

NATIONAL GALLERY OF ART

February 15, 2019

Circular No. 50

Subject **Contingency Plans for Operations in the Absence of Appropriations**

Supersedes Circular No. 50 - Absence of Appropriations/Continuing Resolution Contingency Plan, dated September 1982.

I. **Purpose**

This circular is written to reflect contingency planning and to provide for an orderly shutdown of all but the most essential of the Gallery's activities in the event of a Federal funding hiatus, consistent with the Anti-Deficiency Act, 31 U.S.C. § 1341 *et seq.*, Office of Management and Budget Circular No. A-11 (2018) and other OMB guidance, and the relevant opinions of the Department of Justice's Office of Legal Counsel.

II. **Policy**

- A. The Board of Trustees of the National Gallery of Art holds in trust the national art collections and the buildings which house them. The Gallery buildings are designed and staff are in place to safeguard and preserve the collection, works promised to the nation, works on loan, and art and other property otherwise under the auspices and control of the Board. Thus, safekeeping of the National Gallery's collection and loans in the Gallery's care is best accomplished within the existing secure facilities during a Federal funding hiatus.
- B. The Gallery will cooperate with the Office of Management and Budget (OMB) and the Congress in responding to the absence of appropriations within the scope of the Board's continuing trust responsibilities.
- C. In the event of a lapse in Federal funding, the Gallery will continue normal operations necessary to remain open to the public to the extent that available unexpired two-year and no-year appropriations permit, in compliance with Federal law and applicable OMB guidance. Once the Gallery no longer can continue normal operations, the Gallery would be required to shut down many Federally funded activities. Under guidance provided by OMB regarding allowable activities under a funding hiatus, it would be necessary to close the Gallery to the public. In general, only Federally funded activities designated as "excepted" or "exempt" and privately funded activities that can be performed without resulting in additional Federal expenses will be allowed to continue. *See*, OMB Cir. No. A-11, § 124 (2018).
 1. Exempt Federal employees: Federal employees funded by no-year appropriations who will continue to work during a lapse in appropriations to the extent that balances carried over from prior years remain available and work can be performed without resulting in additional non-exempt or non-excepted Federal expenses at which time they are also subject to furlough.
 2. Excepted Federal employees: Federal employees performing activities excepted by law include those who are required to protect life and property, including

maintaining and protecting the collections and the buildings and information technology systems and those whose duties are necessarily implied by a requirement to support authorized and funded activities such as processing of payroll for exempt staff and payments for funded contractors. Such employees will be required to work during the lapse in funding. The process of shutting down the Gallery to the public, curtailing operations and furloughing non-excepted, non-exempt employees is expected to take no longer than one-half of a workday.

- D. The Administrator, in consultation with the Director, Treasurer, and General Counsel, will direct all actions necessary to curtail operations and furlough civil service personnel, in accordance with the provisions of OMB, the Office of Personnel Management (OPM), or with other guidance.
- E. Curtailments and furloughs will be handled in such a way as to recognize the Board of Trustees’s continuing responsibility for the safety and protection of the national art collection, for the many loans of works of art from other institutions and private lenders which may be in transit or due to be returned to those institutions and private lenders or works of art loaned from the Gallery during a funding hiatus, for the Gallery’s buildings and other property, and for the safety and security of visitors (as appropriate) and staff.

III. Federally Funded Employees

- A. The number of Federal employees expected to be on board before implementation and their status under a lapse in appropriations is outlined in the following table –

<i>Budget Activity</i>	<i>On-board</i>	<i>Exempt Funding</i>	<i>Excepted Duties</i>
Art care	265	14	32
Operations and maintenance	143		17
Protection	280		72
General administration	101		20
Repair, restoration, and renovation	2	2	
Total Federal employees	791	16	141

- B. A description of the excepted activities in each budget activity is outlined below –
 - 1. Art care: Staff from departments with direct responsibility for the care and handling of works of art at the Gallery are required to ensure the continued protection of collections when the Gallery is closed. In addition to caring for art in the building, Gallery staff is responsible for coordinating outside movement and handling. National Gallery couriers may be required to accompany National Gallery-owned artworks in transit. Couriers from other museums and private collections accompany shipments of works of art that they are lending to the Gallery and must be met and provided for until the loans are safely stored or installed (if required under the loan agreement) at the Gallery. Professional installers may be required to hang the art on the walls in climate-controlled environments, in the presence of the visiting courier, to ensure the safety of the art. On the closing date of an exhibition and during the period following, the

Gallery must receive couriers, de-install, condition report, pack, and return shipments of works of art on loan to the Gallery, as per generally accepted art-handling standards as well as U.S. indemnity deadlines and regulations. In addition, a duty curator and conservator must be on call at the Gallery to make critical decisions in the event of an emergency that could threaten the safety or security of a work of art (e.g., fire, smoke, flooding). The incumbents responsible for the care and movement of art would be “necessary to protect life and property,” as provided in OMB Cir. No. A-11, § 124.2.

2. Operations and maintenance: Operations and maintenance trades and crafts employees are required to maintain the temperature, humidity, air quality, and other environmental controls within the facilities necessary to protect the Gallery’s art collections and loans, to perform maintenance on critical equipment, to perform emergency repairs and maintenance that if not performed could threaten the collections and facilities, and to respond to any emergencies that may arise (e.g., fire, smoke, flooding). These operations, maintenance, trades and crafts incumbents would be “necessary to protect life and property,” as provided in OMB Cir. No. A-11, § 124.2.
3. Protection: Guards and supervisory staff are required 24 hours a day, over three shifts each day, to protect the Gallery’s art collections and loans, buildings, grounds and other property and equipment. This staff also protects the safety of individuals within the facilities. Such security personnel would be “necessary to protect life and property,” as provided in OMB Cir. No. A-11, § 124.2.
4. General administration: Staff performing a variety of services such as information technology, financial management, human resources, procurement, transportation and delivery are required to provide support for excepted or exempt activities during a lapse in appropriations. These personnel would be “necessary to protect life and property,” as provided in OMB Cir. No. A-11, § 124.2 and “to perform activities necessarily implied by law,” as provided in OMB Cir. No. A-11, §§ 124.1(a), 124.2.¹

- C. All other Federal Gallery employees will be furloughed. In the event that a funding lapse extends beyond five (5) days, the Administrator, in consultation with the Director, Treasurer, and General Counsel may recall furloughed employees to perform excepted duties as necessary. OMB will be notified of significant adjustments to the number of excepted employees.

¹ “[A] limited number of government functions funded through annual appropriation must otherwise continue despite a lapse. . . because the lawful continuation of other activities necessarily implies that these functions will continue as well. Examples include the check writing and distributing functions necessary to disburse the social security benefits. Further examples include contracting for the materials essential to the performance of the emergency services that continue under that separate exception. In addition, in a 1980 opinion, Attorney General Civiletti opined that agencies are by necessary implication authorized ‘to incur those minimal obligations necessary to closing [the] agency.’ The 1981 opinion [43 U.S. Op. Atty. Gen. 293, 5 U.S. Op. OLC 1 (1981)] reiterated this conclusion and consistent practice since that time has provided for the orderly termination of those functions that may not continue during a period of lapsed appropriations.”
See, OLC Aug. 16, 1995, op. at 3 (1995 WL 17216091), ref’d at OMB Cir. No. A-11, § 124.1(a).

- D. During a shutdown, the Gallery cannot legally accept voluntary services from Federal employees to continue their regular duties. Staff who are not identified as “excepted” will not be allowed to work either at their offices, from another site, or from home during the shutdown and may not access Gallery email or any other Gallery information technology systems to carry out their regular work duties. Non-excepted staff may only monitor Gallery email to receive messages from the Administrator announcing changes in operating status and should respond according to any instructions contained therein.

IV. Private Fund Employees

The number of private-fund employees expected to be on board before implementation of this plan is approximately 164. Because the Gallery’s private-fund employees are paid from funds that are not subject to Federal appropriations laws, the Gallery’s private-fund employees are exempt from furlough due to a lapse in appropriations. Therefore, the Gallery’s private-fund employees will be paid on time for their normal work hours and expected to work during the shutdown to the extent that such work can be performed without access to Gallery buildings and does not require the Gallery to incur any direct or incidental additional, current-year Federal expenses or obligations that are not otherwise exempt or excepted. A small number of private-fund employees may be required to perform excepted duties and permitted access to Gallery buildings. Private-fund employees working in Gallery retail functions that depend on the visiting public may be furloughed at the discretion of management due to a lack of work.

V. Action and Notification

- A. Upon notification from OMB, orderly shutdown activities will begin. All actions will contribute to the orderly shutdown of the Gallery. Primary consideration will be given to protecting life and safeguarding Gallery property and other assets. These actions will be accomplished in such a way as to facilitate reactivation when funds are once again available. The Gallery will notify OMB immediately when shutdown activities are being initiated.
- B. The Administrator will establish internal operating procedures and inform all affected employees about them so that the buildings may be closed and secured within 4 hours. The operations that must be accomplished include such activities as clearing the public, posting signs, and storing any objects of value, including art.
 - 1. Reporting to duty: If the shutdown occurs on a Saturday or Sunday, Federal employees who are scheduled to work on a Saturday or Sunday will be instructed to report for duty on their regularly scheduled day and time. Federal employees whose first scheduled duty day within a shutdown period is Monday (a different group from Saturday/Sunday employees) will be required to report for work on Monday. If there is no funding for normal operations, employees who are not required to perform “excepted” duties will be given 4 hours to complete necessary work for an orderly shutdown. Private-fund employees and exempt Federal employees funded by no-year Federal funds must also complete orderly shutdown activities necessary to enable them to continue working outside of the East and West Buildings in accordance with plans developed in advance with their supervisors. After their shutdown activities are completed, non-excepted Federal employees will be released from duty for the duration of the shutdown.

- a. Supervisors are responsible for notifying employees of their duty status during the 4 hours prior to a shutdown and for preparing work plans with exempt staff.
2. Public notification: In the event of a shutdown, a notice will be posted at each public entrance to the Gallery to inform the visiting public of the closure. In addition, the Gallery's main website (www.nga.gov) will be updated to inform visitors that the Gallery is not responding to queries, sending out newsletters, or updating the site or the Calendar of Events. The main Gallery telephone number (202-737-4215) will have a recorded message about the Gallery's status. Furloughed employees will create Out of Office return email messages and recorded messages on their office phones to explain that they are unavailable because of a U.S. Government shutdown due to the absence of Federal appropriations.
3. Returning to duty: Once appropriations are restored, the Gallery will resume normal operations promptly. Upon instruction by OMB, the Gallery recall employees necessary to begin preparations for reopening. Employees will be directed to consult the Office of Personnel Management's website (www.opm.gov) and the Gallery's website (www.nga.gov) and to monitor local television and radio stations for information about returning to duty. Employees may also monitor Gallery email for messages from the Administrator announcing changes in operating status and may also be contacted through the Gallery's emergency broadcast notification system if they have registered their personal email or telephone contact information. Supervisors may provide flexibility for employees to delay their return to duty through the use of leave or other arrangements where circumstances warrant, such as resumption of child-care arrangements or other exigencies caused by the shutdown.

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Administrator