



# Government Shutdown Guide

## The Threat of Government Shutdown

### BACKGROUND

Agencies pay the wages and salaries of their employees from funds that are appropriated by the Congress through legislation. If those appropriation bills are not passed by the Congress and signed into law by the President before the new fiscal year begins--October 1--agencies lose their authority to incur obligations and authorize expenditures.

To avoid improper spending in such situations, agencies are required to implement furloughs. A "furlough" is defined as an official personnel action that places an employee in a temporary non-pay status without duties because of a lack of work or funds or other non-disciplinary reasons. A furlough of 30 calendar days or less is covered under 5 CFR part 752, adverse action procedures. A furlough of more than 30 calendar days is covered under 5 CFR part 351, reduction-in-force procedures. Employees considered "nonessential" would be furloughed during a shutdown of the government.

A significant number of AFGE members are likely to perform work that is considered to be "essential" and will not be furloughed. Those employees will not be paid for their labor until the regular appropriation bill for their agency becomes law. That is, their agencies will only incur obligations for their salaries. Worse yet, because "essential" employees will be earning income--even though they won't actually be paid until after the budget crisis has been resolved--they will likely be rendered ineligible for unemployment compensation. Working under the supervision of the Office of Management and Budget, your agency is currently in the process of determining which employees are "essential" and which are "non-essential."

The extent of the shutdown depends on which of the eleven appropriation bills are not signed into law in time. For example, if your agency receives funding from the Transportation appropriation bill and that legislation becomes law in a timely manner, your agency would continue to function even if other appropriation bills are held up.

There have been eleven shutdowns of the government because of lapses in appropriations since 1981. Until FY 1995, none had lasted longer than three days. In FY 1996, however, the 104<sup>th</sup> Congress engaged in extended negotiations resulting in two shutdowns lasting 5 and 21 days.

### CURRENT APPROPRIATIONS STALEMATE

The status of the FY 2011 appropriations bill is in limbo. On April 8, the recent extension of the FY 2011 Continuing Resolution will expire as will the stopgap measure designed to allow agencies to continue operations while the Congress and the President continue their negotiations. The following pages offer guidance for Locals and Councils on what to do if no further extension is granted.

## -- UNION GUIDANCE --

### Steps to Take In the Event of a Shutdown

#### 1. Review Collective Bargaining Agreement

If your CBA addresses furloughs, you may file a grievance demanding that the agency comply with those provisions.

#### 2. Demand to Bargain

Send a demand to bargain the issue. Do not wait until you receive formal notice of the furlough because the ability to bargain will expire once the funding expires.

#### 3. Request List of Employees Deemed “Essential”

#### 4. Explore Alternative Work Schedules

Being deemed an essential employee allows for ultimate, but not immediate, payment, leaving the employee to incur costs of traveling to and from work. Survey employees to seek if some would be willing to rotate into shifts of “essential workers.” (Those that are seeking unemployment benefits as furloughed employees may not choose this option.)

#### 5. Attend to the Needs of the Federal Employee Community

The Union should seek to aid the many federal employees, both union members and non-members, that will suffer the financial effects of a government shutdown. See Appendix A for ideas on how your local can reach out to the community.

### Suggested Subjects for Bargaining

#### RETROACTIVE ADMINISTRATIVE LEAVE FOR FURLOUGHED EMPLOYEES

You should attempt to negotiate a provision whereby furloughed employees will receive retroactive administrative leave once an appropriations bill is passed and enacted.

*Suggested Language: The Agency shall grant employees who suffer loss of pay through furlough administrative leave equal to the lost time when an appropriation is enacted.\**

\*This language was found to be negotiable in AFGE v. Veterans Administration, 41 FLRA 73 (1991).

#### **PAY FOR EXCEPTED EMPLOYEES**

You should seek language guaranteeing that employees who are required to work during a funding gap will be paid within a certain number of days once the new appropriation is enacted.

*Suggested Language: Within seven (7) days of the enactment of the new appropriation, excepted employees shall be made whole for the time working during the funding gap.*

#### **NOTIFICATION PROCEDURES**

You should attempt to negotiate procedures on how the Agency will notify employees regarding shutdowns due to funding gaps. This should include letting employees know in advance whether they are excepted employees (employees who will continue to work during the shutdown) or non-excepted employees (employees who will be furloughed).

You will also want to negotiate procedures for how employees who are furloughed will be notified to return to work and to ensure that employees will not be furloughed for longer than necessary due to inadequate information.

Finally, there should be enough notice to returning employees to avoid having employees who have made arrangements or travel plans from losing pay or being placed in an AWOL status.

#### **DETERMINING WHICH EMPLOYEES ARE FURLOUGHED**

In some situations, where a specific number of positions are identified as excepted but a greater number of employees hold the identified positions, the Union may want to negotiate volunteer provisions or other procedures for identifying who will be required to work during the furlough. The Union, however, may want to avoid this subject if the Agency is willing to agree to retroactive administrative leave.

*Suggested Language: Where a limited number of available employees in a position will be deemed excepted, the Agency will first solicit volunteers. If more employees volunteer than necessary, the volunteers shall be selected by*

*seniority. If enough employees do not volunteer, the Agency shall select employees by reverse seniority.*

#### **LOST DIFFERENTIALS**

If the Agency is receptive to Administrative leave, the Union may also want to include additional language protecting against any lost differentials and premium pay that the employee would have normally earned if not for the Shutdown.

*Suggested Language: The Agency will grant employees who suffer loss of pay through furlough, administrative leave equal to the lost time when an appropriation is enacted. Such leave shall include lost differentials and premium pay the employee would have otherwise earned.*

#### **EXCEPTED EMPLOYEES' RIGHTS UNDER THE CBA**

You should ensure that nothing in the MOU waives excepted employees' rights under the CBA for any matters such as requesting leave, or notice requirements for overtime, etc.

*Suggested Language: Nothing in this MOU waives any rights excepted employees would otherwise have in the course of their employment under the CBA, law, rule or regulation (e.g. leave request procedures).*

#### **FEHB PAYMENTS**

You may attempt to address how payments to health premiums and other deductions will be handled.

*Suggested language: Once an appropriation is enacted, all employer health premiums and other benefit premiums shall be promptly paid.*

**See Appendix B for sample proposals.**

## -- MEMBER GUIDANCE --

### What to Expect During a Shutdown: Q & A

#### **Do all federal employees work during a shutdown?**

No. Only excepted services, i.e. those that protect life and property, services that are necessary to begin phase-down of other activities will continue during a shutdown. Non-excepted services are "furloughed" or placed in a temporary non-duty, non-pay status. Primary examples of activities agencies *may continue* are those which may be found under applicable statutes to:

1. Provide for the national security, including the conduct of foreign relations essential to the national security or the safety of life and property.
2. Provide for benefit payments and the performance of contract obligations under no-year or multi-year or other funds remaining available for those purposes.
3. Conduct essential activities to the extent that they protect life and property, including:
  - a. Medical care of inpatients and emergency outpatient care;
  - b. Activities essential to ensure continued public health and safety, including safe use of food and drugs and safe use of hazardous materials;
  - c. The continuance of air traffic control and other transportation safety functions and the protection of transport property;
  - d. Border and coastal protection and surveillance;
  - e. Protection of Federal lands, buildings, waterways, equipment and other property owned by the United States;
  - f. Care of prisoners and other persons in the custody of the United States;
  - g. Law enforcement and criminal investigations;
  - h. Emergency and disaster assistance;
  - i. Activities essential to the preservation of the essential elements of the money and banking system of the United States, including borrowing and tax collection activities of the Treasury;
  - j. Activities that ensure production of power and maintenance of the power distribution system; and
  - k. Activities necessary to maintain protection of research property.

In addition, the following policies will be in effect in the event of an appropriations hiatus:

1. All employees performing non-excepted activities are permitted to perform no services other than those involved in the orderly suspension of agency operations.
2. During a appropriations hiatus, an agency may *obligate* funds for essential services, but funds may not be available to permit agency *payment* of obligations. All personnel performing excepted services 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.

### **What are my procedural rights during a shutdown?**

For a short furlough of a covered employee, the law (5 U.S.C. § 7513) gives a *covered* employee the following rights:

- At least 30 calendar days advance written notice by the agency stating the specific reasons for the proposed action. (Under 5 C.F.R. § 752.404 (b)(2), if the agency is furloughing some, but not all, employees in a competitive level, the notice of proposal must state the basis for selecting the particular employee as well as the reasons for the furlough.)
- At least 7 calendar days for the employee to answer orally and in writing to the proposal notice and to furnish documentary evidence in support of his or her answer.
- The right of the employee to be represented by an attorney or other representative.
- A written decision by the agency with the specific reasons for its action at the earliest time practicable.
- The right to appeal the agency's action to MSPB.

For furloughs held over 30 days, reduction-in-force procedures must be met under 5 U.S.C. part 351.

Additional procedural rights may be provided by bargaining unit members' negotiated agreement.

### **If I am performing excepted services, when will I receive pay for work performed during the shutdown?**

When an appropriations bill for your specific agency has become law.

### **Can a "non-essential" worker volunteer to work in a non-pay status during furlough?**

No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual. *See* 31 U.S.C. § 1342.

### **Can I take another job while on furlough?**

Except for conflict of interest restrictions (which preclude outside employment in a non-government facility that contracts with a Federal agency, and other incompatible activities as well as those which give the appearance thereof) or Hatch Act restrictions (which deal with political activities of Federal employees), employees may accept

employment outside the Federal service while on furlough. Employees must obtain agency approval of any such outside employment. Furloughed employees may, absent any agency restrictions, accept temporary appointments with other Federal agencies during furlough.

### **Can I request leave while on furlough?**

The Agency is not required to grant any leave (sick leave, FMLA, etc.) during furlough days. It may cancel previously granted leave, including authorized LWOP.

### **Am I entitled to unemployment compensation while on furlough?**

It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ.

### **What will happen to my benefits during the shutdown?**

If you have received a temporary appointment in another agency during the furlough, your benefits will be handled as if you had been transferred (see Comp. Gen. opinion B-167975, September 1, 1970).

Because furlough status is *not* a break in federal service, time served in this non-duty status is credited as follows:

- For **career tenure**, the first 30 calendar days of each non-pay period is creditable service.
- For **completion of probation**, an aggregate of 22 workdays in a non-pay status is creditable service.
- For **X-118 qualification standards**, there is no requirement to extend qualifying periods by the amount of non-pay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.
- For **time-in-grade** requirements, non-pay status is creditable service.
- For **retirement** purposes, an aggregate non-pay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a non-pay status. When employees are in a non-pay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. §§ 8332 and 8411). The exception would be an employee who had substantial time in a non-pay status earlier in the year if the furlough causes him or her to have more than six months' time in a non-pay status during the calendar year.
- For **health benefits**, enrollment continues for no more than 365 days in a non-pay status. The non-pay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 CFR 890.303 (e)). The government contribution continues while employees are in a non-pay status. The employee can choose between paying the agency directly on a current basis or having the

premiums accumulate and be withheld from his or her pay upon returning to duty.

- For **life insurance**, coverage continues for 12 consecutive months in a non-pay status without cost to the employees (5 CFR 870.401 (c)) or to the agency (5 CFR 870.401 (d)). The non-pay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.
- For **within-grade increases**, an aggregate of 2 workweeks non-pay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 CFR 531.406 (b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek non-pay status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 CFR 532.417 (b)).
- For **annual and sick leave**, when an employee accumulates 80 hours of non-pay status, his or her annual and sick leave credits are reduced by an amount equal to the amount of leave the employee earns during that pay period (5 CFR 630.208). For purposes of computing annual leave accrual rates, creditable service is limited to an aggregate of 6 months non-pay status in a calendar year (5 U.S.C. 6303 (a) and 8332 (f)).
- For **reduction in force**, an aggregate of 6 months non-pay status in a year is creditable service.
- For **severance pay**, non-pay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595 (b)(1) and 5 CFR 550.705. However, for purposes of determining service creditable towards the computation of an employee's severance pay fund under 5 U.S.C. 5595 (c)(1) and 5 CFR 550.707-708, no more than 6 months of non-pay status time per calendar year is creditable service. (This is the same rule used in crediting non-pay status time as "service" in determining annual leave accrual rates.)
- For the **Thrift Savings Plan**, refer to the *Thrift Savings Plan Bulletin for Agency TSP Representatives*, No. 95-15, dated May 12, 1995, or contact the Federal Retirement Thrift Investment Board at (202) 942-1460.
- For **military duty or workers' compensation**, non-pay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

## What Else Can You Do?

### Resources to Fight Back

AFGE has one of the most talented lobbying teams in Washington, DC. But AFGE's fight to prevent budget, pay, pension and other benefit cuts won't be won on Capitol Hill alone. It will be won by AFGE members, other union members and our allies who rally, walk a picket line, and call, write and visit their lawmakers back home. The following are resources you can use to Fight Back.

### AFGE Back Toolkit

The toolkit contains worksite flyers, phone scripts, sample letters and other tools you can use to mobilize members to action. Simply go to the AFGE website and click on the "Fight Back, Take Action" button on the website home page. With a simple click you'll get the tools you need.

- Sign Up for Text Message Updates On Our Mobilization: Text "NoCuts" to 225568
- Sign Up for Regular Email Alerts: Go to the AFGE website homepage: [www.afge.org](http://www.afge.org). Click on "Sign Up for Email Alerts." Enter your **home** email address and get all the news - not just the sanitized version.

### Stay Informed

In the event of a government shutdown, most federal workers will not have access to their government computers. AFGE Local leaders will necessarily use their own, private, computer and internet providers, to stay informed. Go to [www.afge.org](http://www.afge.org) for the latest news on the shutdown and shutdown related resources.



## -- FURTHER GUIDANCE --

OPM Guidance on Furloughs: <http://www.opm.gov/furlough/furlough.asp>

### APPENDIX A

#### Community Outreach

1. Schedule special Local Meeting to explain the reality of the Government Shutdown.
2. Encourage employees to participate by calling and writing their representatives in both the House and Senate, and by enlisting the support of friends and family.
3. Work with Labor/Management Partnerships or Management to negotiate lockout plans, i.e. Furlough notices and schedules, RIF plans, etc.
4. Establish member committees:
  - \*Media Relations - to inform other members, affiliates, local trades people, the media (press, public and network TV, and radio).
  - \*Coalition Building - to enlist the help and support of your state's AFL-CIO, other affiliates, local merchants, special interest groups, i.e. NARFE Chapters, AARP, and other Community Groups.
  - \*Peer counseling
  - \*Lockout Information Center - to include Fact Sheet, media reprints, local newsletters, OPM information, self- help lists, etc.
  - \*Member Assistance
    - \*Contact the State Unemployment Office and ask if it would be possible to have a representative come to the Local to register all members who are furloughed. If not, get as much information as possible to assist furloughed members in applying for unemployment compensation benefits.
    - \*Contact the local utility offices, (preferably in person), and explain what is likely to happen. Ask if utility company would be willing to maintain accounts and continue service in the event government employees did not receive paychecks for up to two months and could not pay their bills. The Local could supply a list of names of its members to the utility company. Try to get an Agreement. Contact all utilities; Gas, Electric, Telephone, Water, Cable.

- \* Set aside a day for Local members to can and freeze the fruits and vegetables from their gardens to help meet grocery needs in the event there are no paychecks. Members could donate non-perishable goods.
  
- \* Establish a plan where furloughed employees provide free child-care for those employees who are deemed essential and who must report to work but who won't get paid until appropriations measures are passed.
  
- \* Contact temporary employment agencies and find out how as many members as possible can become registered for temporary jobs in the event they are furloughed.
  
- \* Hold a special union meeting to discuss ways in which employees can help each other in order to cut expenses during a period of no paychecks (car repairs performed; providing needed transportation; ??????)
  
- \*Contact merchants in the community and enlist their support.
  
- \* Inform members of local food banks by working with local churches and charities
  
- \*Ask representatives of local community and charitable organizations to provide speakers for brown bag Lunch and Learns to offer suggestions on things the Local and its members can do to help get through a period of prolonged furloughs.
  
- \*Solicit donations from local food merchants for donations, either cash or goods to use in raffles to establish a fund to be used for members in extreme emergencies. Establish guidelines for distribution of this fund.
  
- \*Later - After the crisis of a Government Lockout has ended - remind members and the local to recognize the various groups that helped us through this crisis and to donate to them (either through monetary donations, or work parties).

## APPENDIX B

### Introductory Proposals

The purpose of this collective bargaining agreement is to implement steps and actions which will minimize or eliminate the adverse effects on bargaining unit employees should funds not be appropriated or approved by Congress.

Accordingly, the parties herein have agreed to cooperate to the maximum extent feasible in adapting agency actions and reducing the impact of the budget cuts or failure to provide funding by Congress on employees.

- 1) All union proposals herein which are not mandatory subjects of bargaining by virtue of some interference with a "management right" under 5 U.S.C. are intended as "appropriate arrangements" under 5 U.S.C. §7106(b)(3) for employees adversely affected by the exercise of one or more management rights.
- 2) Employees who are furloughed during a lapse in appropriations will be retroactively paid and otherwise compensated when appropriations are approved to the extent provided by law and regulation. The agency will grant employees who suffer a loss of pay because of furloughs, administrative leave equal to the lost time when an appropriation measure is enacted.
- 3) Nothing in this collective bargaining agreement necessarily reflects the agreement of AFGE to furloughs or other actions having a negative impact on employees, the performance of the agency mission, or the public interest. Nothing in this agreement is intended to waive or limit any statutory rights of individual employees which may exist in the absence of this agreement.
- 4) Cost-cutting actions; such as forced sabbaticals, absences, freezes, etc., will be terminated at the point where funding is restored or provided, or needed budgetary savings have been reached.
- 5) No changes to conditions of employment will be implemented in the collective bargaining unit except as agreed to by the parties to the collective bargaining agreement. The union does not agree to reopen or waive any contractual provisions which may conflict with actions proposed by the agency.
- 6) **Health Coverage.** The employer will continue to provide the full employer contribution to health benefits under the Federal Employees Health Benefit Program for employees affected by a furlough.
- 7) **Employment Assistance.** Affected employees will be provided assistance by the employer in locating outside employment so as to avoid or minimize income lost as a result of the employer's proposed action. Such assistance will include among other things:
  - a) administrative leave to contact federal job placement officials and private employment agencies;

- b) invitation to local human resources officials to interview employees at the work-site;
- c) use of agency facilities for group and individual meetings to pursue outside employment; and
- d) waivers of restrictions on outside employment to the extent permissible under applicable law and government-wide regulations. If approval of outside employment is required, the employer will –
  - i) decide cases on the basis of the employee's explanation of the outside employment, within 2 days of the employee's oral explanation; or
  - ii) if documentation is requested, decide the case on not later than 2 workdays after the documentation is provided.
- e) administrative time and counseling to apply for unemployment benefits.

8) **Flexible workplace.** Employees whose work may be performed off-site will be permitted to work at home in order to save expenses associated with the job, up to the amount of income employees will lose as a result of the employer's proposed action(s). Savings to the employer which may result from the flexible workplace arrangement will be applied toward the required budgetary savings at the source of the employer's proposed action.

9) **Performance-related Actions.**

- a) Employees will not be held accountable for effects of a furlough occurring during or as a result of the absence of the employee from work. Allowances for the effects of intermittent employment on assigned work will be made when applying the performance appraisal system.
- b) Employees will not be subject to adverse performance rating solely as a result of any measures due to the failure to approve or appropriate funds; such as, forfeiture of performance awards, lower ratings, performance related discipline, etc.

10) **Call-in.** Employees who are in a furlough status will not be subject to orders or other work-related instructions.

11) **Parking.**

- a) Employees will be rebated the amount of parking fees, if any, for days they are furloughed and would otherwise have paid but for the furlough.
- b) Spaces otherwise available to employees absented through furlough will be provided to bargaining unit members who request such spaces where parking space on government-controlled premises is allocated among employees.

12) **Child Care.**

- a) Employees who are unable to obtain part-time child care at an affordable price will be allowed to bring their child(ren) into the office. The employer will provide additional space for child care.
- b) Where child care is available to employees by government-sponsored or subsidized child care operators through the employment relationship, child care charges will be reduced by the ratio of salary lost to normal salary by virtue of the furlough.

13) **Compressed Workweek and Flextime.** Employees performing work which is not schedule-dependent, will be permitted to adjust their workweeks to reduce the number of days they are required to be at work.

14) **Furlough Adjustment Arrangements.**

- a) Beginning with the first pay period under a furlough, the employer will re-compute the employee's scheduled annual salary to arrive at the employee's anticipated earnings. The employer will then re-determine the employee's income tax bracket and adjust the amounts withheld from actual bi-weekly/monthly earnings according to the new anticipated earnings. Each employee will be provided notification of completion of this re-evaluation, including the days of furlough and pre- and post-furlough tax brackets.
- b) The employer will survey employees to determine the number of dependents claimed for purposes of income tax withholding. Should an employee indicate a change in dependents, the withholding will be adjusted as of the first paycheck received for a pay period beginning in FY 1996.
- c) Employees may make adjustments to previously designated contributions under the Combined Federal Campaign. Should an employee indicate a change in such designations, the withholding will be adjusted as of the first paycheck received in the next pay period.
- d) Health insurance premiums may be prorated, at the election of an employees, so that a larger amount is withheld during a period of greater pay. For example, if an employee is paying \$100 in bi-weekly insurance premiums, but is furloughed for 2 days during the second pay period in a month, the employee can opt to have the \$100 decreased in that pay period by 2/10 and that dollar amount allocated to pay periods during which no furlough is effective. The number of such pay periods will not be unreasonably low, and need not occur during FY 1996.
- e) Employees may make allowable adjustments to their participation in the life insurance program. Should an employee indicate a change in such designations, the withholding will be adjusted as of the first paycheck received in the next pay period.

- f) Employees will be provided the opportunity for employer-provided budget and credit counseling to help them adjust to the furloughs.
  - i) The employer will provide or arrange for such counseling during regular work hours as administrative absence at the permanent duty location; employees will be permitted to request confidential individual interviews for this purpose.
  - ii) Upon the request of an employee, the employer's representatives will meet with the employee, creditors, and credit rating organizations to work out a revised bill payment plan based on the employee's anticipated salary reduction caused by the furlough.
  - iii) Upon the request of the employee, the employer will provide notification of furlough and the resultant decline in income to parties designated by the employee. The wording of such notice may be provided by the employee, so long as the information contained is factually accurate.

**15) Official Time.**

- a) Where AFGE representatives' use of official time is based on a specified formula or period, it will not be reduced due to furlough of such representatives from what it would have been in the absence of the employer's proposed action(s); and
- b) Due to the increased need for representational activity resulting from the proposed agency actions, additional reasonable official time will be approved as necessary.

**16) Job-Sharing.** Employees possessing transferable skills and qualifications required for performing the work of a required position will be permitted to share jobs. Such employees will agree on how to divide the required work hours between them, such that the total hours required and authorized by the employer will be covered.

**17) Furlough Notices.**

- a) Furlough notices must provide employees with all information to which they are entitled by law.
- b) Furlough notices will be delivered to individual employees by certified mail, return receipt requested, at their last known address. The date of signature on the return receipt will be the date the notice period begins.
- c) Notices will indicate to employees that the action being considered will not be implemented until bargaining obligations have been fully met, including Impasse procedures.
- d) Notices will indicate the actions and steps which the agency has identified to lessen the impact of the furlough on employees, including a copy of this collective bargaining agreement.