INSTITUTE OF MUSEUM AND LIBRARY SERVICES DIRECTIVE
Agency Operations in the Absence of Appropriations

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Effective Date: August 2015

I. PURPOSE

This Directive sets out the steps that the Institute of Museum and Library Services (IMLS or Institute) will take to ensure an orderly shutdown of agency operations in the event of a funding hiatus caused by the absence of appropriations.

II. BACKGROUND

Federal law provides that in the absence of appropriations:

> Federal officers may not incur any obligations that cannot lawfully be funded from prior appropriations unless such obligations are otherwise authorized by law.
>
> Federal officers may incur obligations as necessary for orderly termination of an Agency's functions, but funds may not be disbursed.[1]

Pursuant to Office of Management and Budget (OMB) Circular No. A-11 (2013), each agency must develop and maintain plans for an orderly shutdown in the event of the absence of appropriations. Within the guidance of the law and Circular A-11, the head of an agency must determine which activities are essential to operate the agency during an appropriations hiatus. While the agency head has some discretion in making these determinations, all actions must contribute to an orderly shutdown of the agency and give primary consideration to protecting life and safeguarding Government property and records. During an absence of appropriations, agency heads must limit obligations to those needed to maintain the minimum level of essential activities necessary to protect life and property.

Supporting policy statements and legal opinions must be submitted to OMB if the agency head estimates that more than one-half day would be needed to complete a shutdown or that the number of employees to be retained to protect life and property would exceed five percent of the number of employees on-board at the beginning of a hiatus less those exempt.

The agency must take necessary personnel actions to release employees in accordance with applicable law. This includes preparing employee notices of furlough and processing personnel and pay records in connection with shutdown furlough actions.

This plan is implemented and terminated upon notification from OMB.

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[1] The Attorney General issued two opinions in the early 1980s that the language and legislative history of the Anti-deficiency Act unambiguously prohibit agency officials from incurring obligations in the absence of appropriations ("Applicability of the Anti-deficiency Act Upon a Lapse in an Agency's Appropriations" (1980) and "Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations" (1981)). The Office of Legal Counsel of the Department of Justice issued an opinion dated August 16, 1995, that reaffirms and updates the 1981 opinion.

III. POLICIES AND RELATED PROCEDURES

A. General Policy Governing Agency Shutdown. It is the policy of IMLS that, in the event of a funding hiatus, the Institute will proceed with the orderly shutdown of operations, beginning on the first workday of the hiatus, and will limit all work activity to actions necessary for such a shutdown. It is estimated that such actions will require not more than one-half workday. Since it is assumed that such a hiatus would be temporary and of short duration, no action will be taken that will impede the orderly commencement of operations once funds are available. The Director or his/her designee will notify all office heads regarding which activities and personnel are designated as excepted and therefore exempt from the furlough, as well as the duration of each exemption. The Director of IMLS, who is appointed by the President and confirmed by the Senate, is not subject to the furlough. **Currently, IMLS is being led by an Acting Director, who is not appointed by the President and confirmed by the Senate.**

B. Policies Governing Information Technology Systems. During a shutdown, the Institute's mission-critical information technology systems will be maintained so that they are available to "excepted" employees and so that data isn't lost or damaged during the shutdown. During the shutdown there will be no helpdesk support available to non-excepted employees.

C. Policies Governing IMLS's Website/Social Media. The IMLS website, www.imls.gov, will continue to function. Support will be limited to technical problems which are remediable by excepted employee(s) or contractors from the Office of the Chief Information Officer. There will be no helpdesk or support for grantees, panelists, or the general public. A notification of the agency's closure will be prominently posted on the home page of the IMLS website, as well as the IMLS Facebook and Twitter pages, on the day the Institute is shut down.

D. Policies and Procedures Applicable to Furloughed Employees.

(1) On Annual Leave. Employees on approved annual leave will be notified that as of the completion of shutdown activities, all leave is cancelled for the duration of the shutdown period. Such employees will be furloughed for the full hiatus period and, when funds are restored, either returned to duty or placed on annual leave, as appropriate. Supervisors must make every effort to reschedule the annual leave cancelled due to a shutdown for use before the end of the current leave year, especially if such leave may be subject to forfeiture at the beginning of the subsequent leave year.

(2) On Sick Leave. Employees who, at the time of the lapse of appropriations, are on approved sick leave will not be permitted to continue in sick leave status during the funding hiatus.

(3) On COP Leave. Employees absent on continuation of pay (COP) leave in connection with a job-related injury at the time of the lapse of appropriations will remain in a COP status until determined to be fit for duty by a competent medical authority, or until COP leave totals 45 days, if the latter is earlier. If the hiatus remains in effect when the employee is determined to be fit for duty, he/she will be placed on furlough. At the end of the maximum allowable 45 days of COP leave, if the employee remains incapacitated, he/she will be placed on leave without pay and instructed to file an application with the Department of Labor for receipt of workers' compensation payments.

(4) Leave Use. No annual or sick leave may be granted during a funding hiatus.

(5) On Advanced Sick or Annual Leave. No advanced sick or annual leave is authorized for use during a funding hiatus. Upon a lapse of appropriations, such leave must be cancelled and the employee furloughed.

(6) On Travel. Employees on travel status, including those on travel in connection with training or details funded by IMLS, should be contacted by their supervisors and told that they will be furloughed as of the completion of the shutdown and may return to Washington, D.C. immediately. Such employees may choose to return home immediately, or they may decide (in consultation with their supervisor) to be furloughed at their travel sites to be immediately available for continuation of official business at the travel site when funds are restored. Such employees will be paid the appropriate per diem for travel to return to their duty station, whenever that return travel occurs. However, payment of salary and/or per diem will not be authorized for the furlough period except as provided for in the language of a subsequent appropriations law.

GSA SMARTPAY2 cardholders are not authorized to incur any additional charges (outside of charges incurred to return to Washington, D.C.) on their travel, purchase or centrally billed credit cards during the furlough period. Citibank will ensure that during such periods accounts will not age delinquent or be suspended or cancelled. During this time finance charges will not be assessed; however, Statements of Account will continue to be generated.

(7) At Local Training. Employees absent from the worksite in connection with training at local facilities must be advised that they will be placed on furlough for the duration of the funding hiatus.

(8) On Detail. IMLS employees on details to other agencies must be notified of the exact date and time at which they are to be furloughed, i.e., at the conclusion of the shutdown, and instructed to notify the appropriate officials of the agency to which they are detailed of their furlough status. Employees on details from other agencies must be notified of the absence of IMLS appropriations and instructed to notify the appropriate officials of the agency from which they are detailed of the IMLS hiatus.

(9) Telework. For purposes of this Directive, employees who telework are subject to the same policies and procedures as employees who do not telework. In the event of a government shutdown, all non-excepted employees will be furloughed, whether or not they telework.

IV. SHUTTING DOWN AGENCY OPERATIONS

The following actions will be taken to shut the agency down following a hiatus in funding:

A. Employees will be advised by the Director/Acting Director or her/his designee of a possible funding hiatus as soon as such an event is deemed likely. Supervisors will be responsible for notifying absent employees and any interns under their supervision of the impending shutdown as soon as possible.

B. All employees will be expected to report to work on the first workday of the hiatus, but will only engage in activities necessary to shut down the Institute in one half day. These activities may include: canceling meetings, panels, and other scheduled IMLS business; answering telephones and advising callers of the pending shutdown; issuing a press release advising the general public of the shutdown; securing files, confidential materials, official work papers and documents; documenting the status of projects so that work can be resumed with the least disruption possible; recalling employees from travel and advising those on leave that they will be furloughed; recording voice-mail messages informing callers of the shutdown; posting suitable “out of office” auto-replies on employee email accounts; updating their contact information in the Institute’s Emergency Notification System (IMLS Phone Tree or equivalent notification system); and powering down printers, copiers and computer systems in their offices. As part of the agency’s shut down activities, all furloughed employees must turn in their mobile telephones to the Office of the Chief Information Officer. Employees who are in a telework status should contact the OCIO to make appropriate arrangements.

C. Official files are to be secured as they would be if the Institute were to be closed for a long weekend. Employees should ensure that official papers for which they are responsible are secured.

D. Administrative processing of the payroll for the pay period will continue as necessary to ensure that employees are paid on time for all work performed prior to the shutdown. By the time of shutdown, all timesheets must be verified, validated, and certified through the final hour of the shutdown and transmitted to the National Business Center (or other authorized entity). Although "excepted personnel" (employees designated by the IMLS Director /Acting Director to work during the furlough, will not be on furlough status, they will not receive salary payments until after an appropriations bill has been signed into law. During the furlough, such excepted personnel should keep track off-line of the hours worked for later submission for payment once an appropriations bill has signed into law.

E. On the first workday of the funding hiatus, the staff of the Office of Human Resources will deliver individual furlough letters to office heads for distribution to their employees. Every effort will be made to deliver an individual furlough letter to each employee; however, it should be noted that an employee can be furloughed without first receiving a written notice of a decision to furlough. If prior notice is not feasible, then any reasonable notice is permissible. Examples of a reasonable notice include notification by e-mail or at an all-staff meeting.

F. Supervisors will instruct employees to limit their work activities to those functions necessary for the orderly cessation of operations. Once employees have completed their assigned shutdown tasks and received a furlough notice, they will be asked to leave the worksite. It is expected that most employees will be furloughed prior to 12:00 noon. Employees will be advised to listen to the news media for word of a recall from furlough. Any such news will also be conveyed to staff via the Emergency Notification System (IMLS Phone Tree) or equivalent notification system. . Supervisors will provide the Chief Operating Officer with the personal e-mail addresses of their staff members, which may also be used to convey such information.

G. As office shutdown functions are completed and employees furloughed, the immediate supervisor will notify the office head that all shutdown activities have been completed and all employees have been furloughed. All remaining employees, except the Director (who by law cannot be furloughed) / Acting Director and any employees designated as "excepted" under the pertinent guidelines, will be furloughed before the end of the day.

At present, IMLS has **sixty-nine** full-time employee positions. The Director/Acting Director has determined that the following **four** IMLS positions are deemed excepted and therefore exempt from the furlough: (i) Acting Director (if applicable) (ii) Chief Information Officer (iii) General Counsel and (iv) Chief Operating Officer. The Director/Acting Director may designate that the alternate of the primary-named positions will serve in place of or on a rotating basis with their respective primary-named positions.

The Chief Information Officer will safeguard IMLS's information technology system and maintain the website to provide agency information; the General Counsel will provide legal counsel and representation; the Chief Operating Officer will handle financial transactions and make payments. These positions are designated excepted because they are (a) performing emergency work involving the safety of human life or the protection of property, (b) involved in the orderly suspension of agency operations, or (3) performing other essential functions. The employees holding these positions must be available during the furlough to perform essential activities. These exempted employees will not receive pay for services rendered during the furlough until and unless appropriated funds are subsequently made available by law.

If a lapse in appropriation extends beyond several days, during payroll processing, and/or if other human resource circumstances arise during the shutdown period, the IMLS Director/Acting Director may recall the Director of Human Resources to work on excepted activities on a limited basis through the remainder of the shutdown. This would include handling inquiries concerning unemployment compensation, payroll processing, and other human resource matters.

H. On the day the Institute is shut down, responses to telephone and email inquiries to the Institute will be limited to explaining the funding hiatus. The following notice, or its equivalent, is to be used for such communications as well as for "out of the office" features for voice mail and email:

The Institute of Museum and Library Services (IMLS) is closed due to a partial shutdown of the United States Government. As a result, IMLS is not engaged in grant-making or other agency activities. During this time, we will not be able to review or respond to any form of communication. No payments for discretionary grant programs will be made by IMLS until the agency is reopened. Any additional information will be posted on our agency website.

I. Grant Programs. IMLS administers a number of discretionary grant programs and provides formula funding that supports State Library Administrative Agencies. During a funding hiatus, IMLS will not accept any applications for funding and not process requests for payment for its discretionary grant programs. Should a funding hiatus extend beyond a week, an excepted IMLS employee may process payments to a State Library Administrative Agency from previously obligated awards on a limited and case-by-case basis.

Panel Meetings. Panel meetings previously scheduled for the first day of the hiatus may be held as scheduled, at the discretion of the respective Deputy Director or equivalent. Any staff members who are required to work in support of such panel meetings will be granted "excepted" status for that day. All panels scheduled for after the first day of the funding hiatus are to be

canceled. In addition, no panel reviewer payments may be processed during the furlough.

Field Reviewers. Field reviewer services for which a contract was in place prior to the day before the shutdown may continue. However, IMLS staff may provide no direction to the field reviewers during the furlough. In addition, no field reviewer payments may be processed during the furlough.

J. Cooperative Agreements. The Program Offices, in consultation with the Grants Office, are responsible for informing cooperators of the hiatus and instructing them whether to continue or cease activities consistent with the terms of each agreement and the applicable law.

K. All payments scheduled to be paid during the furlough periods that were authorized under prior obligations, e.g., travel and per diem, and contract payments, will be delayed until the furlough period is ended.

L. The IMLS Contracts Office is responsible for notifying IMLS contractors of the anticipated hiatus and any other relevant information, including whether the respective contractor should continue or stop part or all work, in accordance with applicable law and the terms of the contract.

M. As noted previously, it is expected that the agency shutdown will be completed by noon of the first workday of the hiatus. Office heads will take such actions necessary to ensure orderly accomplishment of this goal. Offices that will require additional time to accomplish the shutdown will notify the Director / Acting Director as soon as the need for such additional time becomes apparent.

N. It is the employee's responsibility to stay informed as to the status of agency funding during the hiatus. Employees are expected to report to work as scheduled on the first workday after the enactment of an appropriation or continuing resolution that makes funds available to the agency. Notification will be made through the Emergency Notification System (IMLS Phone Tree) or equivalent notification system.

O. When the funding hiatus ends and employees are recalled from furlough, the Office of Human Resources will document all furlough periods with a "Notification of Personnel Action" (Standard Form 50) or other applicable form.

V. STATUS OF EMPLOYEE BENEFITS

A. Unemployment Compensation Benefits. It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive

furlough days. State unemployment compensation requirements differ. Agencies or employees should submit their questions to the appropriate State (or District of Columbia) office.

B. Health Benefits Costs. For health benefits, the government contribution continues while employees are in a non-pay status. Each employee's share will be withheld from his or her pay upon returning to duty.

(Federal regulations require all employees enrolled for coverage under the Federal Employees Health Benefits Program (FEHB) to pay the employee's share of the premium cost for the elected coverage for each pay period during which enrolled, whether in a pay or non-pay status.) An employee in a non-pay status due to a lapse of appropriations will not have the opportunity to terminate or cancel health benefits coverage during this period.

C. Retirement and Life Insurance

For most employees these two benefits remain unaffected by the furlough. However, employees for whom the furlough period, when added to previously accumulated leave without pay (LWOP), will cause the total non-pay time to exceed six months in the current calendar year or twelve consecutive months, should contact the Office Human Resources for additional information.

D. Additional Information
The Office of Personnel Management website contains additional information concerning the status of benefits during a lapse of appropriations. See, e.g., http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough

EXEMPT AND EXCEPTED POSITIONS	
Director of IMLS	Presidentially-appointed, Senate Confirmed
Acting Director, IMLS (if applicable)	Necessary to Protect Life and Property
Chief Operating Officer	Necessary to Protect Life and Property
Chief Information Officer	Necessary to Protect Life and Property
General Counsel	Necessary to Protect Life and Property

Director of Human Resources, as necessary	Necessary to Protect Life and Property

APPENDIX A – Furlough Notice to Employees

APPENDIX A

IMLS NOTICES TO EMPLOYEES REGARDING FURLOUGH

NOTICE OF FURLOUGH DUE TO ABSENCE OF APPROPRIATIONS:

[IMLS Letterhead]

TO: IMLS EMPLOYEES

FROM: IMLS DIRECTOR OF HUMAN RESOURCES

DATE: XXXXXXXXXX

RE: <u>NOTICE OF FURLOUGH DUE TO LAPSE OF APPROPRIATIONS</u>

The purpose of this memorandum is to notify you that the Institute of Museum and Library Services (IMLS) is placing you in a furlough status effective upon (insert date). Because of the absence of either an FY XXXX appropriation, or a continuing resolution, no further financial obligations may be incurred by IMLS, except for those related to the orderly suspension of the Institute's operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) Memorandum for Heads of Executive Departments and Agencies dated November 17, 1981 or under other applicable law.

You should monitor public broadcasts and the Internet and when a continuing resolution or an FY XXXX appropriation for IMLS has been signed into law, you will be expected to return to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the Institute'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) and under 5 CFR 359.806(a) for SES career appointees, or such other applicable provisions.

If employees are being retained in your competitive level, they are required for 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 will not be permitted to serve as an unpaid volunteer, and must remain away from your work place unless and until recalled. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is cancelled.

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

Career SES appointees (except reemployed annuitants) who believe the 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 upon request to (insert contact name and phone number).

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at http://www.mspb.gov/appeals/appeals.htm. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based on your duty station, the appropriate field office is the Washington, DC Regional Office. MSPB also offers the option of electronic filing at https://e-appeals.mspb.gov/. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. You may request assistance from (insert contact name) to review the regulations and filing instructions.

If you do not have the right of appeal to MSPB, you may grieve this action in accordance with the IMLS Dispute Resolution Directive. To obtain information on filing a grievance under this Directive, please contact (insert contact name, phone number, and email address).

If you believe that this furlough was effected in a discriminatory manner you have the right to file a complaint with the Equal Employment Opportunity Office. To initiate a complaint, you must contact IMLS's EEO POC within 45 days from the effective date of this action. You may not file both an EEO complaint and an MSPB appeal of the furlough action, and whichever is filed first shall be considered an election to proceed in that forum.

If you believe this action has been taken because of a prohibited personnel practice other than discrimination on the basis of your race, color, religion, sex, national origin, age, disability, marital status, or political affiliation, you may seek corrective action with the Office of Special Counsel (OSC). Your decision to seek corrective action from OSC is

exclusive and irrevocable. See http://www.osc.gov/ppp.htm for more information about seeking corrective action.

Attached is the SF-8, *Notice to Federal Employee About Unemployment Insurance*. Additional information about unemployment insurance is available at http://www.servicelocator.org/owslinks.asp.

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. If you have questions, please contact (insert contact name, phone number, and email address).

_____ _____

Deciding Official Date

I acknowledge receipt of this decision.

_____ _____

Employee's Signature Date

NOTICE TO RECALL AN EMPLOYEE FOR EXCEPTED ACTIVITIES:

[IMLS Letterhead]

TO: XXXXX XXXXXXX

FROM: XXXXX XXXXXXX

DATE: XXXXXXXX

RE: PERFORMANCE OF EXCEPTED ACTIVITIES

This memorandum updates the Notice of Furlough Due to Lapse in Appropriations provided to you on XXXXXXXXX. As the lapse in appropriations has extended beyond one week, certain circumstances have arisen at IMLS that necessitate your recall to work on a limited basis. Please be advised that your furlough will remain in effect, except to the extent that you are performing excepted activities. These would include, for example, XXXXXXXXXXXXXXXXXXXXX.

NOTICE TO RECALL AN EMPLOYEE AT THE END OF THE FURLOUGH (IF NECESSARY)

[IMLS Letterhead]

TO: XXXXX XXXXXXX

FROM: XXXXX XXXXXXX

DATE: XXXXXXXX

RE: RETURN TO DUTY

This memorandum is to notify you that your furlough, which began on XXXXXX due to a lapse in appropriations, is now over. You are directed to return to work and report for duty at your normal reporting time on XXXXXXXX. If you need additional time to report to work due to the need to make adjustments for childcare, eldercare, transportation, or other related issues, please contact your supervisor to discuss available options to accommodate you (e.g. telework; adjustments to regular work schedule; or use of annual leave, compensatory time off, or credit hours).