



**Office of the Special Inspector General
for Iraq Reconstruction**

**Agency Response Plan
in the Event of a Funding Lapse**

**As required by Section 124,
OMB Circular A-11
(2010)**

April 7, 2011

SIGIR Response Plan in the Event of a Funding Lapse

1. Background.

A. SIGIR. — The Office of the Special Inspector General for Iraq Reconstruction (SIGIR) is the successor to the Coalition Provisional Authority Office of Inspector General (CPA-IG). SIGIR was created in October 2004 by a Congressional amendment to Public Law 108-106 and provides oversight of Iraq reconstruction programs and operations. Specifically, SIGIR has the responsibility (a) to oversee the use, and potential misuse, of all amounts appropriated or otherwise made available for the reconstruction of Iraq, including all obligations, expenditures, and revenues associated with reconstruction and rehabilitation activities in Iraq; (b) to conduct audits and criminal investigations of these activities; and (c) to report on these matters every quarter to the appropriate Congressional committees. SIGIR also has law enforcement authority granted by the United States Attorney General. Unlike most other IGs, SIGIR is an independent agency; it is not part of another Federal department or agency. In addition, SIGIR is a temporary organization with an anticipated closure in December 2012.

For seven years now, SIGIR has provided comprehensive, real-time results that have improved economy, efficiency and effectiveness of the government's Iraq reconstruction program. SIGIR's contributions include: 28 Quarterly Reports to Congress; 5 Lessons Learned reports; 348 audit, inspection and evaluation reports; 524 investigations; 436 recommendations to improve program activities; 31 testimonies before Congress; and over a billion dollars in financial impact. SIGIR's body of work has long-term historical significance, documenting the largest relief and reconstruction effort for one country in U.S. history, and influencing how the United States will conduct stabilization and reconstruction operations in future contingency environments.

B. SIGIR Employees. — The agency head of SIGIR is the Special Inspector General for Iraq Reconstruction (the "Inspector General"), whose position was created by statute pursuant to Public Law 108-106, Section 3001(c). While SIGIR is independent and not part of the Departments of State or Defense or any other department, the Inspector General is appointed by the Secretary of Defense in consultation with the Secretary of State. The Inspector General is removable from office only by the President upon prior notice to Congress in accordance with the provisions of Section 3(b) of the Inspector General Act of 1978, as amended.

At present, SIGIR's employee workforce other than the Inspector General consists of 97 excepted service, limited-term (generally, not to exceed 13 months) employees appointed under 5 U.S.C. § 3161. All but 14 of this number currently work either at SIGIR's Arlington, Virginia headquarter or at various field locations in the continental United States (CONUS). The other 14 employees are now deployed on an extended TDY basis to Iraq.

SIGIR employees deployed to Iraq fall under the authority of the U.S. Chief of Mission in that country. Additionally, SIGIR employees in Iraq are, by virtue of their deployment to a war zone, designated “emergency essential” under 10 U.S.C. § 1580, and are therefore required to remain on duty in Iraq in the event of a general evacuation of non-“emergency essential” personnel by the Chief of Mission. *See* Dept. of the Army Civilian Employee Deployment Guide, ¶ 1-3, DA Pamph. # 690-47 (1 Nov. 1995). The employees in Iraq support all of SIGIR’s statutory missions and responsibilities (i.e., audits, criminal investigations, and quarterly reports to Congress).

C. Requirement for Agency Response Plan in the Event of a Lapse in Appropriations.— OMB Circular A-11 (2010), section 124.2, requires Executive Branch agencies to develop and maintain plans for an orderly shutdown of non-excepted activities in the event of a lapse in appropriations. Circular A-11 requires such agencies to submit their agency shutdown plans to OMB when first prepared or revised. This is SIGIR’s first shutdown plan, and has been submitted to OMB pursuant to Circular A-11.

2. Operating in the Absence of Appropriations.

A. General. — The Constitution of the United States mandates that “no money shall be drawn from the treasury, but in consequence of appropriations made by law.” U.S. Const. art. I, § 9, cl. 7. The Treasury is further protected by operation of the Antideficiency Act, 31 U.S.C. § 1341 *et seq.*, which among other things prohibits all officers and employees of the federal government from entering into obligations in advance of appropriations, and prohibits employing federal personnel in the event of a lapse in appropriations (except in emergencies), “unless authorized by law.” *Id.* The Attorney General of the United States has issued legal opinions addressing the permissible scope of government operations during a lapse in appropriations. Such opinions have to some extent clarified and over time narrowed the circumstances under which the “emergencies” exception of 31 U.S.C. § 1342 may be considered to authorize a continuation of certain “emergency” government activities (generally limited to circumstances where the failure to do so would result in an imminent threat to the safety of human life or the protection of property, including government property and records).

B. Continued Availability of No Year Funds. — As a general matter, the opinions of the Attorney General on the subject of funding lapses opine that, to the extent unobligated amounts from unexpired multi-year appropriations continue to remain available to a federal government agency, such moneys *may* continue to be obligated during a funding lapse in furtherance of the purposes and operations for which they were initially appropriated. Thus, at the time OMB notifies SIGIR of a funding lapse for the purpose of initiating this Response Plan, the organization will coordinate with OMB on the usage of any such unobligated and unallocated funds, which may be employed to delay the timing of the Plan’s implementation by SIGIR. As SIGIR and OMB staff have discussed, however, SIGIR, as a matter of sound management practice and good stewardship, must be mindful of the impending termination of SIGIR’s existence. Incident to SIGIR’s sunset and closure, SIGIR may incur financial obligations in amounts that in some cases are difficult to quantify precisely in advance or that may change over time. Unforeseen contingencies may also arise that would create financial obligations not otherwise experienced by an agency of permanent status -- for example, a sudden large exodus from SIGIR’s workforce as the agency’s termination approaches, which would require hiring additional contracted personnel to complete our mission.

Such contracted services would likely come at a higher than normal cost given the short length of time the support would be needed. Also, there could be a requirement for emergency travel and other expenses necessitated by security emergencies, personal injury or loss of life in Iraq involving our employees deployed to Iraq, as has happened in the past. At the same time, SIGIR's appropriated funds have been decreasing in recent years as its workload has changed. It is prudent to assume that this will continue to be the case as the agency approaches its termination, and that supplemental appropriations beyond what SIGIR has already requested for its anticipated remaining operations will not be forthcoming. In these circumstances SIGIR's multi-year funds would be an important resource for discharging such of SIGIR's obligations as might not be covered by current year appropriations. Therefore, SIGIR does not intend to expend any available and unallocated multi-year funds merely for the purpose of delaying the implementation of this Plan, unless OMB advises SIGIR that such expenditure is mandatory under applicable law.

Additionally, in the (not unlikely) event unobligated and unallocated amounts from unexpired multi-year appropriations do not exist at the time of a funding hiatus, then SIGIR will promptly initiate and complete the phase-down of activities for non-excepted employees pursuant to this Plan immediately upon notification by OMB.

C. *SIGIR's Excepted Personnel.*— Consistent with the 1995 and earlier opinions of the Attorney General as implemented in OMB guidance, the Antideficiency Act permits agencies to continue to employ personnel during an appropriations lapse only for functions excepted from the Act's general prohibition. During its orderly shutdown, SIGIR intends to place all its employees then on extended TDY in Iraq (currently numbering 14) into excepted status, based on the 1995 OLC opinion and the OMB memorandum of November 17, 1981, from Director David A. Stockman to the heads of executive agencies identifying "examples of excepted activities." There are several reasons why SIGIR has concluded that this guidance authorizes the designation of our employees in Iraq as excepted personnel:

First, SIGIR personnel in Iraq actively and directly support national security efforts associated with OPERATION IRAQI FREEDOM by conducting audits and criminal investigations into fraud and other misuse of public funds in this combat zone, in particular DOD funds, including emergency funds such as the Commanders Emergency Response Fund that have been appropriated for military commanders to use in situations requiring immediate responses to urgent humanitarian or other emergency needs of the Iraqi people. SIGIR's ability to convey real-time findings and recommendations to U.S. military personnel in Iraq depends critically on the full-time, uninterrupted presence of SIGIR staff on the ground in Iraq.

Second, SIGIR's ability to carry out its Congressionally mandated missions depends on the ability of our staff in Iraq to gain access to senior Iraqi officials, including some of the most senior members of the Iraqi government, and to maintain effective communication with them on the issues under SIGIR's jurisdiction. These issues are frequently sensitive in nature (for example, corruption involving Iraqi government employees, or other criminal matters of mutual interest to the U.S. and Iraqi Governments). At any given time (including at this writing), SIGIR personnel in Iraq typically have high-level meetings scheduled on such matters with senior Iraqi officials, the cancellation of which could have a negative impact on the official relations with such officials and result in lack of access to time-sensitive information. In further support of this assessment, SIGIR

understands that the U.S. Chief of Mission has declared all U.S. Embassy personnel in Iraq to be excepted and to report to work as usual in the event of a funding lapse. As SIGIR's personnel in Iraq are under Chief of Mission authority, they would normally follow Chief of Mission directives in the absence of compelling grounds and authority to do otherwise, none of which are present here in SIGIR's view.

Third, there is an imminent and continuing threat of an emergency in Iraq that would put the lives of our personnel, or property of the United States under SIGIR control, at immediate risk of loss. (Indeed, in the course of SIGIR operations to date, one of our employees has been killed in Iraq and several injured.) As of this writing, for example, the U.S. Chief of Mission in Iraq has ordered all personnel under his authority into a "lockdown" mode for the weekend of April 8-9, 2011, due to planned anti-American demonstrations in Baghdad that could become violent and pose a threat to U.S. citizens there. Should such a situation materialize this weekend or at any other time, it would require – based on past experience -- an immediate response by all SIGIR personnel in Iraq, who would need to be on duty, in full communication with all other USG personnel in the area, and in command of the best situational awareness possible. This requirement cannot be met if SIGIR personnel in Iraq are furloughed.

For the above reasons, activities of SIGIR employees in Iraq implicate and directly support both U.S. national security interests and U.S. foreign relations. Further, the security situation in Iraq can at any moment require an immediate response by SIGIR personnel in that country aimed at preventing or minimizing the loss of life, personal injury, or loss of U.S. Government property. SIGIR believes that in these circumstances the duties of our employees in Iraq fall within the exception for activities that agencies may continue because they provide for the national security, including the conduct of foreign relations essential to the national security, or the safety of life and property. See guidance cited above.

3. **SIGIR's Response Plan in the Event of a Funding Lapse.** – SIGIR has, therefore, followed such guidance in designating as "excepted" its personnel deployed to Iraq at the time a funding lapse occurs for retention, and activity continuation, purposes. At the present time, this would consist of 14 SIGIR employees (including managers, criminal investigators, auditors and support staff).

Because SIGIR would have excepted personnel continuing essential activities in Iraq in case of a funding lapse, SIGIR has also designated the Inspector General (based in Arlington headquarters) as excepted in order to provide senior oversight and guidance over such continuing agency operations for the duration of a lapse in funding. This designation of the Inspector General is also appropriate in order to provide senior oversight of the agency's law enforcement activities, some of which may continue during a funding lapse as discussed below.

Finally, three (3) additional SIGIR staff members in SIGIR's Arlington, Virginia headquarters will be retained, temporarily, upon implementation of this Response Plan, in order to effect an orderly shutdown of headquarters operations. These employees (consisting of the Director-Management and Administration, the General Counsel, and the Security Officer) will be on duty for a relatively short duration (estimated not to exceed 4 hours) after this plan is implemented in order to deal with any matters that may arise in headquarters incident to the

shutdown.

There is a possibility that a small number of SIGIR criminal investigators (estimated at fewer than 5) will be actively engaged in criminal investigation activity that must be immediately completed – even in the event of a funding lapse – in order to help prevent the loss of life or property (including U.S. Government property). There is also a possibility that some or all of three (3) SIGIR prosecuting attorneys currently detailed to the Department of Justice may be required by a U.S. District Court judge to appear in court for previously scheduled hearings if the presiding judge declines to postpone such hearings even though a lapse in funding has occurred. Such situations, if they arise, may also require TDY travel of a brief duration. If such situations arise, the affected criminal investigators or prosecuting attorneys will be temporarily retained, or recalled to duty, as excepted personnel only for so long as necessary to deal with the immediate requirement (estimated to be only a few days) and will then be placed in or returned to furlough status.¹

All other SIGIR personnel not discussed above are considered “non-excepted” in the event of a funding lapse for purposes of this Plan, and are to be furloughed and placed in a non-pay, non-duty status. This includes the three (3) staff members identified above who will be retained temporarily at the outset of an OMB-ordered initiation of this Plan’s implementation. SIGIR’s employees who are to be furloughed pursuant to this Plan will be notified by SIGIR’s human resources staff of their “non-excepted/furlough” status in writing, by email or fax or personal delivery as necessary, on the last work day before the lapse in funding will occur absent an approved appropriation. Those employees will be informed that they should prepare for a possible shutdown of operations for which they may be responsible, secure their work areas that day, and prepare for the possibility of an absence from their work location of an unknown duration. The notice to those employees will instruct them not to return to their work locations in the event a funding lapse does occur, but to report to work the next work day after any approved appropriation removes the funding lapse.

SIGIR personnel retained as “excepted” (whether in Iraq or at SIGIR’s headquarters in Arlington, Virginia, whether on a continuing basis during any funding lapse or only temporarily upon an OMB determination that this Plan is to be implemented) will not be paid until appropriations are made available by Congress, consistent with the principles set forth in OMB Circular No. A-11 and the Attorney General’s opinions addressing a funding hiatus. *See, e.g., “Memorandum Opinion for the Director, Office of Management and Budget,”* August 16, 1995, transmitted by OMB Bulletin entitled “*Agency Plans for Operations During Funding Hiatus,*” OMB Bull. M-95-18; 1995 OLC LEXIS 57 (August 22, 1995); *Authority for the Continuance of Government Functions During a Temporary Lapse in Appropriations*, 43 Op. Atty Gen. 293; 5 Op. O.L.C. 1 (1981); *Applicability of the Antideficiency Act Upon A Lapse in an Agency’s Appropriations*, 43 Op. Atty Gen. 224; 4A Op. O.L.C. 16 (1980). SIGIR will, however, incur an obligation to pay for the services rendered by excepted personnel during the funding hiatus, which obligation will be paid if the Congress appropriates funds for that purpose. *Id.*

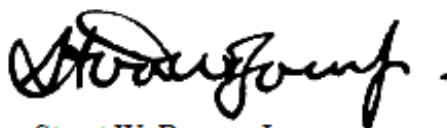
¹ In addition to these circumstances, furloughed employees may be recalled temporarily or otherwise from furlough status in the event their services become necessary to perform any other excepted activities identified in this Plan.² SIGIR will suspend the hiring process for any new employees immediately upon the effectiveness of a funding lapse and consequent Plan implementation.

3. **Additional Data Specifically Required by Section 124.2 of Circular A-11.**—

A. *Time to Complete Implementation.*— SIGIR estimates that a period of no more than 4 hours (or one-half day) from the time of any notification by OMB to implement this Plan will be required to complete its implementation.

B. *Number of employees expected to be on board before the earliest possible implementation of this agency response plan.*— The total number of SIGIR employees (exclusive of SIGIR's agency head) expected to be on SIGIR's employment rolls on or about the earliest possible date of OMB's directing its implementation (*i.e.* April 8, 2011) is estimated to be 97.²

C. *Number of employees to be retained under this plan.*— The total number of employees to be retained under this Plan is at present 15 – the agency head and the 14 SIGIR employees deployed to Iraq -- compared with 83 total SIGIR employees, at present, to be furloughed. Because the agency head and all employees deployed to Iraq are designated as “excepted” on national security, foreign relations and/or law enforcement grounds, there are no SIGIR employees, not otherwise exempt, to be retained solely to protect life and property. In addition, three (3) SIGIR employees will be retained temporarily (as explained above) under this Response Plan for the orderly termination of SIGIR's unexcepted activities. Also, as discussed above, a small number of criminal investigators and prosecuting attorneys may be temporarily retained or recalled to duty under the circumstances stated.



Stuart W. Bowen, Jr.
Inspector General

² SIGIR will suspend the hiring process for any new employees immediately upon the effectiveness of a funding lapse and consequent Plan implementation.