

National Gallery of Art	
Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	½ day
Total number of agency employees expected to be on board before implementation of the plan:	826
<b>Total number of employees to be retained under the plan for each of the following categories:</b>	
Compensation is financed by a resource other than annual appropriations*:	152
Necessary to perform activities expressly authorized by law:	11
Necessary to perform activities necessarily implied by law:	18
Necessary to the discharge of the President’s constitutional duties and powers:	0
Necessary to protect life and property:	128
<b>Brief summary of significant agency activities that will continue during a lapse:</b>	
<p>Employees funded from resources other than annual appropriations (private funds and no-year appropriations) will continue to perform their normal work duties to the extent such duties may be performed without incurring obligation of additional 2-year appropriations. Employees funded by 2-year appropriations may continue normal operations to the extent unexpired prior-year appropriations remain available for operations. Federal employees may be required to perform excepted duties to protect the Gallery’s buildings, grounds, and contents and to meet contractual obligations related to the care of artworks not owned by the Gallery as well as tasks necessary to meet legal obligations such as payment of employees and vendors not affected by a lapse in appropriations.</p>	
<b>Brief summary of significant agency activities that will cease during a lapse:</b>	
<p>Once the Gallery can no longer continue normal operations using unexpired funds, the National Gallery of Art buildings and grounds will close to the public and to all staff not required to perform excepted duties in the buildings or grounds.</p>	
*Includes 138 privately-funded positions + 14 positions funded by no-year appropriations)	

# National Gallery of Art

July 17, 2023

Circular No. 50

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

**Supersedes**        Circular No. 50 - Contingency Plans for Operations in the Absence of Appropriations, dated February 15, 2019.

## **I. Purpose**

This Circular describes contingency planning for an orderly shutdown of all but the most essential of the National Gallery of Art'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 Trustees of the National Gallery of Art holds in trust the national art collection and the buildings which house it. The National Gallery buildings are designed and staff are in place to safeguard and preserve the collections, works promised to the Nation, works on loan, and art and other property otherwise under the auspices and control of the Trustees. Thus, safekeeping of the National Gallery's collections and loans in the National Gallery's care is best accomplished within the existing secure facilities during a Federal funding hiatus.
- B. The National 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 Trustees's continuing trust responsibilities.
- C. In the event of a lapse in Federal funding, the National 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 National 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 National 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).

- D. Exempt Federal employees are those 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.
- E. Federal employees performing activities excepted by law include employees who are required to protect life and property, including maintaining and protecting the collections and the buildings and information technology systems, and employees 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.
- F. The process of shutting down the National 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.
- G. 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.
- H. Curtailments and furloughs will be handled in a way that recognizes the Trustees’s continuing responsibility for the safety and protection of the national art collection; for loans of works of art from other institutions and private lenders that may be in transit or due to be returned to those institutions and private lenders; for works of art loaned from the National 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 –

<b>Budget activity</b>	<b>On-board</b>	<b>Exempt funding</b>	<b>Excepted duties</b>
Art care	280	13	36
Operations and maintenance	133		27
Protection	181		72
General administration	92		20
Repair, restoration, and renovation	2	2	2
<b>Total Federal employees</b>	<b>688</b>	<b>14</b>	<b>157</b>

- B. Excepted Activities: Excepted activities in each budget activity are described as follows:
1. Art care
    - a. Staff who are directly responsible for the care and handling of works of art are required to ensure the continued protection of the collections when the Gallery is closed, and are “necessary to protect life and property,” as provided in OMB Cir. No. A-11, § 124.2.
    - b. In addition to caring for art in the building, staff are responsible for coordinating art 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 National Gallery and must be met and accompanied until works of art on loan are safely stored, or installed if required under the loan agreement.
    - c. 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.
    - d. On the closing date of an exhibition and during the period following, the National Gallery must receive couriers, de-install works of art, prepare condition reports, pack, and return shipments of works of art on loan according to generally accepted art-handling standards and Federal indemnity deadlines and regulations.
    - e. A duty curator and conservator must be on call at the National Gallery to make critical decisions in the event of an emergency that could threaten the safety or security of a work of art, such as fire, smoke, flood, or civil unrest.
  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
  5. Repair, restoration, and renovation
- C. All other Federal employees will be furloughed. In the event that a funding lapse extends beyond 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.
- D. During a shutdown, the National 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 National Gallery email, network, or any other National Gallery information technology systems to carry out their regular work duties. Non-excepted staff may only monitor National Gallery email to receive messages from the Administrator announcing changes in operating status and should respond promptly to Administrator's instructions.

#### **IV. Private-fund Employees**

The number of private-fund employees expected to be on board before implementation of this plan is approximately 138. Because the National Gallery’s private-fund employees are paid from funds that are not subject to Federal appropriations laws, private-fund employees are exempt from furlough due to a lapse in appropriations. Therefore, 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

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<sup>1</sup> “[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).

work can be performed without access to National Gallery premises and does not require 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 National Gallery premises.

**V. Action and Notification**

- A. Orderly shutdown activities will begin upon notification from OMB. The National Gallery will notify OMB immediately when shutdown activities are being initiated.
- B. 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.
- C. The Administrator will establish internal operating procedures and inform all affected employees about the procedures so that the buildings may be closed and secured within 4 hours. Operations that must be accomplished include such activities as clearing the public, posting signs, and storing objects of value, including art.
- D. Reporting to Duty
  - 1. If the shutdown begins 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.
  - 2. If the shutdown begins Monday-Friday: 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 four (4) hours to complete necessary work for an orderly shutdown. Private-funded 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.
  - 3. Supervisors are responsible for notifying employees of their duty status during the 4 hours prior to shutdown and for preparing work plans with exempt staff.
- E. Public Notification: In the event of a shutdown, the National Gallery will post a notice at each public entrance to inform the public of the closure. In addition, the National Gallery will update the public website ([www.nga.gov](http://www.nga.gov)) to inform the public that the National Gallery is not responding to queries, sending out newsletters, or updating the website, including Calendar of Events. The National Gallery’s main telephone number (202-737-

4215) will have a recorded message about the Gallery's status. Furloughed employees will create automatic email replies 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.

- F. **Returning to Duty:** Once Federal appropriations are restored, the National Gallery will resume normal operations promptly. Upon instruction by OMB, the National Gallery will recall employees necessary to begin preparations for reopening. Employees will be directed to consult the Office of Personnel Management's website ([www.opm.gov](http://www.opm.gov)) and [www.nga.gov](http://www.nga.gov) and to monitor local television and radio stations for information about returning to duty. Employees may also monitor National Gallery email for messages from the Administrator announcing changes in operating status and may be contacted through the National Gallery's Send Word Now 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.

## **VI. Penalties**

Violators of the provisions of this Circular are subject to disciplinary action in accordance with National Gallery personnel policies and procedures.

Laura Lott  
Administrator