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MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
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UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
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DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Guidance for Continuation of Operations in the Absence of Available Appropriations

The current continuing resolution (CR) ends December 16, 2011. The Secretary and I still hope that we receive a CR or an appropriations bill for the Department's activities beyond this date. However, we must plan for the possible expiration of the current CR and the possible absence of appropriations.

The attachment to this memorandum provides instructions for continuation of essential operations in the absence of appropriated funds. The Department will, of course, continue to prosecute the war in Afghanistan, including preparation of forces for deployment into that conflict. The DoD will also continue completion of the military commitment in Iraq. The Department must, as well, continue many other operations necessary for the safety of human life and protection of property, including operations essential for the security of our nation. These activities will be "excepted" from cessation; all other activities would need to be shut down in an orderly and deliberate fashion, including – with few exceptions – the cessation of temporary duty travel.

All military personnel will continue in a normal duty status regardless of their affiliation with excepted or non-excepted activities. Military personnel will serve without pay until such time as Congress makes appropriated funds available to compensate them for this period of service. Civilian personnel who are engaged in excepted activities will also continue in normal duty status and also will not be paid until Congress makes appropriated funds available. Civilian employees not engaged in excepted activities will be furloughed, i.e., placed in a non-work, non-pay status.

The responsibility for determining which functions would be excepted from shut down resides with the Military Department Secretaries and Heads of DoD Components, who may delegate this authority as they deem appropriate. The attached guidance should be used to assist in making this excepted determination. The guidance does not identify every excepted activity, but rather provides overarching direction and general principles for making these determinations. It should be applied prudently in the context of a Department at war, with decisions guaranteeing our continued robust support for those engaged in that war, and with assurance that the lives and property of our Nation's citizens will be protected.

This memorandum contains guidance to begin detailed planning. No shutdown actions are to be taken until you receive further notice.

Within the Office of the Secretary of Defense, the Under Secretary of Defense (Comptroller) will take the lead in preparing for operations in the absence of appropriations, assisted by other offices as necessary.

To repeat, the Secretary and I hope that DoD will receive a CR or the appropriations bill. This guidance is intended to support prudent planning.

Attachment:
As stated

cc:
Director for National Intelligence

CONTINGENCY PLAN GUIDANCE FOR CONTINUATION OF ESSENTIAL OPERATIONS IN THE ABSENCE OF AVAILABLE APPROPRIATIONS DECEMBER 2011

GENERAL INFORMATION

This document provides guidance for identifying those missions and functions of the Department of Defense that may continue to be carried out in the absence of available appropriations. The information provided in this document is not exhaustive, but rather illustrative, and is intended primarily to assist in the identification of those activities that may be continued notwithstanding the absence of available funding authority in the applicable appropriations (excepted activities). Activities that are determined not to be excepted, and which cannot be performed by utilizing military personnel in place of furloughed civilian personnel, will be suspended when appropriated funds expire. The Secretary of Defense may, at any time, determine that additional activities shall be treated as excepted.

Military Personnel

Military personnel are not subject to furlough. Accordingly, military personnel on active duty, including reserve component personnel on Federal active duty, will continue to report for duty and carry out assigned duties. In addition to carrying out excepted activities, military personnel on active duty may be assigned to carry out non- excepted activities, in place of furloughed civilian personnel, to the extent that the non- excepted activity is capable of performance without incurring new obligations.

Reserve component personnel performing Active Guard Reserve (AGR) duty will continue to report for duty to carry out AGR authorized duties. Reserve component personnel will not perform inactive duty training resulting in the obligation of funds, except where such training directly supports an excepted activity, and may not be ordered to active duty, except in support of those military operations and activities necessary for national security listed in Attachment 2, including fulfilling associated pre-deployment requirements. Orders for members of the National Guard currently performing duties under 32 U.S.C. 502(f) will be terminated unless such duties are in support of excepted activities approved by the Secretary of Defense.

Movement of military personnel will be limited as follows:

1) Moves TO an excepted activity will continue.

2) Moves FROM an excepted activity will continue only to the extent the commander of the excepted activity determines it essential to mission (e.g., overburden of local infrastructure), or required to enhance support of excepted activities.

3) Accession and training moves associated with recruitment and initial entry training will continue, along with subsequent movement to first station when required by "1" above.

4) Movement to comply with separation instructions will continue.

Civilian Personnel

Civilian personnel, including military technicians, who are not necessary to carry out or support excepted activities are to be furloughed. Only the minimum number of civilian employees necessary to carry out excepted activities will be exempt from furlough. Positions that provide direct support to excepted positions may also be deemed excepted if they are critical to performing the excepted activity. Determinations regarding the status of civilian positions will be made on a position by position basis, using the guidance in this document. Determinations shall be made for all positions, including those in the Senior Executive Service or equivalent, as well as those located overseas.

Following the expiration of appropriations, a minimum number of civilian employees may be retained as needed to execute an orderly suspension of non- excepted activities within a reasonable timeframe.

Senate-confirmed officials appointed by the President are not subject to furlough. Their immediate office personnel necessary to support excepted activities may be exempt from furlough at the discretion of the appointee.

Foreign national employees paid with host country funds are exempt from furlough. Additionally, foreign national employees governed by country-to-country agreements that prohibit furloughs are exempt from furlough.

Civilian personnel whose salaries are paid with expired appropriations and later reimbursed from a non-DoD source (e.g., the Foreign Military Sales Trust Fund) are not exempt from furlough solely on that basis. Personnel whose salaries are paid from a DoD appropriation or fund that has sufficient funding authority (e.g., multiyear appropriations with available balances from prior years) will not be subject to furlough. Heads of activities may, on their authority, require the return to work of civilian personnel in the event of developments (natural disasters, accidents, etc.) that pose an imminent danger to life or property.

Temporary Duty (TDY) Travel

In the absence of appropriations, TDY travel scheduled to begin after the shutdown occurs should be cancelled, except as noted below. Any TDY travel that began prior to the shutdown should, except as noted below, be terminated as quickly as possible, but in an orderly fashion.

All TDY travel in direct support of the war in Afghanistan and the transition in Iraq, and other travel directly related to safety of life and protection of property, as well as foreign relations (e.g., negotiating international agreements), may be undertaken or continued only if approved, in writing, by the appropriate approval authority listed below and only in the most limited circumstances. The approval authority (which may be delegated to appropriate senior officials) for any such TDY travel is the:

- Secretary of a Military Department for personnel assigned to that Military Department
- Head of the agency for personnel assigned to that defense agency

- Chairman of the Joint Chiefs of Staff for personnel assigned to the Joint Staff
- Combatant Commander for personnel assigned to that combatant command
- Principal Staff Assistant (PSA) for personnel assigned to that office

Notwithstanding the approval authority stated above, all TDY travel by Presidential Appointed – Senate Confirmed (PAS) personnel must be approved by the Deputy Secretary of Defense.

Approving officials will implement a mechanism within their organizations for approving such travel.

Contracts

Contractors performing under a contract that was fully obligated upon contract execution (or renewal) prior to the expiration of appropriations may continue to provide contract services, whether in support of excepted activities or not. However, new contracts (including contract renewals or extensions, issuance of task orders, exercise of options) may not be executed unless the contractor is supporting an excepted activity. No funds will be available to pay such new contractors until Congress appropriates additional funds.

The expiration of an appropriation does not require the termination of contracts (or issuance of stop work orders) funded by that appropriation unless a new obligation of funds is required under the contract and the contract is not required to support an excepted activity. In cases where new obligation is required and the contract is not required to support an excepted activity, the issuance of a stop work order or the termination of the contract will be required.

The Department may continue to enter into new contracts, or place task orders under existing contracts, to obtain supplies and services necessary to carry out or support excepted activities even though there are no available appropriations. It is emphasized that this authority is to be exercised only when determined to be necessary - where delay in contracting would endanger national security or create a risk to human life or property.

Additionally, when authorized by the Secretary of Defense, contracts for covered items may be entered into under the authority of the Feed and Forage Act.

PROTECTION OF LIFE AND PROPERTY
NATIONAL SECURITY

Excepted	• Military operations and activities authorized by deployment or execute orders, or otherwise approved by the Secretary of Defense, and determined to be necessary for national security, including administrative, logistical, medical, and other activities in direct support of such operations and activities; training and exercises required to prepare for and carry out such operations. • Activities of forces assigned or apportioned to combatant commands to execute planned or contingent operations necessary for national security, including necessary administrative, logistical, medical, and other activities in direct support of such operations; training and exercises required to prepare for and carry out such operations. • Activities necessary to continue recruiting for entry into the Armed Forces during contingency operations (as such term is defined in 10 U.S.C 101(13)), including activities necessary to operate Military Entrance Processing Stations (MEPS) and to conduct basic and other training necessary to qualify such recruited personnel to perform their assigned duties. • Command, control, communications, computer, intelligence, surveillance, and reconnaissance activities required to support national or military requirements necessary for national security or to support other excepted activities, including telecommunications centers and phone switches on installations, and secure conference capability at military command centers. • Activities required to operate, maintain, assess, and disseminate the collection of intelligence data necessary to support tactical and strategic indications and warning systems, and military operational requirements. • Activities necessary to carry out or enforce treaties and other international obligations.
Footnotes	Activities involving technical intelligence information collection, analysis and dissemination functions not in direct support of excepted activities (e.g., general political and economic intelligence unrelated to ongoing or contingency military operations, support of acquisition programs, support to operational test and evaluation, intelligence policy security promulgation and development, systems development and standards, policy and architecture) are not excepted activities.

SAFETY OF PERSONS AND PROTECTION OF PROPERTY

Excepted	• Response to emergencies, including fire protection, physical and personnel security, law enforcement/counter terrorism, intelligence support to terrorist threat warnings, Explosive Ordnance Disposal operations, emergency salvage, sub-safe program, nuclear reactor safety and security, nuclear weapons, air traffic control and harbor control, search and rescue, utilities, housing and food services for military personnel, and trash removal. • Emergency repair & non-deferrable maintenance to utilities, power distribution system buildings or other real property, including bachelor enlisted quarters (BEQ), bachelor officers' quarters (BOQ), and housing for military personnel. • Repair of equipment needed to support services for excepted activities, including fire trucks, medical emergency vehicles, police vehicles, or material handling vehicles. • Monitoring and maintaining alarms and control systems, utilities, and emergency services. • Receipt/safekeeping of material delivered during shutdown. • Control of hazardous material and monitoring of existing environmental remediation. • Oil spill/hazardous waste cleanup, environmental remediation, and pest control, only to the extent necessary to prevent imminent danger to life or property. • Safe storage or transportation of hazardous materials, including ammunition, chemical munitions, photo processing operations. • Emergency reporting response and input to the National Response Team and coordinating with Environmental Protection Agency (EPA) and other agencies on fire, safety, occupational health, environmental, explosive safety for vector borne disease management. • Activities, both in the Continental United States (CONUS) and overseas, required for the safety of DoD or other U.S. Government employees or for the protection of DoD or other U.S. Government property. • Defense support to civil authorities in response to disasters or other imminent threats to life and property, including activities of the U.S. Army Corps of Engineers with respect to responsibilities to state and local governments that involve imminent threats to life or property. • Foreign humanitarian assistance in response to disaster or other crises posing an imminent threat to life. • Emergency counseling and crisis intervention intake screening and referral services. • Suicide and substance abuse counseling. • Counterdrug activities determined to be necessary for the protection of life or property. • Operation of mortuary affairs activities and attendant other services necessary to properly care for the fallen and their families. • Other activities authorized by the Secretary of Defense to provide for the safety of life or protection of property.
Footnote	• Activities in support of environmental requirements which are not necessary to prevent imminent threat to life or property are not excepted activities.

MEDICAL/DENTAL CARE

Excepted	• Inpatient care in DoD Medical Treatment Facilities and attendant maintenance of patient medical records. • Acute and emergency outpatient care in DoD medical and dental facilities. • Private Sector Care under TRICARE. • Certification of eligibility for health care benefits. • Veterinary Services that support excepted activities (i.e., food supply and service inspections).
Footnotes	• Contingency planning in medical command headquarters not immediately necessary to support excepted activities is not an excepted activity. • Elective surgery and other elective procedures in DoD medical and dental facilities are not excepted activities. • Surgery to continue recovery of function/appearance of Wounded Warriors is an excepted activity.

ACQUISITION AND LOGISTIC SUPPORT

Excepted	• Contracting, contract administration, and logistics operations in support of excepted activities. • Activities required to contract for and to distribute items as authorized by the Feed and Forage Act (e.g., clothing, subsistence, forage, fuel, quarters, transportation, and medical and hospital supplies). • Central receiving points for storage of supplies and materials purchased prior to the shutdown.

EDUCATION AND TRAINING

Excepted	• Education and training necessary to participate in or support excepted activities. • DoD Education Activity (DoDEA) educational activities.
Footnotes	• DoDEA summer school activities are non-excepted activities. • Installation education centers may continue to operate utilizing military personnel, so that private agencies such as colleges and universities may provide courses for which payment has already been made. • Civilian employees on TDY for training or education associated with non-excepted activities should be returned to their home stations as part of the orderly closedown of operations. • Civilian personnel on PCS orders attending training or educational activities should remain in place.

LEGAL ACTIVITIES

Excepted	• Litigation activities associated with imminent or ongoing legal action, in forums inside or outside of DoD, to the extent required by law or necessary to support excepted activities. • Legal support for excepted activities, including legal assistance for military and civilian employees deployed, or preparing to deploy, in support of military or stability operations. • Legal activities needed to address external (non-judicial) deadlines imposed by non-DoD enforcement agencies, to the extent necessary to continue excepted activities.

AUDIT AND INVESTIGATION COMMUNITY

Excepted	• Criminal investigations related to the protection of life or property, including national security, as determined by the head of the investigating unit, and investigations involving undercover activities. • Counterterrorism and counterintelligence investigations.

MORALE WELFARE & RECREATION/NONAPPROPRIATED FUNDS

Excepted	• Morale, Welfare, and Recreation (MWR) and Non-Appropriated Fund (NAF) activities necessary to support excepted activities, e.g., operation of mess halls; physical training; child care activities required for readiness.
Footnotes	• Activities funded entirely through NAF sources will not be affected. • Military personnel may be assigned to carry out or support non-excepted MWR activities, where deemed necessary or appropriate, to replace furloughed employees.

FINANCIAL MANAGEMENT

Excepted	• Activities necessary to control funds, record new obligations incurred in the performance of excepted activities, and manage working capital funds. • Activities necessary to effect upward adjustment of obligations and the reallocation of prior-year unobligated funds in support of excepted activities.
Footnote	• Preparation of financial reports, research and correction of problem disbursements, adjustments to prior-year funds (excepted as noted above) including those related to programs and contracts that do not support excepted activities, and approval of the use of currently available funds to pay obligations against closed accounts are not excepted activities.

WORKING CAPITAL FUND/REVOLVING FUNDS

Excepted	• **Defense Working Capital Fund (DWCF)/Revolving Fund (RF) activities with positive cash balances may continue to operate until cash reserves are exhausted.** • **When cash reserves are exhausted, DWCF/RF activities must continue operations in direct support of excepted activities.** • **DWCF/RF activities may continue to accept orders financed with appropriations enacted prior to the current fiscal year or unfunded orders from excepted organizations. Unfunded orders will be posted to accounts receivable and not actually billed until appropriations are enacted.**
Footnotes	• **DWCFs/RFs are not directly impacted by a lapse in annual appropriations.** • **Management actions should be taken to sustain operations and minimize operational impact resulting from late approval of annual appropriations.** • **Management actions which could be taken to conserve cash reserves include: delay of training, minimal travel, reduction in supplies, and other actions consistent with management objectives.** • **Inter-DWCF/RF billings will continue unless a suspension request is approved by the Office of the Under Secretary of Defense (Comptroller),** • **Approval may be requested for advance billing of funded customer orders.** • **Plan guidance for excepted activities is applicable to DWCF/RF internal operations.**