

**Court Services and Offender Supervision Agency
Orderly Shutdown Plan in the Absence of Appropriations
April 6, 2011**

SUMMARY:

The Anti-Deficiency Act, 31 U.S.C. 1341 and 1342, narrowly restricts the conduct of operations by agencies during a lapse of appropriations. In a lapse of appropriations, the agency must shutdown those activities and furlough those staff not exempted by agency heads within the guidance established by the Office of Management and Budget (OMB) and the Department of Justice (DOJ).

OMB Circular A-11 Section 124 (Agency Operations in the Absence of Appropriations) requires Agency heads to develop and maintain plans for an orderly shutdown of agency operations in the event of absence of appropriations. Shutdown plans must be submitted to OMB either when first prepared or revised.

The Court Services and Offender Supervision Agency (CSOSA) is a law enforcement agency comprised of two programs:

1. Community Supervision Program:

The Community Supervision Program (CSP) is a law enforcement agency playing a vital role in public safety within the District of Columbia. CSP core offender supervision/law enforcement functions will continue throughout the lapse period.

2. Pretrial Services Agency:

The Pretrial Services Agency (PSA) is a law enforcement agency playing a vital role in public safety within the District of Columbia. PSA core defendant assessment and supervision functions will continue throughout the lapse period.

OMB and DOJ guidance authorize agency heads to continue operations (requiring new obligations) when such is necessary for: 1) the orderly shutdown of agency operations, and 2) the protection of life and property. The CSP and PSA shutdown plan below assumes the DC Courts, the Federal Bureau of Prisons, the United States Parole Commission, the Metropolitan Police Department, and other law enforcement entities within the District of Columbia criminal justice system will continue core public safety operations throughout the shutdown period.

A. Shutdown Plan Points of Contact

1. CSP

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B. Shutdown Time Period

CSP and PSA require approximately one-half of the business day following the date of the appropriation lapse to complete the initial shutdown of operations. CSP/PSA core offender/defendant supervision functions will continue throughout the lapse period. For purposes of this shutdown plan, core offender/defendant supervision functions are only those deemed necessary for protection of life and property.

Within CSP, certain functions and staff will be initially retained for 30-45 calendar days post appropriation lapse to complete oversight of offender support functions started (and obligated) prior to appropriation lapse. This strategy is necessary to provide an orderly shutdown in a way that avoids unacceptable risks to human life. These staff will be furloughed once these functions cease.

C. Program Shutdown Plans

OMB Circular A-11 requires that agency shutdown plans identify those “activities that are essential to operate their agencies during an appropriations hiatus.” The underlying assumption is that only those law enforcement (and health care) activities deemed necessary for protection of life and property or required for orderly shut-down are to be exempted. This applies only to cases of threat to human life or property where the threat can be reasonably said to those individuals near at hand and demanding of immediate response.

1. CSP

- **Offender Supervision:** CSP will continue direct offender supervision and investigation functions at pre-appropriation lapse levels throughout the entire shutdown period.
- **Offender Sanctions:** CSP requires several offender sanctions to enforce offender supervision violations. Offender sanctions and interventions are ordered by the

Courts, the U.S. Parole Commission or CSP with the approval of the Courts as a condition of supervision. CSP (staff and contractors) will continue to operate the following offender sanctions throughout the entire shutdown period:

- Global Positioning System (GPS) monitoring,
- Day Reporting Center, and
- Drug testing

The Secure Residential Treatment Program (SRTP) is a 180 day offender treatment program operated within the D.C. Jail while offenders are incarcerated. There will be no new placements into the SRTP during the shutdown period. The SRTP and contract Halfway Back sanctions will be phased out as part of an orderly shutdown. Offenders placed in the SRTP or Halfway Back prior to appropriation lapse will continue to receive services based on the time period and specific services in the initial referral. Therefore, certain CSP staff and contractors initially retained to oversee the SRTP and Halfway Back will gradually be phased out to furlough status approximately 45-60 days after appropriation lapse. The Community Service sanction program will be immediately suspended during the shutdown period.

- **Offender Support Services:** CSP will not process any new placements for the following offender support services after the lapse in appropriated funding:
 - Substance abuse treatment
 - Transitional Housing*
 - Sex offender treatment
 - Mental health assessments**
 - Re-entry and Sanctions Center

CSP will continue to provide support services oversight for those offenders referred (and obligated) to the above services prior to appropriation lapse according to the time period and specific services in the referral. Therefore, certain CSP staff and contractors initially retained to oversee the above support services will gradually phase-out and will be furloughed during a time period of approximately 30-60 days after appropriation lapse. This strategy is an orderly shutdown to avoid unnecessary risk to human life. The funding for those offenders referred prior to the shutdown is fully obligated prior to the funding lapse.

CSP's Vocational Opportunities, Training, Education and Employment (VOTEE) unit, providing direct offender vocation and education assistance, and Victim Services unit will both immediately cease to operate. CSP's Faith-Based (FB) mentoring program and Violence Reduction Program (VRP) will phase-out over an approximate 30 day time period.

*CSP will continue to issue referrals to contract Transitional Housing only when the offender will otherwise be homeless.

**CSP will continue to use contract Mental Health night/weekend group sessions as an effective supervision tool.

2. PSA

- **Defendant Assessment and Supervision:** PSA will continue defendant assessment, supervision and directly related functions at pre-appropriation lapse levels throughout the entire shutdown period. These functions include:
 - Risk assessment of defendants in preparation of bail reports for the courts
 - Drug testing and laboratory analysis
 - Supervision, including electronic monitoring of defendants on pretrial release
 - Case management of defendants on pretrial release including on-going risk assessment and in-house drug treatment groups
 - Referrals of defendants to city services
 - Reporting violations of release conditions to the court and requesting revocation of release where appropriate

- **Defendant Services:** Many pretrial defendants are ordered to engage in substance abuse or mental health treatment as a condition of release. PSA provides these services internally using trained PSA staff as well as through the use of contract service providers. These contractors provide both residential and day services at a more clinically rigorous level than is provided in-house. Defendants in contract treatment at the beginning of the shutdown will continue their course of treatment for the duration of their existing pre-approved period of treatment. COTR supervision of contractor services will be phased out after 30 days as the last of the treatment task orders expire.
 - No extensions will be processed after current periods of performance have expired
 - No new placements will be made with contract service providers
 - In-house treatment programs will continue

D. Number of Employees Prior to the Appropriation Lapse

1. CSP

In FY 2010, CSP had 931 authorized and funded FTP Positions/FTE. CSP estimates that approximately 900 employees are on-board at any given time.

2. PSA

In FY 2010, PSA had 378 authorized and funded FTP Positions/FTE. PSA estimates that all employees (378) are on-board at any given time.

E. Employees Retained (Exempt) Under the Shutdown Plan After Appropriation Lapse

OMB Circular A-11 allows agencies to retain employees after appropriation lapse if:

- They are engaged in military, law enforcement, or direct provision of health care activities, or
- Their compensation is financed by a resource other than annual appropriations.

However, DOJ opinion limits new obligations to those needed to protect life and property or conduct an orderly shut-down. All employees not meeting these criteria must be furloughed. A furlough is the placing of an employee in a temporary non-duty, non-pay status because of lack of work or funds, or other non-disciplinary reasons. Agencies may not permit voluntary performance of non-excepted services.

1. CSP

CSP plans to initially retain a total of **724** FTP Positions/FTE after appropriation lapse because they are deemed exempt:

- **Law Enforcement (452)** [Community Supervision Officers; Supervisory Community Supervision Officers; Branch Chiefs; Offender Processing Unit; Drug Testing Units]
- **Law Enforcement Critical Support (176)** [Community Supervision Assistants; Day Reporting Center; Global Positioning System Monitoring, and limited Treatment/SRTP/VRP/FB Mentoring, Information Technology, Human Resources, Budget, Procurement and Executive Staff]
- **Healthcare and Required for Orderly Shut-Down (96)** [Re-entry and Sanctions Center]

Actual number of employees initially retained (exempt) may be less than 724 due to vacancies, military leave or other factors.

All Re-entry and Sanctions Center (96) staff to be released on furlough as program clients placed in program prior to appropriation lapse separate from the program (approximately 30 calendar days after appropriation lapse).

All Treatment/SRTP/VRP/FB Mentoring staff to be released on furlough as offenders separate from Offender Support Services programs referred/obligated pre-appropriation lapse.

An additional **14** non-law enforcement staff (Facilities and Security staff) will be retained in support of functions necessary to protect life and property at 16 CSP locations.

2. PSA

PSA plans to retain a total of **317** FTP Positions/FTE after appropriation lapse because they are deemed exempt:

- **Law Enforcement (247)** [Pretrial Services Officers; Supervisory Pretrial Services Officers; Drug Testing Units]
- **Law Enforcement Critical Support (70)** [Drug testing laboratory staff, program assistants in direct support of Operations, and limited IT, HR, F&A, and executive staff in direct support of Operations]

An additional **4** non-law enforcement staff (Facilities staff) will be required in support of functions necessary to protect life and maintain property at 6 PSA locations.

F. Employees Retained to Protect Life and Property

Per OMB A-11, an agency must inform OMB if the number of non-law enforcement and non-health care 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.

1. CSP

CSP plans to retain 14 employees to provide security and facilities services to exempt/retained law enforcement and healthcare staff.

The number of CSP non-law enforcement and non-health care staff required to protect life and property (14) slightly exceeds five percent of the number of employees on-board at the beginning of a hiatus (900) less those exempt (724).

2. PSA

PSA is planning to retain four (4) staff in this category to protect and maintain the Agency's facilities.

G. Staff Furloughed

1. CSP

CSP plans initially to furlough a total of **193** FTP Positions/FTE after the appropriation lapse [931 Total – 724 Exempt – 14 Protect Life & Property = 193].

The number of staff furloughed will increase as Re-entry and Sanctions Center (RSC), FB Mentoring, VRP, Treatment and SRTP functions desist. The RSC, FB Mentoring and VRP programs would be phased out within 30 calendar days after an appropriation lapse. The Treatment/SRTP programs would be phased out within 60 calendar days after an appropriation lapse.

2. PSA

PSA plans to furlough a total of **57** FTP Positions/FTE after the appropriation lapse [378 – 317 - 4 = 57].

H. Agency Directors Approval of Retained Staff

The Agency Directors must approve retained staff in advance of appropriation lapse. Executive Staff, managers and supervisors must be aware of the specific staff to be retained during a shutdown and provide this information to affected employees.

I. Staff on Details (Reimbursable & Non-Reimbursable) To/From Other Agencies

CSP/PSA employees on reimbursable detail to another agency would not be subject to furlough if the reimbursement continued throughout the appropriation lapse. If the funding/reimbursement provided by the other agency does not continue, the employee must return to CSP/PSA with continued work depending on their furlough/retention designation.

CSP/PSA employees on non-reimbursable detail to another agency would be subject to furlough, depending on CSP/PSA furlough/retention designations. In most cases, non-reimbursable details selected for retention must return to CSP/PSA to perform work during the lapse in appropriation.

In most cases, employees from other agencies detailed to CSP/PSA on a cost-reimbursement basis must return to their employing agency during a lapse of appropriations to work in an exempt function or to be furloughed. Exceptions may occur if the detailed employee is performing law enforcement (and health care) activities deemed necessary for protection of life and property.

J. Preliminary Agency Directors Notification to Employees/Contractors

The Agency Directors will issue a preliminary notification to all CSP/PSA staff and applicable contractors of a possible shutdown due to lapse of appropriations, in advance of the shutdown. The advance notification will be issued based on OMB guidance and/or when the situation appears imminent. The guidance will provide the following information:

- Staff will be notified that the Agency may be shutdown on an approximate date due to a lapse of appropriations.

- Once appropriations have lapsed, most normal Agency operations will cease and a shutdown process will take place on the first regular business day after appropriation lapse. All Agency staff, regardless of leave, travel, AWS or telecommuting status, must report to work on this date.
- Supervisors must immediately contact staff currently on leave, travel or detail to notify them of the possible shutdown.
- Certain staff will be retained through all or part of the shutdown period. Retained staff is necessary to continue the Agency's core offender/defendant supervision functions and protect government property. Certain staff will be furloughed through all or part of the shutdown period. Staff will contact their supervisor to determine retention/furlough status. All staff will be formally notified of their retention/furlough status when they arrive at work for the shutdown process.
- In the event the appropriation lapse takes place just before or during non-regular business days, all staff who are excepted from furlough must continue to work as scheduled.
- Staff must postpone/cancel all planned Agency travel and training scheduled to take place within the shutdown period.
- All planned/approved paid leave (annual and sick) during the shutdown period is cancelled. All paid leave during a lapse of appropriations is cancelled and all employees will either be in retained work status or furloughed.
- Information concerning employee pay, benefits and leave throughout the shutdown period will be issued by the Agency based on OPM guidance.
- Furloughed staff may not perform voluntary work for CSP/PSA during the shutdown period. Furloughed staff should not use Agency cell phones, Blackberrys or access Agency systems during the shutdown.
- Employees must be reminded that Agency rules and approval processes surrounding outside employment apply to all staff during the lapse of appropriation.
- Contractors must contact their contracting officer (CO) or contracting officer technical representative (COTR) to determine their work status during a shutdown. It is incumbent upon COTRs and COs to ensure that all contractors receive this preliminary notification.
- Staff must stay apprised of the shutdown status through the media and contact with their supervisors.

K. Shutdown Day

All Agency staff must report to their approved duty stations on the first regular business day after appropriation lapse.

Supervisors will provide furlough notices to appropriate staff. Furloughed staff will be asked to complete necessary functions, secure their belongings/office, and return home. In cases where a furloughed staff does not report to the office, the supervisor must make every effort to contact them and inform them of their furlough status. It is expected that all furloughed staff will leave the duty station within three to four hours after arrival.

Excepted staff must continue to perform normal business functions according to their normal business schedule.

L. Contractors

In accordance with Federal Acquisition Regulation (FAR) 42.1303, stop-work orders will be issued by CSP's Office of Management and Administration (M&A) and PSA's Office of Finance and Administration (F&A) to all affected contractors on the first business day following appropriation lapse. M&A, F&A, contracting officers (CO) and contracting officer technical representatives (COTR) must work closely together to: 1) compile a complete list of all current contractors, 2) determine those contractors with funding and purpose necessary to continue work in an appropriation lapse, and 3) determine those contractors to whom stop-work orders will be issued.

Contractors funded by prior-year appropriations, non-appropriated funds, or current fiscal year (*i.e.*, FY 2011) appropriated funds properly incurred prior to appropriation lapse may continue to perform services according to the terms (purpose, funding, period of performance) of the contract. However, in cases where a COTR of such a contract is furloughed, COTR responsibilities must be formally transferred to a qualified, excepted employee or a stop-work order must be issued to the contractor. It may be determined that the contractor's function is not necessary or cannot be performed effectively during the shutdown; therefore, a stop-work order will be issued.

Contractors authorized to perform services in support of excepted activities during the shutdown and which represent new obligations, may work under the terms of the contract, however payments cannot be made.

M. FY 2011 Obligations and Payments After Appropriation Lapse

During an absence of appropriations, agency heads must limit new obligations to "excepted services or goods". Excepted services or goods are those needed for: 1) conducting orderly shutdown of agency operations, and 2) the protection of life and property.

CSP/PSA cannot make payments (disburse) for new obligations incurred during an appropriations lapse. For obligations incurred and funded prior to an appropriations lapse, payments may not be made, unless the failure to make payments would result in the termination of a contract service required to perform an excepted activity. Excepted employees and vendors who are directed to perform new tasks in the absence of appropriations will be assured that they will be paid when appropriations are enacted.

Contractors:

As noted above, contractors performing services in support of excepted activities cannot be paid during a lapse in appropriations. Generally, CSP/PSA may also not issue payments to contractors funded by prior-year, non-appropriated, or current fiscal year (*i.e.*, FY 2011) appropriated obligations properly incurred prior

to appropriation lapse, unless the failure to do so would result in the termination of services by the vendor and the services involve an excepted activity. Vendors will be assured that interest will be paid on late payments under the terms of the Prompt Payment Act.

Personnel/Employee Salaries and Benefits:

CSP/PSA may not issue payments during the shutdown for work performed by retained employees after appropriation lapse, including that performed by retained/furloughed staff on shutdown day and all work performed by retained employees throughout the shutdown period.

All personnel and contractors performing excepted services, including activities incident to the orderly suspension of agency operations, should be assured that the United States will not contest its legal obligation to make payment for such services, even in the absence of appropriations.