other FPAC senior leadership, as applicable and approved, may be designated as excepted on-call. Excepted employees may be identified for selected days or all days of shutdown.

- Employees whose work is critical to the protection of life or property or performing those activities with funding that remains available during the lapse in appropriations where the suspension of the related activity would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation will also be excepted, and they may not necessarily participate in shutdown activities.
- Other employees identified and approved as excepted will also be identified, however they may not necessarily participate in shutdown activities.

After day 5 of a shutdown: Only the following employees may be designated as excepted due to the responsibility of the shutdown committee as determined by the Under Secretary:

- Agency Heads and Select Agency Senior Leadership
- Agency Chiefs of Staff
- Chief Financial Officer
- Budget Director
- Chief Acquisitions Officer
- Chief Human Capital Officer
- Assistant Chief Information Officer
- Employees whose work is for the protection of life or property
- Employees whose work is for those activities with funding that remains available during the lapse in appropriations where the suspension of the related activity would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation
- Other employees identified and approved as excepted due to policy determination

All other employees on the Committee or Team will be designated as excepted on-call and will be in furlough status unless called in to report. In addition, Agency Heads can make recommendations and determinations for employees after consultation with the Under Secretary, FPAC BC Human Resources and FPAC BC Budget Division.

Mission Support: Roles and Responsibilities

Information Technology

The FPAC Assistant Chief Information Officer (ACIO) is responsible for ensuring an orderly shutdown of Information Technology (IT) Systems, as well as making sure excepted IT systems are available and operating with a high level of confidence:

- All government equipment (computers, laptops, iPhones, iPads, etc.) must be secured and may not be used during the shutdown except by those in exempt, excepted and excepted on-call. Senior leadership (including the Administrators, Chief, Associate Chiefs, Associate Administrators, Chiefs of Staff, Deputy Chiefs, Deputy Administrators, Regional Conservationists, State Executive Directors, Division Directors, and State Conservationists) should retain a mobile device.
- All employees, including senior leadership placed in furlough status, may not remotely access government networks or applications or use government equipment.
- Only excepted IT Systems, as identified by agency business leaders, and approved by the Associate Chief or Associate Administrator, with concurrence of the Under Secretary, will be available and operational.
- All non-excepted websites will be off-line and users will be redirected to a common splash page stating that the information may not be up-to-date. If the website is public facing, it should also state the Agency may not be able to respond to inquiries until appropriations are enacted.
- Employees should reset network and other system specific passwords to ensure expiration does not occur during shutdown.
- The FPAC ACIO will provide ongoing monitoring to ensure availability and proper functionality of excepted systems during shutdown.
- The FPAC ACIO will identify the minimum information technology support required to maintain excepted IT services, systems and infrastructure.
- All IT systems that are excepted during shutdown will be minimally maintained (operations & maintenance) with no development, modernization and enhancement occurring.

FPAC Excepted IT Systems

The identification of IT excepted systems is dependent on an assessment of needs to support any activities identified as excepted by the Associate Chief or Associate Administrators with concurrence of the Under Secretary. If an activity or program is determined to be excepted, the associated applications and systems necessary to support those activities will be identified and categorized as excepted.

The approval of any special ADA exceptions, while in the midst of shutdown, will result in a need for the FPAC ACIO to complete a new assessment and determination of systems needed to support activities that fall under a special ADA exception, and approved through the DCOO.

Human Resources

In the event of a lapse in appropriations and government shutdown, Human Resources must, in conformance with Departmental directives:

- Ensure notice is provided to all non-excepted employees that they are subject to being placed in furlough status.
- Ensure advance notice to all collective bargaining units is provided, as appropriate, concerning shutdown and furlough related topics. Initiate impact and implementation bargaining as appropriate.

- Inform individuals on detail to FPAC agencies from non-Federal organizations (IPA assignments or contribution agreements) that they are subject to shutdown in the same manner as permanent employees.
- Inform all FPAC employees on detail to Federal or non-Federal organizations that they are subject to furlough in the same manner.
- Inform temporary employees and students that they must be furloughed in the same manner as permanent employees.
- Inform volunteers (e.g., NRCS's Earth Team) that volunteering is not an excepted activity.

FPAC Supervisors

In the event of a lapse in appropriations and government shutdown, FPAC supervisors must, in conformance with Departmental directives:

- Provide employees on a non-duty day for the first day of shutdown with activities they are required to complete as part of an orderly shutdown.
- Make prior arrangements with employees on telework, alternate work schedules, or leave without pay under Family and Medical Leave Act (FMLA), to complete shutdown activities.

Travel

- Prior to shutdown, all vouchers from previous travel must be submitted and approved to help ensure payment prior to systems being shut down. If travel is taken close to a possible shutdown, payment may not be made until after the shutdown.
- During an extended shutdown event, government issued credit card companies will use a forbearance clause and will work with the government and employees on payments once returned to normal business operations. FPAC employees whose government issued credits cards are in good standing will not move to delinquent status; however, if an employee was in delinquent status prior to the shutdown, then the account will continue in delinquent status until payment is made.
- Generally, all FPAC employees in travel status or on detail in another location must return to official duty stations as soon as possible once notified to begin shutdown activities.
- Employee change of duty station actions may be delayed, depending upon the individual circumstances.

FPAC Contracts, Grants, Agreements and Asset Management

Contracts, Grants and Agreements

- One week prior to a possible shutdown, FPAC agency State and NHQ leadership must work with appropriate Contracting Officers and Contracting Officer Representatives in the FPAC BC to identify all contracts that are excepted and must remain in full effect to ensure the safety of life and/or property or to support those activities with funding that remains available during the lapse in appropriations where the suspension of the related activity would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation. After OMB guidance is provided, contracting officers will notify those contractors who will continue to perform excepted work.

- Work under any FPAC agency authority and requiring that agency's support, oversight, assistance, etc. will cease during shutdown unless determined to be an excepted activity by the FPAC agency heads.
- For previously obligated and awarded contracts, grants, and agreements that are identified as excepted work, where it is not critical that an FPAC agency provide oversight, supervision, support, or other assistance to the contractor's or grantee's continued performance during the lapse of operations, those contractors or grantees may continue within the confines of agreed to and paid for work.
- Contractors and grantees may not continue to work if they use FPAC agency space, government-issued devices, or any asset owned or leased by an FPAC agency unless the use of these assets are necessary to perform excepted activities.
- Identify any Federal procurement actions (e.g., solicitations, bid openings) that may expire during a shutdown, and take appropriate action to extend, delay, or cancel those actions.
- See Appendix C for additional excepted contracts guidance.

Subject to adjustment due to any updated Departmental Guidance that will be distributed by the FPAC Mission Area Chief Contracting Officer (MASCO):

Excepted contracts

States and NHQ will identify Federal contracts (governed by the Federal Acquisition Regulation) that must remain in full effect to ensure the safety of life and/or property (i.e., excepted contracts).

- All appropriate senior leaders must identify the contracts that are proposed to be excepted and must continue.
- The Department of Justice and OMB have defined such contracts to be those for which the suspension of the function would imminently threaten the safety of human life or the protection of property.) To be excepted, the following two conditions must exist:
 - A reasonable and articulable connection between the obligation (i.e., a contract or grant) and the safety of life or the protection of property, **AND**
 - Some reasonable likelihood either the safety of life or the protection of property would be compromised in some significant degree by failure to carry out the function in question – and the threat to life or property can be reasonably said to be near at hand and demanding immediate response.
- Contracting Officers will notify contractors/vendors who have excepted contracts that their contracts will continue.
- Include in the notification the name and contact information for the Contracting Officer that will serve as the point of contact on the excepted contract during shutdown.
- States will notify NHQ of excepted contracts proposed to remain in effect. This notification will be sent to the Acquisitions Division Director (ADD), MASCO, and Agency Associate Administrator, Associate Chief, or Deputy COO, as appropriate. No specific format is required, but the following information should be included:
 - Contract number.
 - Contractor contact information.
 - Contracting Officer.
 - Contracting Officer Technical Representative.
 - Location of work to be performed.
 - Brief description of project.

- Description of work to be performed.

Note: This notification cannot be issued to contractors until FPAC BC, FSA, NRCS, and RMA receive notification from OMB.

Non-excepted contracts (i.e., where there is no threat to life or property)

Upon the notification of the Government shutdown, Contracting Officers will:

- Issue notifications to suspend/stop work for non-excepted contracts where:
 - Performance would incur costs to the Agency.
 - Access to agency office locations would be prohibited.
 - Supervision, oversight, or support by the Agency is required.
 - Continuation would be a waste of taxpayer money (i.e., janitorial services).
- Notification to contractors will be in accordance with Federal Acquisition Regulation Subpart 42.13.
- Contracting Officers notify the ADD and MASCO via e-mail that all stop work/suspension notices have been issued as required.

Note: The Integrated Acquisition System (IAS) will not be operational for non-excepted contracts and all actions for non-excepted contracts will be required to be completed manually. Upon return to work, all IAS actions for non-excepted contracts will then be entered into the system.

Other Acquisitions Guidance

Routine, on-going operational and administrative activities relating to contract or grant administration (including payment processing) cannot continue when there is a shutdown. Employees who perform activities associated with contract or agreement/grant administration (including oversight, inspection, payment, or accounting) should generally not continue work during shutdown, unless performing functions related to an excepted contract.

Extension or Cancellation of Procurement Actions

Contracting Officers will identify any Federal procurement actions that may expire during shutdown.

- Contracting officers, in conjunction with Contracting Officers Technical Representative, must make a determination on contracts with options that may need to be exercised before the shutdown occurs.
- Contracting officers must review and identify impacts of shutdown on any solicitations, bid openings, etc., that will expire, or that are scheduled to be conducted during the potential shutdown period.
- Contracting officers will take the necessary actions to cancel, extend, or delay any of the above actions.

Contractors Performing Work On-Site at Agency Offices/Locations:

Communicate possible suspension of work to contractor program managers for personnel working on-site at agency locations.

- Contracting Officers will notify appropriate Contractors' program managers of the potential to suspend/stop work on non-excepted contracts in the event of a shutdown.
- Contracted staff should take appropriate actions on the last day of funding in anticipation of a potential shutdown.

- If/when a shutdown occurs, and upon the Contracting Officer's issuance of the suspension/stop work notice, the Contractors' program/project managers will notify their respective contracted employees.

Examples for Grants and Agreements (including Farm Bill program funded)

- For previously-awarded and obligated grants and agreements (including Farm Bill program funding):
 - These instruments remain in effect.
 - Partners/landowners/recipients should be notified they can continue the work of these agreements/grants to the extent that they can do so without any technical or other assistance from agencies.
 - The notification should also indicate that until agency employees return and all operations are fully functional, payments will be delayed; therefore, any actions they take will be at their risk as no certifications, reimbursements, etc., will be conducted or processed.
- For previously awarded/obligated agreements with awardees who may enter into third-party agreements and the support and assistance by agencies is not critical:
 - Parties to third-party agreements make an award at their own risk as no technical assistance or administrative actions (i.e., reimbursement) from the agencies can be conducted during shutdown. Only at the time that all Government functions are once again operational would agencies be able to provide assistance and process payments.

Depending upon the length of the shutdown, agencies may need to issue supplemental guidance around excepted contracts, grants and agreements.

Management Service

Real Property

- All real property owned or leased by an FPAC agency will not be available for use through the furlough unless utilized by an excepted or exempted employee or unless covered by the partner reimbursable agreement exception below. All expenses for fuel, utilities, supplies, etc., must be kept to the minimum required to perform excepted work.
- In locations where an FPAC agency shares space with non-Federal partners and the FPAC agency bears the costs for the space, partners will be prohibited from entering and using the office during the shutdown. Partners will not be able to use/access any FPAC agency equipment, files, and other property.
- If the partner's space is segregated and separate from USDA space and they are paying all costs through a reimbursable agreement with NRCS, FSA, or RD, their operations may continue; however, they will still be prohibited from accessing and using Federal files, computers, other equipment, etc. All FPAC agency equipment, files, property and any segregated and/or separate space will be secured and locked for the duration of the shutdown.
- In leased space, notify lessor about lapse in funding and reduce support services such as janitorial service (unless there are excepted employees in the building). Be sure trash is removed before lapse begins.

- Leases will not be terminated in the event of shutdown; however, actions must be taken to secure real and personal property and conserve energy.
- Actions should be taken to keep utility costs to a minimum during shutdown period.
- Utilities, such as heating, should be maintained at a minimum to prevent property damage (such as frozen pipes).
- Advise employees and lessor to secure the premises and power down systems (such as HVAC) and lighting as per a Federal holiday. Computers and other electronic items should be locked in a secure area.

Non-fully Serviced Leases

- Measures should be taken to ensure janitorial services are available in offices that janitorial services are not provided in accordance with the lease agreement.
- Contact utility services to prevent if possible, the suspension of utility services during the lapse of appropriation.

Personal Property

- All personal property (vehicles, survey equipment, copiers, etc.) owned or leased by an FPAC agency will not be available for use through shutdown unless utilized by an excepted employee while performing excepted activities. All expenses for utilities, supplies, etc., must be kept to the minimum required to perform excepted work and to conserve energy.
- Partners are prohibited from access to or use of FPAC agency equipment, files and other property. All FPAC agency equipment, files, space and property (including segregated and separate space) will be secured and locked for the duration of the shutdown.
- The use of vehicles by non-Federal partners or other non-excepted personnel is prohibited.
- Fleet cards will only be available for excepted activities during shutdown.
- Employees using FPAC agency owned or leased vehicles must ensure they maintain the logs, as well as all receipts during their excepted work period.
 - All expenses should be kept to the minimum required to perform excepted services.
 - Fleet vehicles should be parked, and equipment secured at the designated garage(s) or authorized location(s) to prevent theft/damage, unless required for excepted functions.
- All supervisors must identify measures to secure records, personal property, real property, and facilities that will be maintained and protected during shutdown.

Budget and Financial Management

Budget and Financial Management will work in conjunction to centrally manage the spending chain process for excepted activities where obligations and payments need to occur. The Financial Management Modernization Initiative (FMMI) System will be available to support exempt and excepted activities as needed by agency programs.

Time and Attendance

As directed, all FPAC employees should complete their timesheet for the pay period in which the shutdown is occurring, timekeepers must verify those timesheets, and managers/supervisors will be given further information from the Human Resources Division.

Employees who are in excepted and excepted on call status and work during shutdown will be provided guidance from the Human Resources Division on how to record their hours during the shutdown, as guidance may change due to the National Finance Center's system and support.

Post Furlough Activities

All employees are responsible for following guidance on OPM's and OMB's website related to status. Employees will be required to return to work as directed by OPM and/or OMB when an appropriation is enacted, either by a full-year appropriation or a CR.

Agency Specific Guidance for Shutdown

Natural Resources Conservation Service

Conservation Programs

During a shutdown, NRCS will deliver programs with mandatory funding and those with adequate carryover to support operations. For discretionary funding, NRCS will prioritize keeping field level operations available for its customers. NRCS will implement a continuous monitoring process to ensure the status of funds are known on a daily basis and assess funding needed to keep field level offices and those that provide direct support to field offices operating. In the event that funding is no longer available for discretionary programs NRCS will:

- Notify applicable customers of discretionary program services that will not be available during shutdown.
- Complete program activities that can be finished prior to the shutdown, such as processing payments for completed work, or completing planning or design where a TSP or other contractor will be conducting the work without NRCS oversight.
- Cancel near-term appointments with customers, if applicable.
- Submitting payments for processing before close of business on the last day for which a program is funded (that is, by close of business the day before a possible shutdown).

Emergency Watershed Protection Program

- Activities associated with exigencies under the Emergency Watershed Protection Program (EWPP) are excepted because they perform functions necessary for emergencies involving the safety of human life or the protection of property. This includes carrying out Damage Survey Assessments after an event to determine if a potential project is eligible for EWPP assistance and is classified as an exigency and access to DamWatch (dam monitoring tool) and possibly other systems.
- At any given time, NRCS may have a number of EWPP exigency projects being implemented across the nation. During shutdown, these projects will continue to be serviced

by designated excepted and/or excepted on-call or episodic employees. If a state has one or more EWPP exigency projects, a limited number of other personnel may be needed to direct, coordinate, and support these excepted and/or excepted on-call or episodic employees and their activities in the field.

- One week prior to a possible shutdown, the agency will identify the number of excepted and/or excepted on-call or episodic employees needed to perform critical work associated with EWPP exigencies. The list will be maintained by the Deputy Chief for Management and Strategy. A communications protocol will be implemented to support these excepted activities from field to state POC, to NHQ, and vice versa. Once an EWPP exigency project is completed, and if there are no further EWPP excepted activities for the employee(s) working on that project, the employee(s) will be placed in furlough status.
- Natural events that result in the need for EWPP assistance are dynamic and may occur after shutdown has begun. When warranted, additional employees may be called back to duty in excepted and/or excepted on-call or episodic status to carry out EWPP Damage Survey Assessments and to implement eligible EWPP exigency projects.

Plant Materials Centers

Certain Plant Materials Centers (PMC) activities are considered excepted because they are required to protect Federal property (i.e. - facilities and the germplasm). PMC excepted activities include:

- Checking PMC facilities, especially critical systems such as seed coolers, which store mission-critical germplasm for conservation activities.
- Addressing critical, unexpected facility maintenance needed to protect Federal property.
- Maintaining potted plant materials in greenhouses or outdoor production areas by hand watering or checking that automated systems are operating properly.
- Maintaining seed, plant breeder and foundation production areas. Irrigation activities, chemical treatments, or weed control should be performed only if absolutely required to maintain the purity or viability of the seed or plant production.
- Harvesting breeder and foundation seed fields required to preserve the purity of the germplasm so that unharvested seed does not contaminate existing seed production fields.

The employees required to perform excepted activities will typically be one person per PMC. Time requirements will vary depending on the activities and volume at each location. Additional employees will be designated as excepted and/or excepted on-call or episodic if needed. Excepted and/or excepted on-call or episodic employees will be in furlough status when not performing excepted activities.

Some excepted activities at PMCs vary seasonally due to the seasonal nature of seed and plant production, requiring different amounts of staff and time to complete. One week prior to a

possible shutdown, the agency will identify the number of excepted and/or excepted on-call or episodic employees needed to perform work. The list will be maintained by the Deputy Chief for Management and Strategy. The number of employees and time required to perform excepted activities will be kept to a minimum.

- A communications protocol will be implemented between PMCs and National Headquarters (i.e. - the National Program Leader—Plant Materials) to support excepted activities at the PMCs.

Risk Management Agency

RMA is partially funded through mandatory funding that falls under the exception criteria during a lapse in appropriations. As a result, RMA will continue essential operations utilizing the \$7 million in funding targeted to support Program and Financial Integrity as well as statutory obligations such as prompt implementation of the Agricultural Improvement Act of 2018. RMA will implement a continuous monitoring process to ensure the status of funds are known on a daily basis.

RMA will fund a partial staff presence of approximately 155 exempted employees for an estimated 6-8 hours per day. These exempted employees are essential to ensure the following functions:

1. Continued escrow funding;
2. Accurate processing of Approved Insurance Provider financial operations;
3. Continued program payments and offering of crop and livestock insurance policies including Dairy Revenue, Livestock Risk Protection, and Livestock Gross Margin;
4. Maintaining the Federal crop insurance price support function and needed updates to business systems to ensure appropriate payments and insurance offers are made;
5. Approval of current crop year written agreements;
6. Compliance activities such as reviewing Office of Inspector General Hotline complaints, Approved Insurance Provider Performance Reviews and general oversight of Approved Insurance Providers through the Standard Reinsurance Agreement;
7. Review of Large Claims, and
8. Continued implementation of the Agricultural Improvement Act of 2018.

If RMA exhausts non-discretionary funding, the agency will commence agency-wide shutdown with minimal excepted on-call staffing. At that time, RMA will not maintain any routine daily activities and will not maintain any staff to pay contractual obligations or perform regulatory functions.

FPAC Business Center

Generally, FPAC BC will operate to fully support Agency exempt, excepted, and excepted on-call programs and activities. The Shutdown is led by the Deputy Chief Operating Officer and the outlined Division Directors across the Agency. These employees will be excepted from the lapse of appropriation to ensure a proper shutdown. The necessary number of employees will be dependent on the USDA policy.

The FPAC BC will fully support all exempt, excepted, and excepted on-call operations for FSA, NRCS, and RMA. Accordingly, the FPAC BC may return up to all employees on an exempt status depending upon the extent of work excepted by the agencies and the availability of mandatory funds to pay employees and have them work in exempt status. The Agency will monitor operating and use of available mandatory funding and adjust, as necessary, on a pay period basis.

Farm Service Agency

FSA employees will deliver exempt programs and activities that are funded with mandatory dollars and/or carryover funding. FSA will deliver discretionary-funded programs and activities that are necessary for the protection of property or where the suspension of the related activity (during the funding lapse) would prevent or significantly damage the execution of the terms of the statutory authorization or appropriation. FSA will prioritize keeping field level operations available for its customers.

Permissible activities include:

- Coronavirus Food Assistance Program
- Market Assistance Loans
- Provision of new Direct and Guaranteed Farm Operating Loans
- Servicing Direct and Guaranteed Farm Operating and Farm Ownership Loans
- Emergency Loans
- Farm Storage Facility Loans
- Service existing Conservation Reserve Program contracts
- Sugar Price Support Loans
- Dairy Margin Coverage
- Continued implementation of the Agricultural Improvement Act of 2018
- Agricultural Risk Coverage
- Price Loss Coverage
- Agricultural Risk Coverage Pilot
- Livestock Forage Disaster
- Emergency Assistance for Livestock, Honey Bees, and Farm-raised Fish Program
- Livestock Indemnity Program
- Noninsured Crop Disaster Assistance Program
- Tree Assistance Program
- Wildfires and Hurricanes Indemnity Program
- Emergency Conservation Program
- Emergency Forest Rehabilitation Program
- Dairy Indemnity Payment Program

Non-permissible activities include:

- New Conservation Reserve Program sign-up
- Grassroots Source Water Protection Program
- State Mediation Grants
- Reforestation Pilot Program
- Geographically Disadvantaged Farmers and Ranchers

- Feedstock Flexibility
- National Organic Certification Cost-Share Program