

**Court Services and Offender Supervision Agency
Pretrial Services Agency for the District of Columbia**

**Orderly Shutdown Plan in the Absence of Appropriations
Updated by CSOSA October 7, 2013**

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 excepted by agency heads or otherwise legally authorized to continue within the guidance established by the Office of Management and Budget (OMB) and the Department of Justice (DOJ).

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.**

OMB and DOJ guidance authorize agency heads to continue operations (requiring new obligations) when:

1. Operations are financed by a resource other than annual appropriations;
 2. Operations are necessary to perform activities expressly authorized by law;
 3. Operations are necessary to perform activities necessarily implied by law;
 4. Operations are necessary to discharge the President's constitutional duties and powers; or
 5. Operations are necessary to protect life and property.
- **Federal officers may incur obligations as necessary for orderly termination of an agency's functions, but funds may not be disbursed.**

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. Updated plans should be submitted to OMB at least every four years.

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.

Certain CSOSA core offender /defendant supervision operations are deemed by the Agency to be necessary to protect life and property. Failure to continue these operations in the absence of appropriations would constitute an emergency resulting in an imminent and immediate threat to the safety of human life and the protection of property. The CSOSA (CSP/PSA) shutdown plan below provides a detailed outline of those specific core offender/defendant supervision operations to remain functioning through all or part of a lapse in appropriations in order to protect life and property. In addition, the CSP/PSA shutdown plan outlines those Agency administrative functions necessary to continue operations through all or part of a lapse of appropriations to support those core offender/defendant supervision operations.

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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These staff are responsible, at the direction of the Agency Director, for implementing and adjusting the shutdown plan to respond to the length of the appropriation hiatus and changes to external circumstances.

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 30-60 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 will continue and those that will cease during an appropriations hiatus.” The underlying assumption is that only those Agency law enforcement, health care and required support activities deemed necessary for protection of life and property or required for orderly shut-down are to be excepted. 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 staff performing direct offender intake, supervision, drug testing and investigation functions will be excepted and continue to perform duties at pre-appropriation lapse levels throughout the entire shutdown period.
- **Offender Sanctions:** CSP requires continuation of 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 be excepted and continue to operate the following offender sanctions throughout the entire shutdown period:
 - Global Positioning System (GPS) monitoring, and
 - Day Reporting Center

The following CSP offender sanctions will be phased-out or cease upon shutdown:

- **Secure Residential Treatment Program (SRTP):** The SRTP is a 180 day offender treatment program operated by the Federal Bureau of Prisons within the D.C. Jail. CSP offenders are placed in the SRTP for violations in lieu of revoking them to BOP custody. There will be no new CSP offender placements into the SRTP during the shutdown period.
- **Halfway Back Residential Sanctions:** CSP places offenders into contract residential sanctions programs in lieu of revoking them to BOP custody. There will be no new CSP offender placements (obligations) into contract Halfway Back 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 (excepted) to oversee the SRTP and Halfway Back programs will gradually be phased out to furlough status approximately 45-60 days after appropriation lapse.

- **Community Service Sanctions:** CSP's offender community service sanction program will be immediately suspended during the shutdown period; to include court-ordered community service. Staff performing community service sanctions functions will be immediately furloughed.

- **Offender Support Services:** CSP will not process any new placements (obligations) for the following offender support services after the lapse in appropriated funding:
 - Substance Abuse Treatment (including Court-ordered treatment)
 - Transitional Housing*
 - Mental Health Assessments

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 will continue to issue referrals (obligations) to contract Transitional Housing throughout the shutdown period only when the offender will otherwise be homeless.

The following CSP offender support services will continue or be phased-out upon shutdown:

- Re-entry and Sanctions Center (RSC): Staff and contractors performing residential assessment and treatment readiness at the RSC at Karrick Hall will be excepted and continue services throughout the shutdown period as a necessary component of offender supervision.
- Mental Health Group Sessions: Staff and contractors performing Mental Health Group sessions will be excepted and continue services throughout the shutdown period as a necessary component of offender supervision.
- Young Adult Program: Staff and contractors performing Young Adult supervision support services will be excepted and continue services throughout the shutdown period as a necessary component of offender supervision.
- Sex Offender Treatment: Staff and contractors performing Sex Offender Treatment supervision support services will be excepted and continue services throughout the shutdown period as a necessary component of offender supervision.
- Vocational Opportunities, Training, Education and Employment (VOTEE): VOTEE provides direct offender vocation and education assistance; VOTEE operations will be suspended, and staff immediately furloughed, during the shutdown period.

- The Victim Services unit will be suspended, and staff immediately furloughed, during the shutdown period.
- The Faith-Based (FB) mentoring program will phase-out over an approximate 30 day time period. Therefore, certain staff will be initially retained (excepted) to oversee the phase-out.
- The Violence Reduction Program (VRP) will phase-out over an approximate 30 day time period. Therefore, certain staff and contractors will be initially retained (excepted) to oversee the phase-out.
- **Agency Support Services:** CSP deems as excepted status certain Agency support (administrative) staff necessary to support on-going offender supervision programs through all or part of the shutdown period. These include Information Technology, Human Resources, Budget, Procurement, Security, Facilities, General Counsel and Executive Staff. A skeletal staff is necessary to perform program and facilities management, and offender case management systems, security and administrative (e.g., payroll, personnel, procurement, budget/finance) functions.

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

CSP had 915 planned employees for FY 2013. Due to Sequestration, CSP estimates that approximately 875 employees will be on-board before implementation of the shutdown plan.

2. PSA

PSA had 367 planned employees for FY 2013. Due to Sequestration, PSA estimates that approximately 356 employees will be onboard before implementation of the shutdown.

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

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

1. They are financed by a resource other than annual appropriations;
2. They are necessary to perform activities expressly authorized by law;
3. They are necessary to perform activities necessarily implied by law;
4. They are necessary to discharge the President’s constitutional duties and powers; or
5. They are necessary to protect life and property.

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-expected services.

1. CSP

CSP plans to initially retain/except up to a total of **738** FTP Positions after appropriation lapse because they are deemed excepted:

1. They are financed by a resource other than annual appropriations:

Excepted from Furlough: 0

2. They are necessary to perform activities expressly authorized by law:

Excepted from Furlough: 0

3. They are necessary to perform activities necessarily implied by law:

Excepted from Furlough: 0

4. They are necessary to discharge the President’s constitutional duties and powers:

Excepted from Furlough: 0

5. They are necessary to protect life and property:

Excepted from Furlough: **738**

Actual number of CSP employees initially retained (excepted) will be less than the 738 total positions deemed excepted due to vacancies, military leave or other factors. Most notably, the number of employees retained for Offender Supervision functions will be less than the 551 positions reported below due to Community Supervision Officer vacancies (Sequestration hiring freeze).

CSP Retained/Excepted Positions by Shutdown Duration:

	Initially Retained (Days 1-5)	Short –Term (Days 6-30)	Intermediate-Term (Days 30-60)	Long-Term (Days 60+)
Offender Supervision	551	551	551	551
Offender Sanctions	13	13	13	13
Offender Support Services	104	104	101	95
Agency Support Services	70	70	70	70
Total Retained	738 Positions (708 Employees - Estimated)	738 Positions (708 Employees - Estimated)	735 Positions (705 Employees - Estimated)	729 Positions (699 Employees - Estimated)

Offender Supervision: Community Supervision Officers; Community Supervision Assistants; Supervisory Community Supervision Officers; Branch Chiefs; Offender Processing Unit; and Drug Testing Units.

Offender Sanctions: Day Reporting Center; Global Positioning System Monitoring; Halfway Back; and Secure Residential Treatment Program.

Offender Support Services: Substance abuse treatment; transitional housing; sex offender treatment; mental health; Re-entry and Sanctions Center; Young Adult Program, Faith-Based Mentoring; and Violence Reduction Program.

- All Re-entry and Sanctions Center (91) staff to be excepted throughout the shutdown period.
- Offender Support Services staff to be released on furlough as offenders separate from programs referred/obligated pre-appropriation lapse.

Agency Support Services: Information Technology, Human Resources, Budget, Procurement, Security, Facilities, General Counsel and Executive Staff.

- Agency support services staff are necessary to protect life and property at 16 CSP locations and perform required administrative support functions.

2. PSA

PSA plans to retain a total of **278** employees after appropriation lapse because they are deemed excepted:

- **Law Enforcement (214)** [Pretrial Services Officers; Supervisory Pretrial Services Officers; Drug Testing Units]
- **Law Enforcement Critical Support (63)** [Drug testing laboratory staff, program assistants in direct support of Operations, and limited information technology, human resources, budget, procurement and executive staff in direct support of Operations]

An additional one (1) non-law enforcement employee (Facilities staff) will be required in support of functions necessary to protect life and maintain property at 6 PSA locations.

F. Staff Furloughed

1. CSP

CSP plans initially to furlough a total of **177** FTP Positions after the appropriation lapse [915 Total – 738 Excepted = 177 Positions] as their functions are deemed non-excepted. The number of CSP employees actually furloughed (estimated 167) will be less than 177 Positions due to vacancies. The number of staff furloughed will increase as FB Mentoring, VRP, Treatment, SRTP and other offender support functions desist. The 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 **78** employees after the appropriation lapse [376 – 277– 1 – 20 vacancies = 78].

G. Agency Directors Approval of Retained Staff

The Agency Directors must approve retained (excepted) 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.

H. 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 excepted 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.

I. 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 non-excepted 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, should 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 (excepted) 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.
- Information concerning eligibility, timelines and procedures for obtaining unemployment compensation should be directed to the District of Columbia Government. Requests for required documentation verifying an employee's employment status should be directed to the respective CSP/PSA Office of Human Resources.
- Contractors must contact their contracting officer (CO) or contracting officer representative (COR) to determine their work status during a shutdown. It is incumbent upon CORs 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 via non-Agency devices and systems.

J. Shutdown Day

Unless notified otherwise, 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 excepted business functions according to their regular business schedule.

K. 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 Financial and Administration (OFA) to all affected contractors on the first business day following appropriation lapse. M&A, OFA, contracting officers (CO) and contracting officer representatives (COR) must work closely together well in advance of the lapse 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 current or prior-year appropriations (*e.g.*, FY 2013) or non-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 COR of such a contract is furloughed, COR 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.

L. FY 2014 Obligations and Payments After Appropriation Lapse

During an absence of appropriations, agency heads must limit new obligations to "excepted services or goods". CSP/PSA 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 (*e.g.*, FY 2013) or non-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.