

Memorandum of Understanding Furloughs Due to a Government Shutdown

This Memorandum of Understanding ("MOU") is entered into by and between the American Federation of Government Employees General Committee ("AFGE" or "Union") and the Social Security Administration ("SSA"; "Agency"; or "Management"), collectively ("Parties"), sets forth procedures for the Parties in the event of a government shutdown ("Shutdown").

The parties acknowledge the role of Office of Management and Budget (OMB) in agency decisions regarding government shutdowns which may have implications under the Anti-Deficiency Act. Due to the unique circumstances presented in conducting excepted Agency operations during a Shutdown, the Parties will each take into consideration Office of Personnel Management's ("OPM") published Guidance for Shutdown Furloughs.

Provisions of this MOU do not reflect an agreement by AFGE to furloughs. This agreement does not waive or limit any statutory, regulatory, or contractual rights of individual employees. The Parties acknowledge that some contractual provisions involving expenditure of funds may be temporarily impacted by the Anti-Deficiency Act pursuant to Article 1, Section 1 of the National Agreement between AFGE and SSA. Otherwise, the parties will presume that contractual provisions not impacted by the Anti-Deficiency Act remain in full force and effect during a lapse in appropriations. To the extent permitted by the Anti-Deficiency Act, as part of the dialogue between OLMER and the AFGE General Committee, either party may bring up issues that arise because of the shutdown that are in conflict with the National Agreement, law, or this MOU. OLMER will engage with AFGE to discuss/resolve the issues.

1. The Agency will establish and maintain a toll-free number and internet website with 24-hour availability that employees can access to receive information on the shutdown furlough. The Agency will inform employees regarding the existence of the website and the toll-free

number. The website will contain information for employees regarding the impact of the furlough on employee pay, leave, and benefits. This will also include a link to contact information for the unemployment compensation office in each state as well as links to the Anti-Deficiency Act and the Agency's contingency plan.

2. During a government shutdown, management will provide furloughed employees with all information to which they are entitled by law in any furlough decision notice and will make reasonable efforts to do so in advance. The notice will direct employees to the Agency website address for information on the impact of the furlough upon employee leave and benefits. A sample of the decision notice will be posted on the agency website.
3. (A) Employees are expected to monitor the Mass Emergency Notification System (MENS) notifications, Agency's toll-free number, and website to learn when the Shutdown ends and when to return to duty. Management will be liberal when considering requests for leave on the day the employees are expected to return to duty.

(B) Additionally, during a Shutdown, furloughed employees may be contacted by their supervisor if required to convert to an excepted duty status as specified in their decision notices. Supervisors will make reasonable efforts to contact employees during regular business hours using the emergency contact information provided by the employee, including through MENS. It is the employee's responsibility to update their emergency contact information, and prior to a shutdown management will verify this information. Employees converting from furlough to excepted status will report to duty the following business day. Management will be liberal when considering requests for intermittent furlough on the day the employees are expected to report to duty.

Management will make reasonable efforts to ensure that a minimum of

two hours of excepted work is available before requiring employees to report for duty.

4. If insufficient pay is available to make all deductions from an employee's gross pay, the agency will comply with the sequence of deductions specified in the July 30, 2008, Office of Personnel Management Memorandum titled "Order of Precedence When Gross Pay is Not Sufficient to Permit All Deductions."
5. To ensure the Agency's contingency plan is current for OMB, AFGE will submit input regarding the Agency's contingency plan by the end of July each year. The Agency will consider any input offered by AFGE regarding the contingency plan. Once the Agency Shutdown contingency plan and any revisions are approved by OMB, the Agency will provide a copy to the Union.
6. The Agency will meet as soon as possible with representatives of the AFGE General Committee after the end of a government Shutdown to provide a briefing on the Agency's plan to pay any authorized retroactive salary and benefits to bargaining unit employees who have not received their full compensation.
7. Unless authorized by law, employees are prohibited from providing voluntary services to the Agency during a furlough.
8. The Agency will continue to provide the full Agency contribution to health benefits under the Federal Employees Health Benefit Program for employees affected by a furlough consistent with Statute and Government-wide regulations.
9. The Parties acknowledge that the amount of income taxes withheld from employees' biweekly earnings will be adjusted to reflect the reduction in earnings that results from the furlough. Where employees request changes

to withholdings/deductions, the employer will make reasonable efforts to process such changes in an expeditious manner.

10. Subject to the limitations of the Anti-Deficiency Act, certain limited categories of official time may be permissible during a government Shutdown. The Agency has determined that official time may be permitted when triggered by certain approved agency actions identified as excepted under the Agency's Shutdown Contingency Plan. Situations that may trigger representational duties, and the use of official time, during a Shutdown include but are not limited to the following:

- Formal Discussions with Employees;
- Weingarten Interviews;
- Disciplinary or performance-based actions taken during the Shutdown period, associated with excepted activities; and
- Bargaining obligations triggered by notice of management-initiated changes during the Shutdown to the extent required by 5 USC 71.

To the extent permitted under the Anti-Deficiency Act, the Agency will continue to maintain the OUTTS official time electronic recording system throughout any lapse in appropriations. Union representatives may submit requests to work official time in connection with any of the above listed activities through OUTTS. If OUTTS is not available, union representatives may use alternative methods for requesting official time until OUTTS is restored.

11. The Agency is committed to make and communicate all official time decisions in an expeditious manner.

12. Union representatives who were authorized to use hours of official time per

Article 30, Section 5.C. as of the last workday prior to a Shutdown and who occupy an excepted Agency position may request to be furloughed intermittently during the shutdown to engage in voluntary Union activities. The amount of time requested for both official time (under provision number 10 of this agreement) and intermittent furlough should be consistent with the previously established schedule of official time used to accommodate both Union representational activities and Agency assigned duties per Article 30, Section 5. Such requests will be referred to the appropriate management official and will normally be approved. This does not preclude Union representatives from requesting intermittent furlough time pursuant to provision number 10 of this agreement.

13. The Parties acknowledge that during a period of government Shutdown, excepted employees who are required to work shall be entitled to use leave, for which compensation for used leave shall be paid at the earliest date possible after the shutdown ends. Leave requests will be handled in accordance with Article 31, including leave requests approved in advance of a shutdown. **Management will consider excepted employees' furlough requests similarly to leave requests made under Article 31 of the National Agreement. Preapproved leave will normally be honored when a lapse occurs. Employees on preapproved leave may request to substitute furlough time for their leave.**
14. Employees required to be absent from excepted duties subject to the provisions of A31, Section 9 (Court Leave) will be placed in intermittent furlough status.
15. The Decision to Effect Furlough form shall be used to record periods of intermittent furlough.
16. In accordance with Article 41, employees at the time of the shutdown who are currently working under an approved Telework agreement and who are excepted from the furlough will be allowed to continue to Telework based on availability of portable excepted work.
17. A personalized creditor letter will be issued to each employee. This letter will be signed by the Commissioner of Social Security or designee and will

provide contact information should a creditor wish to contact the supervisor for further information. The designee will not be the first-line supervisor.

18. Subject to the request and approval procedures in Article 10 of the National Agreement, excepted employees may earn credit hours when working on excepted activities. The Parties recognize that employees may not use credit hours until after the Shutdown is over. The Agency website will contain information regarding the impact of a government Shutdown on the employees' inability to carry over more than twenty-four (24) credit hours.
19. If an employee has exceeded the twenty-four (24) hours credit hour accrual limit and is unable to use the excess hours due to a government Shutdown, the Parties will engage in discussions (at the conclusion of the Shutdown) to explore alternatives, so that employees are not adversely affected, prior to the Union exercising its rights under Article 24.
20. If management determines that a limited number of employees are required to perform a specific excepted activity in the employees' duty station, management will determine the excepted employees by the earliest SCD of those qualified to perform the excepted activities.
21. The Agency will make reasonable efforts to approve or deny, in writing, employees' requests for outside employment within three (3) workdays.
22. During a furlough, Union officials will have normal access to the space provided to the Union pursuant to Article 11 of the National Agreement.
23. Provided the requirements for retirement are met, a furlough will not impact the effective date of any employee's voluntary or early out retirement.
24. It is understood that a furlough is a factor beyond the employee's control for purposes of applying Article 21, Section 6.I.1 of the National Agreement.

25. All filing and processing deadlines contained in collective bargaining agreements will be extended by the number of days that the Agency is shut down. These extensions apply to all deadlines for bargaining unit employees, Unions, and Agency management officials. Additionally, the parties agree that any arbitration dates that fall during the period of the Shutdown may be postponed consistent with Article 25.
26. As soon as possible, the Agency will provide AFGE with a list of the excepted positions.
27. In the event of furlough, the Agency will make reasonable efforts to provide employees with access to their duty station during duty hours to secure their personal belongings.
28. If management conducts formal discussions with employees regarding Shutdown furloughs, the appropriate Union representative for each facility will be afforded notice and opportunity to attend such formal discussions.
29. Employees on LWOP will be issued a notice by management of the effect of Shutdown periods.

For the Union:	For the Agency:
<div><div><div><div></div><div>RICHARD F. COUTURE</div></div><div><div>Richard Couture</div><div>AFGE C215</div></div></div><div><div>Digitally signed by RICHARD F. COUTURE</div><div>Date: 2021.11.18 17:14:19 -05'00'</div></div></div>	<div><div><div><div></div><div>Jacqueline Donato</div></div><div><div>Jacqueline Donato</div><div>OLMER</div></div></div><div><div>Digitally signed by Jacqueline Donato</div><div>Date: 2021.11.30 08:40:15 -05'00'</div></div></div>

<p>SHELLEY WASHINGTON Digitally signed by SHELLEY WASHINGTON Date: 2021.11.19 09:39:18 -05'00'</p> <p>Shelley Washington AFGE L1923</p>	<p>Patricia Flynn Digitally signed by Patricia Flynn Date: 2021.11.30 06:08:12 -05'00'</p> <p>Patricia Flynn OPE</p>
<p>Beverly Parks Digitally signed by Beverly Parks Date: 2021.11.19 08:29:53 -05'00'</p> <p>Beverly A. Parks AFGE C109</p>	<p>VIKASH CHHAGAN Digitally signed by VIKASH CHHAGAN Date: 2021.11.24 12:48:21 -08'00'</p> <p>Vikash Chhagan DCO</p>
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<p>ANGELA DIGERONIMO Digitally signed by ANGELA DIGERONIMO Date: 2021.11.18 17:36:12 -05'00'</p> <p>Angela Digeronimo AFGE C220</p>	<p>Sharaye Alexander Digitally signed by Sharaye Alexander Date: 2021.11.29 13:29:05 -05'00'</p> <p>Sharaye Crowder OLMER</p>

MEMORANDUM OF UNDERSTANDING

Save Money Furlough

This Memorandum of Understanding (MOU) is entered into by and between the Social Security Administration (SSA), hereinafter referred to as the “Agency” or “Management” and the American Federation of Government Employees (AFGE), General Committee, hereinafter referred to as the “Union.”

The purpose of this MOU is to set forth the procedures by which SSA will conduct a “Save Money” furlough. A “Save Money” furlough is a planned event by the Agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any budget situation other than a lapse in appropriations.

Provisions of this MOU do not reflect an agreement by AFGE to Save Money furloughs. This agreement does not waive or limit any statutory, regulatory, or contractual rights of individual employees, which may exist in the absence of this agreement.

General Provisions

1. The Agency will establish and maintain a toll-free number and internet website with 24-hour availability that employees can access to receive up to date information on the Save Money furlough. The Agency will inform employees regarding the existence of the toll-free number and website. The toll-free number and website will contain information for employees regarding the impact of the furlough on employee pay and benefits. The Agency will provide the website to the Union for review prior to making it available to employees.
2. The Agency will update employees on the reason and status of potential and currently active and in place Save Money furloughs. This and other Save Money furlough related information will be posted on the Agency furlough website described in this MOU. The Union will be notified by the Agency of any changes prior to posting to the website.
3. The Agency intends to take reasonable steps to minimize the need to implement a Save Money furlough. If the Agency determines a Save Money furlough becomes necessary, the Agency will provide the Union with a list of the reasonable steps taken to avoid the need for a furlough.
4. As soon as possible before the effective date of the Save Money furlough, the Agency will provide the Union with notice of a Save Money furlough and a list of all positions subject to be furloughed, and whether the furloughs are planned to be continuous or discontinuous. This information shall also be posted to the furlough website described in this MOU.

After the furlough starts, if additional positions become subject to the Save Money furlough, AFGE will be notified as soon as possible, prior to implementation.

5. The Save Money furlough will be conducted in accordance with applicable law, government-wide rule and regulation, the SSA/AFGE National Agreement (National

Agreement), and this MOU.

6. Save Money furlough decision notices provided to employees by the Agency will contain all information employees are entitled to by law and federal regulations.
7. The Agency may decide that any Save Money furlough will be accomplished by shutting down Agency operations for full days. If said determination is made, all bargaining unit employees will be furloughed on such days except for those employees necessary to perform critical functions. Absent such decisions, furloughs will be defined and carried out in terms of hours. Employees may request the dates and hours during which they will be furloughed. Normally, furlough time requested in advance will be granted, except when conflicts of scheduling or the work of the Administration would preclude it. Furlough time may also be granted when it is not requested in advance and workload considerations permit.

Furlough requests will be considered on a first-come, first-served basis. Conflicts arising from furlough requests received by management on the same day will be resolved using service computation date (SCD).

Employees may request a continuous or non-continuous furlough. If furlough days conflict with scheduled absences because the Agency cannot release the total number of employees (approved absence plus furloughs needed), the Agency will not cancel preapproved leave requests to accommodate the preferred furlough dates of other employees.

Employees will request furlough hours by submitting their request in WebTA or electronic equivalent, including email and other means, to their immediate supervisor. Employees will schedule seventy-five (75) percent of their furlough hours prior to the last forty-five (45) days of the furlough period.

If an employee has not requested and been approved for all of their furlough hours as of forty-five (45) days before the end of the furlough period, the employee and the employee's supervisor will meet at least five days before the start of the 45-day period and attempt to agree to a schedule for the employee's remaining furlough hours. Absent agreement on a schedule, management is authorized to schedule the employee's remaining furlough hours. Management will present this schedule to employees no later than thirty (30) days before the end of the furlough period.

8. The Agency will provide bargaining unit employees with the website address and telephone number of their state unemployment offices. This information will be posted to the furlough website and will be provided on the employee's furlough notice.
9. Unless authorized by law, employees are prohibited from providing voluntary services to the Agency during a Save Money furlough per 31 USC 1342.
10. The Agency will continue to provide the full Agency contribution to health benefits under the Federal Employees Health Benefit Program for employees affected by a Save Money furlough consistent with Statute and Government wide regulations.
11. When the employee's gross pay is insufficient to cover health benefit premiums due to a

non-pay status, the employee may make payments directly to the payroll provider or opt to wait until return to pay status and repay the premiums owed through the debt collection process. If employees opt to wait until return to pay status, they need to complete Notice of Intent Agreement, form SSA-605. Employees will be advised of any applicable due process rights.

12. If insufficient pay is available to make all deductions from an employee's gross pay, the Agency will comply with the sequence of deductions specified in the current Office of Personnel Management (OPM) guidance.
13. Save Money furloughs of part-time employees must comply with applicable law, and government-wide rules and regulation.
14. It is understood that a Save Money furlough is a factor beyond the employee's control for purposes of applying Article 21, Section 6.I.1 of the National Agreement.
15. In the event of a Save Money furlough in excess of 30 calendar days, the Agency will comply with the provisions of Article 14 of the National Agreement.
16. Provisions of Article 41-Telework of the National Agreement and any applicable MOUs will be in effect during any Save Money furlough.
17. The parties acknowledge that the amount of income taxes withheld from employees' biweekly earnings will be adjusted to reflect the reduction in earnings that results from the Save Money furlough. Where employees request changes to withholdings/deductions, the employer will make reasonable efforts to process such changes in an expeditious manner.
18. A personalized creditor letter will be issued to each employee. This letter will be signed by the Commissioner of Social Security or designee. The designee will not be the employee's first-line supervisor. The letter will provide contact information should a creditor wish further information.
19. A furloughed employee will not be required to remain available to be called in to work on a day the employee is scheduled to be furloughed.
20. If the Agency determines that an employee already scheduled for LWOP during a period of a Save Money furlough will be subject to furlough, affected employees may request to substitute furlough for LWOP.
21. The Agency will, to the extent practicable, make efforts to avoid interruptions to scheduled training classes during a Save Money furlough.
22. Official time issues will be handled in accordance with Article 30 of the National Agreement.
23. During a Save Money furlough, SSA employees who are union officials on furlough status or official union time, will have reasonable access to Agency space and equipment provided for union use in accordance with Article 11 of the National Agreement.

24. If an employee, union official, or management official must meet a contractual timeframe and either the employee, union official, or management official has been furloughed, such timeframe will be extended by the length of the time of the longest furlough.
25. In the event of a Save Money furlough, the Agency will process travel vouchers and reimburse employees in accordance with Article 8 of the National Agreement.
26. Provided the requirements for retirement are met, a Save Money furlough will not impact the effective date of any employee's voluntary or early out retirement.
27. In an effort to absorb reductions that will necessitate a Save Money furlough, the Agency will consider offering an early out retirement (VERA) and/or Voluntary Separation Incentive Payments (VSIP), contingent on OPM approval.
28. The Agency does not intend to furlough employees on a federal holiday or on the day before and the day after a federal holiday.
29. While on a Save Money furlough, employees must continue to comply with the Standards of Ethical Conduct for Executive Branch Employees, including provisions related to non-federal employment or volunteer activities. In the event of a Save Money furlough, if an employee requests approval for outside employment, the employee should submit SSA- 520, Request for Approval of Outside Activity. The Agency will make reasonable efforts to review and act on such requests within 3 workdays.
30. If the Agency makes the decision to effectuate a Save Money furlough, the provisions in Article 10 of the National Agreement will be followed.

FOR THE UNION

Angela Digeronimo Date
President
AFGE Local 2369

Jessica LaPointe Date
President
AFGE Council 220

Richard Couture Date
President
AFGE Council 215

Desiray Kennoy Date
Chief Steward

FOR THE AGENCY

John Huston Date
OLMER

Shannon McGlotten Date
OPE

Megan Eisenhower Date
OPE

Heather Turnover Date
BFM

AFGE Local 2809

Terri Heymann 2 nd Vice President AFGE Local 1923	Date
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Owen Thilly OHO	Date
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Debbie Glenn Administrative Director AFGE Council 224	Date
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Ian Taylor DCO	Date
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John Jennings Executive Vice President AFGE Council 109	Date
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Cristal Lizaola OLMER	Date
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#	Question(s)	Answer
1	How and when will the employees be notified of the processes and procedures?	All federal agencies follow Office of Management and Budget (OMB) direction on when to begin communication with their employees. If OMB advises agencies to communicate with employees, managers will meet with employees, and we will also provide resources for employees on our website. Meetings will be held no later than the workday before appropriations lapse, or in this year's case, on Friday, September 29.
2	Where and how will they access the website?	Consistent with past communications, there will be a central website available outside of the Agency's firewall that employees can access from both agency-issued laptops and their personal electronic devices. The website will not go "live" until we begin communications with employees.
3	Would there be any changes in telework in the event of a shutdown?	No. The Agency's telework policies remain the same in the event of a shutdown. In accordance with Article 41, employees at the time of the shutdown who are currently working under an approved Telework Agreement and who are excepted from the furlough will be allowed to continue to telework based on availability of portable excepted work. Employees who are non-excepted and who were scheduled to telework on the day of the shutdown may complete their shutdown activities via telework. (See Shutdown MOU, #16)
4	When will employees find out if they are excepted or non-excepted?	See answer to Question #1. In the event of a lapse in appropriations, managers will advise employees of their status (i.e., excepted or non-excepted) the workday before, or September 29.
5	Will OUTTS be operational during a shut down? If not, will email be sufficient to request OUTTS or is the SSA-75 necessary?	To the extent permitted by law, the Agency will continue to maintain OUTTS throughout a lapse in appropriations and union representatives may continue to submit requests for official time in OUTTS. If OUTTS is unavailable, union representatives may submit requests via email to their supervisors or other designated management officials. Such requests must still contain the sufficient information required by Article 30, Section 7 (i.e., time, date, representational category, contact telephone number, and specific location if other than normal duty station). (See Shutdown MOU, #10)
6	When can we have a list of excepted positions per number 26 of MOU?	We will provide the list as soon as possible. (See Shutdown MOU, #26)
7	How does overtime factor into an employee in furlough status? Working Religious Comp?	Overtime – Supervisors should follow the excepted activities guidance for their components and only allow hours of work and credit hours for excepted activities. Generally, overtime is not permitted during a lapse in appropriation, however supervisors may permit overtime and compensatory time in limited circumstances (i.e., late interviews, administratively

#	Question(s)	Answer
		<p>uncontrollable overtime assignments, and travel necessary to complete excepted functions that would be hours of work).</p> <p>Religious Compensatory Time (RCT) – Non-excepted employees may not earn religious compensatory time while in furlough status. Supervisors may approve requests from excepted employees to earn religious compensatory time for religious observances that occur in the future. Requests for earning religious compensatory time must be handled in accordance with applicable negotiated agreements and PPM Chapter S550 4. During a lapse in appropriations, excepted employees may only work on excepted activities to earn religious compensatory time.</p> <p>(See OPM Guidance, D.2. and F.3.)</p>
8	<p>Will use or lose roll over to the next calendar year if the employee is not able to use it up once shutdown is over?</p>	<p>Employees should make every effort to reschedule “use-or-lose” annual leave for use before the end of the current leave year. However, if this is not possible due to a lapse in appropriations, delegated officials must use their discretionary authority to restore any forfeited annual leave by determining that the employee was prevented from using his or her leave because of an exigency of the public business—namely, the need to furlough employees because of the lapse in appropriations.</p> <p>(See OPM Guidance, F.10.)</p>
9	<p>Is accrued leave earned during the shutdown period made available to use during the shutdown period?</p>	<p>Yes. A lapse in appropriations does not affect employees’ accrual of sick and annual leave, or their ability to use the leave as it is accrued. After the lapse in appropriations has ended, paid leave requested by employees will be posted retroactively in accordance with applicable law.</p> <p>(See Shutdown MOU, #13 & OPM Guidance, F.12.)</p>
10	<p>Are managers going to be regularly denying furlough requests based on operational needs due to our staffing and customer service crisis forcing BUE to submit leave requests?</p> <p>I believe OPM establishes an order of preference: 1. Flexible workplace approvals, 2. Furlough approvals 3. Leave approval.</p> <p>Can the Agency verify this is their guidance to managers?</p>	<p>Furlough requests from excepted employees will be approved in accordance with the AFGE MOU, Provision 12 (related to union representational activities) and Provision 14 (related to court leave). Employees are entitled to use leave during the shutdown in accordance with Provision 13. As a result, the need for voluntary furlough requests should be limited to situations addressed in OPM guidance, such as a new FMLA need arising during the shutdown.</p> <p>(Shutdown MOU, #12, 13 and 14 & OPM Guidance, F.7a.)</p>
11	<p>Will all deductions be taken out of first paycheck once funding is restored or is there a way to have deductions taken out over time?</p>	<p>Deductions will be calculated for each individual pay period during a lapse in appropriations. If insufficient funds are available in the partial paycheck to cover all deductions for the pay period at the time of the lapse, deductions will be processed in the order below and remaining deductions will be taken out of the first paycheck after funding is restored.</p>

#	Question(s)	Answer
		<p>There is no way to have deductions taken out over a longer period.</p> <p>The order of deductions from pay are set based on governmentwide rules from OPM and can be accessed from the OPM website. See Furlough Guidance (opm.gov).</p> <p>Deductions are taken in this order:</p> <ol style="list-style-type: none"> 1. Retirement; 2. Social Security tax; 3. Medicare tax; 4. Federal income tax; 5. Health insurance under FEHB; 6. Basic life insurance under FEGLI; 7. State tax; 8. Local tax; 9. Government housing; 10. Debts owed to the federal government; 11. Court-ordered debts; 12. Optional benefits such as Federal Dental and Vision, FLTC, FSA, TSP, TSP loans, ROTH; other voluntary deductions such as Association or Union dues, Combined Federal Campaign, allotments; 13. IRS tax levies. <p>(See OPM Guidance, D.6.)</p>
12	With FEGLI – will premiums accumulate and then all be deducted with first check or do premiums not accumulate and deductions just resume?	<p>FEGLI premiums for the pay period in which the lapse occurs will be paid as normal, provided sufficient funds are available for the deduction. See Question #11 for more information. Retroactive FEGLI premiums for any subsequent pay periods during the lapse will be withheld from the first pay after the lapse in appropriations ends.</p> <p>(See OPM Guidance, H.7.)</p>
13	Will EAP/ESPYR be available during the shutdown and is this an excepted activity for employees to attend appointments on duty time?	<p>SSA's EAP service provider, ESPYR, will continue providing services. Employees can access EAP services by calling (877) 549-9528 or visiting our secure website http://www.ssaeap.com (Access Code: ssaeap). For Excepted employees, normal duty time flexibilities for attending EAP sessions continue to apply.</p> <p>(See OPM Guidance, I.4.)</p>
14	Will hiring cease during the lapse?	<p>Yes. Hiring of new personnel will be suspended during a lapse in appropriations.</p>
15	Will training cease?	<p>Yes. Training will largely be discontinued during a lapse in appropriations. To the extent permitted by law, we intend to conduct limited training such as on-the-job training where trainees could assist with approved workloads.</p>

Shelley Washington AFGE L1923	Patricia Flynn OPE
Beverly A. Parks AFGE C109	Vikash Chhagan DCO
Debbie Glenn AFGE C224	Lori Vandeventer BFM
Barri Sue Bryant AFGE L2809	Heather Turnour BFM
Iris Rakowski AFGE L2809	Allison Baugher OHO
Angela Digeronimo AFGE C220	Sharaye Crowder OLMER

FACT SHEET: Pay and Benefits Information for Employees Affected by the Lapse in Appropriations

This information covers pay and benefits matters that may be important to employees if the lapse in appropriations continues past payroll processing deadlines. Payroll deadlines vary from agency to agency, so the actual timing of when an employee's pay and benefits may be impacted will vary.

This information is only for employees who are:

- Furloughed (a type of nonpay status), or
- "Excepted" from furlough (i.e., continuing to work and earn pay, but their pay is delayed until appropriations are authorized).

Employees who are "exempt" from the lapse in appropriations (e.g., because they are not paid from annually appropriated funds) are not impacted.

Topic	What you should know
Pay	<p>Furloughed employees: After the lapse ends, you are entitled to receive your "standard rate of pay" for the furlough period, which includes any—</p> <ul style="list-style-type: none"> • basic pay; • overtime and other premium pay for regularly scheduled work; • regular premium payments (e.g., law enforcement availability pay); and • allowances and differentials payable on a regular basis. <p>Employees who were on previously approved leave without pay (LWOP) or who were absent without leave (AWOL) during the lapse in appropriations will not receive pay for those hours.</p>
	<p>Excepted employees: After the lapse ends, you will receive your "standard rate of pay" for the actual hours that you worked (e.g., including any overtime or other premium pay, allowances, and differentials earned based on actual hours worked). Any time that an excepted employee is placed in a furlough status will be compensated under the rules for furloughed employees. (See above.)</p> <p>Both furloughed and excepted employees will be paid after the lapse in appropriations ends.</p>

Annual and Sick Leave Accrual	<p>Any leave you had previously scheduled during the lapse period is cancelled, so you won't be charged leave (except as described in the paragraph below on excepted employees). In addition, per OPM guidance, if you had properly scheduled "use-or-lose" annual leave that you weren't able to use because of the lapse in appropriations, that leave must be restored to you. Your agency will provide instructions on any action you may need to take.</p> <p>Both furloughed and excepted employees will receive credit for any annual and sick leave you would have otherwise (but for the lapse in appropriations) accrued during the period of the lapse once funding is provided.</p> <p>An excepted employee may request approval to use paid leave instead of being placed in a furlough status during an authorized absence from work. However, compensation for such leave is still not payable until after the lapse in appropriations. Generally, we do not expect excepted employees to request to use paid leave during a lapse, since they are entitled to retroactive pay for furlough periods without charge to leave. Use of paid leave under this special authority is subject to normal rules for the applicable leave program, including leave request and approval procedures.</p>
Retirement	<p>No retirement deductions will be made if you aren't receiving pay. Generally, a period of nonpay status will have no effect on an employee's retirement-creditable service or high-3 average pay unless the nonpay status is for more than 6 months during the calendar year. In addition, since employees are entitled to receive retroactive pay after the lapse ends (with exclusions noted above under "Pay"), the lapse period will no longer be considered as a period of nonpay status.</p>
Allotments from Pay	<p>Since no allotments can be made if you're not receiving pay, you may want to review your allotments to determine whether you'll need to make alternative arrangements (e.g., if you are using allotments to pay loans, alimony, etc.).</p>
Unemployment Compensation	<p>Furloughed employees are eligible to apply for unemployment benefits, but excepted employees working on a full-time basis are generally not eligible. Employees who wish to file should do so with the Unemployment Office for the state where the employee worked (i.e., last official duty station prior to furlough).</p> <p>Please be advised, however, that when employees receive retroactive pay, they will be required to pay back any unemployment benefits they received, in accordance with State law.</p>

	For more information, see https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Unemployment-Insurance-Resources and the U.S. Department of Labor's Unemployment Compensation for Federal Employees website, https://oui.doleta.gov/unemploy/unemcomp.asp .
Federal Employees Health Benefits (FEHB)	FEHB coverage continues even if you don't receive a paycheck. Your share of premiums will accumulate and be withheld later when the lapse ends and employees can be paid.
Flexible Spending Account (FSAFEDS)	<p>Your FSAFEDS payroll deductions stop when you don't receive pay. You remain enrolled in FSAFEDS, but you can't be reimbursed for eligible health care claims until you return to pay status and your payroll deductions can be made. Payroll deductions will be subsequently collected to match your annual election amount.</p> <p>Eligible dependent care expenses incurred during the lapse in appropriations may be reimbursed up to whatever balance is in your dependent care account—as long as the expense incurred allows you (or your spouse, if married) to work, look for work, or attend school full-time.</p>
Federal Long Term Care Insurance Program (FLTCIP)	Your coverage will continue. However, if you usually pay your premiums through payroll deduction, and the lapse period is less than three consecutive pay periods, your accumulated premiums will be withheld when the lapse ends and employees can be paid. Otherwise, Long Term Care Partners will begin to bill you directly for premium payments. You must pay those bills on a timely basis in order to continue your coverage.
Federal Employees' Group Life Insurance (FEGLI)	Coverage continues for up to 12 consecutive months of nonpay status, but premiums are collected only for pay periods for which you receive pay.
Federal Employees Dental and Vision Insurance Program (FEDVIP)	Your coverage will continue. However, if the lapse period is less than three consecutive pay periods, your premiums will accumulate and be withheld later when the lapse ends. If you do not receive pay for three consecutive pay periods, BENEFEDS will begin to bill you directly for premium payments. You must pay those bills on a timely basis in order to continue your coverage.
Qualifying Life Event – Health Insurance	Qualifying life events are certain life events that allow you to enroll or make changes to your existing insurance coverage outside of open season (e.g., marriage, birth of a child, etc.). Generally, new enrollments or changes in

	enrollment due to a Qualifying Life Event do not take effect until the employee has been back in pay status for any part of the prior pay period. The exception is for a new enrollment or change in enrollment due to the birth or addition of a child, which is effective on the first day of the pay period in which the child is born or becomes an eligible family member. There is no requirement to be in pay status in order for an enrollment or change in enrollment due to birth or addition of a child to become effective.
Thrift Savings Plan (TSP)	For information on the effect of a furlough on your Thrift Savings Plan contributions, loans, and investments, please refer to https://www.tsp.gov/index.html .
Childcare Subsidy Program	Employees enrolled in their agency child care subsidy program should contact their agency HR office for information about payments.
Employee Assistance Programs	Employee Assistance Program (EAP) services can be helpful in providing confidential counseling with experienced, licensed counselors, and many EAPs can provide access to legal and financial consultation services. Contact your agency's EAP office to determine what services might be available to you.
Other Considerations	Some mortgage, loan, credit and utility providers have indicated that customers may qualify for alternative arrangements. Please contact your providers for more information.

Note: This guidance should not be considered time and attendance instructions. Guidance on documenting time and attendance will be provided by each agency and payroll provider.

Guidance for Administrative Furloughs



Overview

The U.S. Office of Personnel Management (OPM) has prepared human resources guidance for agencies and employees on administrative furloughs. An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or other budget situation other than a lapse in appropriations.

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NOTE: Certain Qs and As in this document, “Guidance for Administrative Furloughs,” assume coverage under provisions of law or regulation specified in the given Q and A. To the extent that a particular employee is not covered by those specified provisions, the guidance in the Q and A may not be applicable.

A. General

1. What is a furlough?

A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. What is an administrative furlough and why are administrative furloughs necessary?

A. An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. This type of furlough is typically a non-emergency furlough in that the agency has sufficient time to reduce spending and give adequate notice to employees of its specific furlough plan and how many furlough days will be required. An example of when such a furlough may be necessary is when, as a result of Congressional budget decisions, an agency is required to absorb additional reductions over the course of a fiscal year.

3. What human resources guidance applies for furloughs that are caused by a lapse of appropriations (i.e., shutdown furloughs)?

A. In the event that funds are not available through an appropriations law or continuing resolution, a “shutdown” furlough occurs. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities which are not excepted pursuant to the Antideficiency Act. For additional information on shutdown furloughs, see OPM’s Guidance for Shutdown Furloughs at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

4. What does it mean to be in furlough status?

A. Furlough status means that, because of a furlough (as described in Question A.1.), the employee is placed in a nonpay, nonduty status for designated hours *within* the employee’s tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Furlough hours are a type of leave of absence without pay. Employees are in furlough status only during designated furlough hours, not for entire calendar days. Furlough status may be designated as the employee’s full daily tour of duty or part of that tour of duty. For example, an employee may be furloughed for half of an 8-hour daily tour of duty, or 4 hours. An employee who is in furlough status during a daily tour of duty may be ordered to perform work outside that tour, and such work would be subject to normal compensation requirements. (See also Questions D.4. and D.5.)

5. Does placement in furlough status cause a full-time employee to be converted to part-time or a part-time employee to be converted to a reduced part-time work schedule?

A. No. Placement in furlough status or any other kind of temporary nonpay, nonduty status does not affect the nature of an employee's official work schedule as full-time or part-time. For a full-time employee who is furloughed during a 40-hour basic workweek, the employee continues to have a full-time 40-hour basic workweek. For a part-time employee who is furloughed, the part-time tour of duty established for leave usage purposes also remains the same.

B. Covered Employees

1. Which employees may be affected by an administrative furlough?

A. Agencies are responsible for identifying the employees affected by administrative furloughs based on budget conditions, funding sources, mission priorities (including the need to perform emergency work involving the safety of human life or protection of property), and other mission-related factors. See also Procedures and Labor Management Relations Implications.

2. How will employees be notified whether they are affected by an administrative furlough?

A. Each agency will determine the method and timing of notifying employees of whether they are affected by an administrative furlough. See also Procedures and Labor Management Relations Implications.

3. Are political appointees (such as Executive Schedule officials, noncareer members of the Senior Executive Service (SES), and Schedule C appointees) subject to administrative furlough?

A. All political appointees who are covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are subject to administrative furlough. For example, Schedule C appointees in the General Schedule or Senior Level (SL) pay systems and noncareer SES members are all covered by the leave system and subject to administrative furlough. However, regular procedural requirements may not apply. (See Q&As M.5., M.6., N.12., and N.13.) Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. (See Q&A B.4. for more information on why certain Presidential appointees are not subject to furlough.)

4. Why are leave-exempt Presidential appointees not subject to furlough?

A. Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. An exemption from the chapter 63 leave system may be based on 5 U.S.C. 6301(2)(x) or (xi). (See also OPM regulations at 5 CFR 630.211.) These leave-exempt Presidential appointees are not subject to furloughs because they are considered to be entitled to the pay of their offices solely by virtue of their status as an officer, rather than by virtue of the hours they work.

A leave-exempt Presidential appointee cannot be placed on nonduty status. Thus, the appointee's pay cannot be reduced based on placement in nonduty status, including via the mechanism of a furlough. As explained above, a leave-exempt Presidential appointee is entitled to the established pay of the position based on the holding of the office, not on the hours of duty.

Presidential appointees who are covered by the chapter 63 leave system are not considered to be entitled to pay based solely on their status as officers; thus, these individuals are subject to furlough in the same manner as other Federal employees. (See 5 U.S.C. 5508.) Any Presidential appointee who is a member of the Senior Executive Service (SES) or in a senior level (SL/ST) position paid under 5 U.S.C. 5376 may not be exempted from the chapter 63 leave system. All SES and SL/ST employees are subject to furlough on the same basis as other employees. (The furlough of career SES members is subject to the procedures in 5 CFR 359, subpart H, and the furlough of SL/ST employees is subject to the procedures in 5 CFR 752, subpart D, or 5 CFR part 351, as applicable.)

While employees may be subject to furlough, the applicable due process procedures depend on the type of employee in question. For example, all Presidential appointees are excluded from the adverse action procedures in 5 U.S.C. chapter 75, based on 5 U.S.C. 7511(b)(1) and (3). In addition, Presidential appointees subject to Senate confirmation are excluded from reduction in force procedures, based on 5 CFR 351.202(b). If a Presidential appointee is subject to furlough but not subject to adverse action or reduction in force procedures, the agency should follow any administrative procedures required by any applicable internal personnel policies.

Note: A former career Senior Executive Service (SES) appointee who receives a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. 3392(c). If SES leave benefits are so elected, such a Presidential appointee would be subject to furlough under 5 CFR part 359, subpart H.

5. Are furloughed detailees returned to their home agencies following any furlough?

A. Detailed employees remain officially assigned to their permanent positions during the detail. During a furlough, each agency will determine the status of their employees on detail within the agency or to another agency.

6. Do all detailees follow the furlough policies and procedures of their home agencies if the detail continues?

A. Yes, because all detailees remain officially employed by the agencies from which they are detailed. If furlough is required, the home agency will determine if and how the detailed employee is affected. The home agency and the receiving agency should discuss how a detailee will be affected if a furlough is not required in the home agency but is required in the receiving agency.

7. I have a detailee from another agency working in my unit. Who can I contact to discuss any flexibility the home agency may be willing to exercise regarding scheduling of any required furlough days?

A. Generally, the point of contact would be the human resources office of the employee's home agency. If the point of contact within that office is unknown, OPM suggests contacting the employee's supervisor at the home agency to determine who to contact about potential flexibility in scheduling required furlough days.

8. Can an employee request to be furloughed as a way of reducing the hours of furlough required of other employees?

A. An employee cannot request to be furloughed. A furlough is an agency adverse action that places an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

An employee may voluntarily request leave without pay which also places an employee in a nonpay, nonduty status. However, approval of leave without pay does not provide any due process rights (unlike a furlough action), and approval is subject to your organization's policies, procedures, and any collective bargaining agreement provisions. An employee should discuss with their human resources office any personnel implications of additional time in a nonpay, nonduty status. An agency should not pressure employees to request leave without pay. Such requests should be made on a purely voluntary basis.

While the granting of leave without pay to a significant number of employees may produce savings that could potentially affect the extent to which an agency needs to use furloughs to achieve the savings required by sequestration, employees should be aware that there is no guarantee that volunteering for unpaid leave will have a significant enough effect on an agency's operations to affect the agency's need to furlough employees. Moreover, there are many other factors that may potentially affect an agency's budget, and therefore affect the extent to which an agency needs to use furloughs to achieve cost savings.

Note 1: Leave-exempt Presidential appointees may not take leave without pay, as explained in Question B.4.

Note 2: This matter, like others involving the impact and implementation of furloughs, may be subject to collective bargaining for union-represented employees.

C. Working During Furlough

1. May an employee volunteer to do his or her job on a nonpay basis during any hours or days designated as furlough time off?

A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an employee. (See 31 U.S.C. 1342.)

2. What happens to employees scheduled for training during an administrative furlough?

A. Since agencies typically have sufficient time to give employees adequate notice and to plan for administrative furloughs, furlough time off may be scheduled so as not to conflict with scheduled training. In the event that scheduled training occurs during a furlough period, affected employees must be placed in a furlough status and ordered not to attend the scheduled training.

3. May employees take other jobs during a period designated as furlough time off?

A. While on furlough time off, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct at 5 CFR part 2635). In addition, there are specific statutes that prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, an employee should review these regulations and then consult his or her agency ethics official to learn if there are any agency-specific supplemental rules governing the employee. (Also, see the Office of Government Ethics' March 13, 2013, legal advisory entitled, "[A reminder that ethics laws and regulations continue to apply to Federal Government employees during furlough periods.](#)")

4. May an employee work during a period designated as furlough time off to earn credit hours under a flexible work schedule?

A. No. An employee may not work to earn credit hours during hours and/or days designated as furlough time off.

5. May an employee work during a period designated as furlough time off to accumulate religious compensatory time off hours for religious observances?

A. No. An employee may not work during a period designated as furlough time off, even to accrue religious compensatory time.

6. What is the effect of an agency ordering an employee to work during scheduled furlough hours?

A. If an agency official orders an employee to work during scheduled furlough hours (e.g., to respond to an emergency), the assignment of work cancels the employee's furlough status for the duration of the ordered work, and such work would be subject to normal compensation requirements.

D. Pay

1. When an employee's pay is insufficient to permit all deductions to be made because furlough time off occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?

A. Agencies will follow the guidance at <http://www.chcoc.gov/content/ppm-2008-01-order-precedence-when-gross-pay-not-sufficient-permit-all-deductions> to determine the order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions.

2. May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage System employees during a furlough?

A. It depends on the length of the furlough. Within-grade and step increases for General Schedule (GS) and Federal Wage System employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a GS employee in steps 1, 2, or 3 of the grade who is furloughed an aggregate of more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406(b).)

3. What issues arise with the furloughing of employees who would otherwise reach the biweekly cap on premium pay?

A. Under 5 U.S.C. 5547, premium pay may not normally be paid to the extent the payment would cause the sum of the employee's basic pay plus premium pay received in a biweekly pay period to exceed the higher of (1) the biweekly rate for level V of the Executive Schedule (EX-V) or (2) the biweekly rate of basic pay for GS-15, step 10 (including any applicable locality payment or special rate supplement). (Note: In all locality pay areas within the

United States, the applicable GS-15, step 10, rate is higher than the EX-V rate.) Certain employees regularly receive a recurring type of premium pay that causes them to reach the premium pay cap each biweekly pay period. For example, certain employees regularly receive law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty premium pay, or regularly scheduled firefighter overtime pay.

The biweekly premium pay cap limits premium pay based on the aggregate sum of basic pay plus premium pay in a biweekly pay period. Thus, if a furlough causes basic pay to be reduced, it may result in an increased payment of premium pay that had been limited by the premium pay cap.

If an employee is furloughed, he/she will not receive basic pay or premium pay during the furlough period. If the furlough is for a full pay period, then the employee will not receive any pay for the pay period and the biweekly premium pay cap is not an issue.

However, there are issues if an employee who normally reaches the premium pay cap is furloughed for part of a pay period. The employee's total basic pay will be reduced and, as a result, the *uncapped* amount of premium pay for the pay period will be reduced. ("Uncapped" refers to the amount of premium pay that would be payable if the biweekly premium pay cap did not apply.) If the employee was reaching the premium pay cap in a normal pay period and receiving less than the full amount of premium pay available under the given premium pay provision, the reduction of basic pay could allow otherwise blocked premium pay to become payable—even if the uncapped amount of premium pay is reduced. In fact, the employee could receive the same capped total pay while working less hours. In this case, a furlough would not save money and would actually reduce productivity.

For example, consider a GS-15, step 10, criminal investigator in Washington, DC. Criminal investigators are entitled to LEAP equal to 25% of the investigator's basic pay, subject to the biweekly premium pay cap, which can reduce or eliminate the LEAP payment. Normally, a GS-15, step 10, investigator would receive 0% LEAP since his/her adjusted rate of basic pay is already at the cap.

- Assume the investigator is entitled to a GS-15, step 10, locality rate of \$155,500 (EX-IV locality rate cap). The hourly rate is \$74.51 and the biweekly rate is \$5,960.80. Let's say this investigator is furloughed for 2 workdays. The investigator's basic pay would be reduced to \$4,768.64 ($80 - 16 = 64$ hours, $64 \text{ hours} \times \$74.51 = \$4,768.64$).
- Uncapped LEAP for 80 hours of basic pay = $25\% \times \$5,960.80 = \$1,490.20$
- Uncapped LEAP for 64 hours of basic pay = $25\% \times \$4,768.64 = \$1,192.16$.
- Basic pay + uncapped LEAP = $\$4,768.64 + \$1,192.16 = \$5,960.80$, which equals the premium pay cap. So, the investigator receives the full 25% LEAP.
- In this example, the investigator's hours were reduced by 16 hours out of 80 (20%), leaving basic pay at 80% of the normal amount. $25\% \text{ LEAP} \times 80\% \text{ of normal basic pay} =$

20% of normal basic pay for an 80-hour biweekly pay period (which would have applied but for the furlough). Thus, the LEAP replaced the lost basic pay exactly.

- Uncapped LEAP decreased from \$1,490.20 to \$1,192.16.
 - Capped LEAP increased from \$0 to \$1,192.16.
 - Basic pay decreased from \$5,960.80 to \$4,768.64, a reduction of \$1,192.16.
 - Capped LEAP increase = Basic pay decrease.
- In this scenario, no budget savings would be realized by furloughing the investigator. The investigator would receive the same amount of pay while working fewer hours, resulting in a loss in productivity.

An agency is not required to furlough an employee when the workings of the premium pay cap prevent budget savings or provide limited savings relative to the loss in productivity. As a general rule, an agency may selectively furlough employees, but an explanation must be provided to employees in the advanced written proposal notice regarding the agency's justification as to why the administrative furlough is being implemented. The notice should contain an explanation of other employees who may not have been furloughed in that particular employee's same competitive level. (See 5 CFR 752.404(b)(2).)

For example, see the language below from Sample Notice 1—Furlough Proposal Due to Planned Reduction in Agency Expenditures (5 CFR Part 752):

If other employees in your competitive level (i.e. generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency or, (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, you must include them in this listing.]*

Based on the above, in deciding which employees should be subject to an administrative furlough, an agency should take into account the effects of the premium pay cap and should address in the furlough notice the exclusion of any employees who are affected by the premium pay cap.

4. May Federal agencies require employees who are placed on administrative furlough for all or part of their basic workweek to work hours outside the basic workweek?

A. Yes. An agency may assign work during hours outside the employee's basic workweek, subject to any applicable agency policies or collective bargaining agreements.

Employees are only in furlough status for designated furlough hours. Furlough status means the employee is placed in nonpay, nonduty status for certain hours within the employee's tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Thus, for full-time employees with a 40-hour basic workweek, furlough hours must be within the 40-hour basic workweek. For part-time employees, furlough hours must be within the employee's part-time basic workweek based on the part-time tour of duty established for leave usage purposes. For employees on an uncommon tour of duty established under 5 CFR 630.210, furlough hours must be within the uncommon tour of duty. (See Question L.3.)

Note: During a [shutdown furlough](#) in response to a lapse in appropriations, an agency may not allow an employee (unless the employee is excepted or exempt from furlough) to perform work outside his or her basic workweek because it would create a budgetary obligation before an appropriation is made, which is barred by the Antideficiency Act (31 U.S.C. 1341 et seq.).

5. How are employees compensated when they are required to work hours outside a basic workweek in which they have been furloughed?

A. Employees who are required to work hours outside of a basic workweek during which they have been furloughed are compensated with their rate of basic pay if overtime thresholds have not been met, and/or with overtime pay or compensatory time off in lieu of overtime pay, as appropriate, once the thresholds have been met. Normally applicable overtime rules apply. Most employees are subject to a 40-hour weekly overtime threshold and an 8-hour daily overtime threshold. Leave without pay hours (such as furlough hours) do not count as hours of work in applying overtime thresholds.

As provided by 5 CFR 550.112(d)(1), an employee's hours of work outside of his or her basic workweek, but occurring in the same administrative workweek as furlough hours, must be substituted for furlough hours in pay computations, as long as the hours of work outside the basic workweek do not qualify for an overtime rate on the basis of exceeding 40 hours in a workweek. (Note: For hours that qualify for an overtime rate on the basis of exceeding 8 hours of work in a day, this substitution rule does not apply.) Those substituted hours are paid for at the rate applicable to hours in the employee's basic workweek. After all furlough hours during the employee's basic workweek are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 40 hours in a workweek.

Similarly, as provided by 5 CFR 550.112(d)(2), an employee's hours of work outside of his or daily tour of duty, but in the same workday as furlough hours, must be substituted for such furlough hours in pay computations. Those hours are paid for at the rate applicable to the

employee's daily tour of duty. After all furlough hours during the employee's daily tour of duty are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 8 hours in a workday (for employees subject to the 8-hour daily overtime threshold).

The substitution rule in 5 CFR 550.112(d) does not change an employee's basic workweek or daily tour of duty. The hours worked outside the employee's basic workweek or daily tour of duty are substituted for the purpose of pay computations. Under the rule, substituted hours are paid at the rate "applicable to" hours in the basic workweek or daily tour of duty, even though the hours were worked outside those periods. This rule simply recognizes that leave without pay hours (such as furlough hours) do not count toward weekly and daily overtime thresholds.

Examples

For purposes of these examples, an employee with a Monday–Friday, 8-hour per day work schedule is required to work overtime in a workweek during which he or she also has 1 day (8 hours) of designated furlough time off. (As described in Question L.1., agencies have discretion to implement an administrative furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures.)

- **Example A.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 hours on Saturday.

The 4 hours of work on Saturday are substituted for 4 of the furlough hours on Monday and paid at the rate applicable to the employee's basic workweek (i.e., basic rate), consistent with 5 CFR 550.112(d)(1). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours of work on Saturday.

- **Example B.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 additional hours on Friday evening after completing his 8-hour daily tour of duty.

The additional 4 hours of work on Friday evening are beyond the 8-hour daily overtime pay threshold and the employee is entitled to an overtime rate for those hours based on 5 U.S.C. 5542(a). The substitution rule in 5 CFR 550.112(d)(1) bars paying an overtime rate for substitutable hours outside the basic workweek "on the basis of exceeding 40 hours in a workweek." However, the 40-hour overtime pay threshold is not the basis for paying an overtime rate for the 4 additional hours of work on Friday evening. Since the 8-hour overtime pay threshold is being used, those 4 hours are not substituted for the Monday furlough hours in pay computations; thus, an overtime rate applies. If appropriate, the employee may receive compensatory time off in lieu of overtime pay for the 4 additional Friday hours under the normal rules governing compensatory time off.

- **Example C.** An employee is furloughed for 8 hours on Monday and works 8 hours per day

on Tuesday–Friday. The employee is required to work 4 hours on Monday evening during hours outside of his daily tour of duty.

For purposes of pay computations, the 4 hours of work on Monday evening are substituted for 4 hours of furlough time off taken during the employee’s daily tour of duty on Monday and paid for at the rate applicable to the employee’s daily tour of duty (i.e., basic rate), consistent with 5 CFR 550.112(d)(2). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours worked on Monday evening because the hours are not overtime hours.

Note 1: The above scenarios assume the employee’s administrative workweek and workdays are based on calendar days. The administrative workweek can be based on any 24-hour period. (See 5 CFR 610.102.) That would affect application of 5 CFR 550.112(d), which is based on the applicable “administrative workweek” and “workday.”

Note 2: For employees on flexible or compressed work schedules, the “basic work requirement” is generally equivalent to the “basic workweek.” However, no hour within the basic work requirement can be an overtime hour, even if those basic work requirement hours exceed 8 hours of work in a day or 40 hours of work in a week. For example, if an employee on a flexible or compressed work schedule has a 9-hour basic work requirement on a given day, only hours of work outside the 9-hour basic work requirement could be overtime hours. In other words, while hours of work (including any paid time off but excluding hours in nonpay status) within the basic work requirement count as hours of work in applying the 8-hour daily and 40-hour weekly overtime thresholds, only hours of work outside the basic work requirement may receive an overtime rate. Hours outside the daily or weekly basic work requirement are substituted, as appropriate, for furlough hours under the rules in 5 CFR 550.112(d). For example, if an employee is placed in furlough status during a 9-hour daily basic work requirement and works 4 hours outside the basic work requirement on that same day, those 4 hours would be substituted and paid at the rate for basic work requirement hours.

An employee on a flexible work schedule may have the option to earn credit hours by working hours outside the basic work requirement. The rules governing credit hours remain applicable in the context of an administrative furlough. See Questions C.4., D.6., and E.1. for additional information on earning and using credit hours.

6. May an employee on a flexible work schedule earn credit hours by working during a week or on a day when the employee is furloughed?

A. During a week or on a day when an employee is furloughed during certain basic work requirement hours, the employee may earn credit hours by electing to work in excess of his or her basic work requirement, subject to all legal requirements and applicable agency policies or collective bargaining agreements. An employee may not earn credit hours by working during designated furlough hours within the employee’s basic work requirement. (See Question C.4.) Also, an employee may not use previously earned credit hours during furlough hours. (See Question E.1.)

The substitution rule in 5 CFR 550.112 may not be applied to credit hours—that is, the rule cannot be used to convert earned credit hours into paid hours that substitute for furlough hours in pay computations.

E. Leave and Other Time Off

1. May an employee take paid leave or other forms of paid time off (e.g., annual, sick, court, or military leave, leave for bone marrow or organ donor leave, credit hours earned, any compensatory time off earned, or time off awards) instead of taking administrative furlough time off?

A. No. During an administrative furlough, an employee may not substitute paid leave or other forms of paid time off for any hours or days designated as furlough time off.

2. Can agencies furlough employees who are on approved leave without pay (LWOP) during a time when administrative furloughs are being conducted for other employees?

A. Agencies have discretion in determining whether to furlough employees who are in LWOP status, since both furloughs and LWOP are periods of nonpay status. Employees may already be scheduled for LWOP for a variety of reasons and for various lengths of time on either a continuous or discontinuous basis. An employee's LWOP may or may not fully encompass the period during which administrative furloughs are being conducted for other employees in the same organization. For example, for one employee, a continuous 1-year period of leave without pay to accompany a military spouse overseas may encompass the entire period during which administrative furloughs are being conducted in an employee's organization, while another employee's continuous LWOP may end during that period. Other employees may be scheduled to take LWOP on a regular but discontinuous basis under the Family and Medical Leave Act. (See Question E.3.)

Agencies are responsible for determining (1) whether employees already scheduled for LWOP during a period when administrative furloughs are being conducted will be subject to furlough and (2) the hours of furlough required of such employees. If an agency decides to place an employee in furlough status during hours that were originally scheduled to be LWOP, all applicable procedural requirements must be met, including a furlough notice.

3. May an employee take LWOP under the Family and Medical Leave Act (FMLA) during a time when administrative furloughs are being conducted for other employees?

A. Yes. An employee may take LWOP under FMLA during a time when administrative furloughs are being conducted for other employees in the same organization, subject to the conditions in 5 U.S.C. 6382. (See Question E.2.) However, if an employee is placed in furlough status during hours that were previously scheduled to be LWOP under FMLA, those furlough hours will no longer be considered to be LWOP under FMLA. Furlough hours will not count toward the employee's 12-week FMLA leave entitlement. An employee may not later substitute paid leave for furlough hours.

As explained in Question E.2., agencies are responsible for determining the extent to which employees with scheduled LWOP (including LWOP under FMLA) are placed in furlough status. If employees are placed in furlough status instead of LWOP under FMLA, all applicable procedural requirements must be met, including a furlough notice.

4. Does a furlough affect the accrual of annual leave and sick leave?

A. If an employee is furloughed (i.e., placed in nonpay status) for part of a biweekly pay period, the employee's leave accrual will generally not be affected for that pay period.

However, the accumulation of nonpay status hours during a leave year can affect the accrual of annual leave and sick leave over a period of time. (See 5 CFR 630.208 and Notes 1 and 2 below.) For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status from the beginning of the leave year (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period in which that 80-hour accumulation is reached. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached. At the end of the leave year, any accumulation of nonpay status hours of less than 80 hours is zeroed out so that the accumulation of nonpay status hours for the next leave year starts at zero.

For part-time employees, the rule blocking accrual of leave based on the accumulation of nonpay status hours (5 CFR 630.208) does not apply. Instead, leave accrual for part-time employees is prorated based on hours in a pay status in each pay period; thus, time in nonpay status reduces leave accrual in each pay period containing such time (5 CFR 630.303 and 5 U.S.C. 6307).

Also, please see OPM's fact sheet on the [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\) on Federal Benefits and Programs](#), which has a section entitled, "Accrual of annual and sick leave."

Note 1: The term "nonpay status" refers to period during which an employee is absent from his or her tour of duty established for leave usage purposes and receives no pay for such absence. Furlough is one type of nonpay status.

Note 2: The term "leave year" is defined as the period beginning on the first day of the first full biweekly pay period in a calendar year and ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year. (For example, for employees on the standard biweekly payroll cycle, the 2013 leave year is January 13, 2013, through January 11, 2014.) (See fact sheet at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-year-beginning-and-ending-dates/>.)

Note 3: For full-time employees with an uncommon tour of duty under 5 CFR 630.210, the accumulation limit used in applying 5 CFR 630.208 is the number of hours in the uncommon tour of duty for a biweekly pay period.

5. May an employee who takes furlough hours off be permitted to substitute annual leave retroactively for furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?

A. Generally no. However, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the employee may retroactively cancel excess furlough hours and substitute annual leave for those hours, as determined by the agency. (See B-219211, December 9, 1985.) For example, an agency's furlough plan requires each employee to take 176 furlough hours (22 days) between April and September. The agency requires the employee to take 8 furlough hours off each week in the month of April (for a total of 32 furlough hours (4 days)) and provides the employee with an option of when to take his/her remaining furlough hours off at a time of the employee's choosing, but no later than the end of September. If the employee takes all 176 furlough hours off (22 days) in April and the agency cancels the furlough on May 1 due to improved financial conditions, the employee would have taken 144 furlough hours more than what was needed (176 hours (22 days) - 32 hours (4 days)). Upon the determination to cancel the furlough, the agency must decide how to handle the 144 furlough hours (18 furlough days) off the employee has taken ahead of schedule in accordance with internal agency procedures and any applicable collective bargaining agreement. Any annual leave substituted for furlough hours would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

Note: This matter may be subject to collective bargaining for union-represented employees to the extent an agency has discretion to retroactively substitute annual leave for furlough hours taken.

6. May an employee who takes furlough hours off be granted excused absence to substitute retroactively for the furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?

A. Agencies have the discretionary authority to determine the situations in which an employee may be excused from duty without loss of pay or charge to leave in accordance with internal agency policy and any collective bargaining agreement. However, agencies are not required to provide excused absence unless specifically required by statute or Presidential directive. For example, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the agency is not required to provide excused absence for the excess furlough hours, as determined by the agency. (See B-219211, December 9, 1985.) If the agency decides to cancel certain furlough hours and substitute excused absence, the excused absence should be provided to all similarly situated employees. Any retroactive substitution of excused absence would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

Note: This matter, like others involving the impact and implementation of furloughs, may be

subject to collective bargaining for union-represented employees.

F. Holidays

1. May employees be administratively furloughed on a holiday?

A. Employees may be furloughed for periods of time that include holidays. However, an agency should select the furlough days off on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. For example, an agency may not properly furlough employees for a 3-day period, the middle of which is a holiday, for the sole purpose of saving 3 days' pay while losing only 2 days of work. (See Comptroller General opinion B-224619, August 17, 1987.) Neither would it be proper to furlough an employee solely on a holiday. (See Comptroller General opinion B-222836, May 8, 1986.)

2. If employees have a designated administrative furlough day off on the last workday before a holiday *or* the first workday after a holiday (but not on both days), will they be paid for the holiday?

A. Yes. The general rule is that an employee is entitled to pay for a holiday so long as he or she is in a pay status on either the workday preceding a holiday or the workday following a holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. (Note: A holiday should not be the first or last day of the period covered by a furlough.)

3. If employees have a designated administrative furlough day off on the last workday before a holiday *and* the first workday after a holiday, will they be paid for the holiday?

A. No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the employee is not entitled to pay for the holiday because there is no longer a presumption that, but for the holiday, the employee would have worked on that day. (See Comptroller General opinion B-224619, August 17, 1987.) Agencies that allow employees to choose their furlough days off should explain that the employee will not be paid for the holiday if the employee chooses to take a furlough day off both before and after the holiday.

G. Benefits

1. How does an administrative furlough impact the Federal Employees Health Benefits Program?

A. Please see Section S (Federal Employees Health Benefits Program).

2. Will an employee's Federal Flexible Spending Account Program (FSAFEDS) be impacted during an administrative furlough?

A. The employee's FSAFEDS coverage continues, and allotments made by the employee continue if the employee's salary in each pay period is sufficient to cover the deduction(s). If the employee's salary is insufficient to cover his or her allotment(s), then incurred eligible health care expenses will not be reimbursed until the allotments are successfully restarted (in which case the remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount). Incurred eligible dependent care expenses may be reimbursed up to whatever balance is in the employee's dependent care account, as long as the expenses incurred allow the employee (or employee's spouse if married) to work, look for work or attend school full-time. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount.

3. How does an administrative furlough impact the Federal Employees' Group Life Insurance (FEGLI) Program?

A. Please see Section T (Federal Employees' Group Life Insurance Program).

4. Will an employee continue to be covered under the Federal Dental and Vision Insurance Program (FEDVIP) during an administrative furlough?

A. Yes. Just as with scheduled LWOP, if BENEFEDS is unable to take the necessary premium deduction from an employee's pay, BENEFEDS collects premium up to twice the biweekly amount from the next full pay period to make up for the missed premium deduction. If the furlough continues for more than two consecutive pay periods, BENEFEDS will mail a direct bill to the employee. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

5. Will an employee continue to be covered under the Federal Long Term Care Insurance Program (FLTCIP) during an administrative furlough?

A. Yes, eligible claims will continue to be paid. Coverage will terminate if premiums are not paid. If the contractor does not receive premium for two or fewer pay periods, they will adjust future premium deductions, increasing by no more than \$50 per pay period to recover the missed premiums. Three consecutive pay periods of no premium will result in the contractor billing the participant directly.

The employee also has the option to change to direct billing or to payment via electronic funds transfer (EFT). If premiums are not collected or a final bill is not paid within a 30 day grace period, FLTCIP will send a termination letter. The employee has 35 days from the date of the letter to pay the premium; otherwise the employee will be disenrolled retroactively to the last pay period in which premium was paid.

6. How does a furlough affect retirement annuity benefits?

A. Generally, furloughs will not affect an annuity benefit under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).

The amount of a CSRS or FERS annuity paid by OPM is based primarily on the amount of creditable service an employee performs and the employee's high-3 average salary. Both CSRS and FERS allow service credit for up to 6 months of nonpay status in any calendar year. If a furlough period does not cause an employee to be in a nonpay status for more than 6 months in a calendar year, the furlough period will be included as creditable service in determining the employee's total creditable service used in the annuity computation. If the total amount of time an employee spends in a nonpay status in a calendar year exceeds 6 months, the amount of nonpay status in excess of 6 months in the calendar year will not be creditable for retirement purposes.

The high-3 average salary used to compute CSRS and FERS annuities is the largest annual rate resulting from averaging an employee's *rates of basic pay* in effect over any period of 3 consecutive years of creditable civilian service, with each *rate* weighted by the length of time it was in effect. If a period of nonpay status (such as a furlough) that is creditable for retirement occurs during the 3-year period used to compute the high-3 average salary, the loss of actual pay during that nonpay status period generally would have no effect on the high-3 computation. The basic pay rate in effect during that nonpay status period would be used in the high-3 average salary calculation. For example, if an employee whose annual rate of basic pay is \$85,000 is placed in a furlough status for two weeks and that 2-week period falls in the employee's average salary period, that 2-week furlough period will be credited in the high-3 average salary calculation using the \$85,000 annual rate of basic pay that was in effect during the furlough period. In this example, the loss of actual pay (or earnings) during that period is not material in the high-3 average salary calculation.

Basic pay for retirement includes locality pay and certain types of additional pay, such as law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty pay, firefighter pay (annualized salary), and market pay for physicians. These types of additional pay are included in the basic pay used to calculate the high-3 average salary during periods of creditable nonpay status as long as the authorization for the payments remains in effect.

Other additional types of basic pay, however, including night shift differential and environmental differential for wage grade employees, and certain overtime pay for customs officers are included in the average salary computation only when an employee has received that type of pay.

H. Employee Assistance

1. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that furloughed employees may become eligible for unemployment compensation. The various State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. Agencies or employees should submit questions to the appropriate State (or the District of Columbia, Puerto Rico, or the Virgin Islands) office. The Department of Labor (DOL) website provides links to individual State offices at <http://www.servicelocator.org/OWSLinks.asp>.

For additional information on Unemployment Compensation for Federal Employees (UCFE), see DOL's UCFE webpage at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>, fact sheet at <http://www.dol.gov/sequestration/ucfe.pdf>, and frequently asked questions at <http://www.dol.gov/sequestration/ucfe-faqs.pdf>.

2. What resources are available if a Federal employee needs financial assistance during a furlough period?

A. Some agency employee assistance programs (EAPs) include financial consultation services. In addition, employees may want to contact their financial institution or credit union or learn about their options through the Thrift Savings Plan (<http://www.tsp.gov>). The Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at www.tsp.gov/PDF/formspubs/oc95-4.pdf, and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

3. Can I take a TSP loan while I'm furloughed? What is the effect of an administrative furlough on Thrift Savings Plan (TSP) contributions, investments, and loans?

A. Agencies and employees should refer to the TSP website (<http://www.tsp.gov>) or contact their agency representative for information. Specifically, the Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at www.tsp.gov/PDF/formspubs/oc95-4.pdf, and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

I. Service Credit for Various Purposes

1. Is being furloughed or on leave without pay (LWOP) considered a break in service?

A. No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, an extended furlough or extended LWOP may affect the calculation of creditable service for certain purposes.

2. To what extent does nonpay status affect Federal employee benefits and programs?

A. The effects of a nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on Federal employee benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs" at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/effect-of-extended-leave-without-pay-lwop-or-other-nonpay-status-on-federal-benefits-and-programs/>.

J. Federal Employees on Military Duty

1. Will employees continue to receive a reservist differential payment (5 U.S.C. 5538) if they are affected by an administrative furlough from their Federal civilian position while on active duty?

A. It depends. In computing a reservist differential, the employing agency must compare the employee's projected civilian basic pay to the allocated military pay and allowances for each civilian pay period. If an employee is affected by a furlough from his or her Federal position while on active duty, the employing agency must reduce the employee's projected civilian basic pay during any pay period in which furlough time off occurs. If the allocated military pay and allowances are greater than or equal to the projected civilian basic pay adjusted for furlough time off, no reservist differential is payable for that pay period. If the projected civilian basic pay (as reduced to account for furlough time off) is greater than the allocated military pay and allowances, the difference represents the unadjusted reservist differential.

2. Will there be an impact on an employee's General Schedule or Federal Wage System within-grade increases (WGI) waiting period if the employee is affected by an administrative furlough while in an Absent – Uniformed Service status?

A. No. A furlough has no impact on an employee's General Schedule or Federal Wage System WGI waiting period if the employee is affected by a furlough while in an Absent – Uniformed Service status (i.e., Nature of Action Code 473, which is used when the employee has restoration rights). An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when an employee returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. (See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).)

K. Benefits under the Federal Employees' Compensation Act (FECA)

1. Are employees who are injured while on furlough or LWOP eligible to receive workers' compensation?

A. No. Federal workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. A Federal employee who is receiving workers' compensation payments under the FECA will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

2. How does an administrative furlough affect the compensation of an employee who is receiving FECA benefits and is under medical orders to work part-time?

A. When an employee is already out on total or partial wage loss benefits, FECA compensation continues at the usual rate. Claims for FECA compensation benefits submitted as a result of missing a partial day due to a furlough are not payable under the FECA.

3. How does an administrative furlough impact the compensation of an employee who is receiving FECA benefits and is required to work a modified light duty schedule?

A. FECA compensation benefits are not payable for work days lost as a result of administrative furlough.

4. How does a furlough affect Continuation of Pay (COP)?

A. If an employee sustains a traumatic injury and is receiving COP before furlough days have been scheduled, COP should continue. However, if an employee sustains a traumatic injury and has already been scheduled for one or more furlough days, then there would be no COP entitlement for any day that the employee was not scheduled to work due to an administrative furlough.

5. Are schedule awards or medical benefits affected by an administrative furlough?

A. No. Schedule award and medical benefits continue regardless.

Note to Section K: Any additional questions regarding Federal workers' compensation benefits should be directed to the Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor. See <http://www.dol.gov/owcp/dfec>.

L. Scheduling Furlough Time Off

1. How should agencies schedule administrative furlough time off? Must all agencies follow the same procedures for furloughing employees?

A. An administrative furlough will impact each agency differently depending on the extent of the agency's budget reduction. Agencies have discretion to implement such a furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures. For example, an agency may furlough employees for 1 day a pay period for a finite period of time, designate a number of furlough hours, shut down the entire agency for a defined number of days, designate specific dates as furlough days off, or allow employees to select their own furlough time off, etc.

2. How should agencies schedule administrative furlough time off for employees on flexible or compressed work schedules under an alternative work schedule (AWS) program?

A. Because the definition of a workday will vary based on the type of work schedule and/or appointment, it is best for an agency to develop a policy that provides equity and consistency, subject to all legal requirements and applicable agency policies or collective bargaining agreements. For ease of administration and equity, agencies may schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, in the event that all full-time employees are furloughed for 40 hours, for some employees the actual number of furlough days could be more or less than 5 days, depending on their work schedules.

Many employees who are on flexible work schedules normally have a great deal of flexibility in the starting and stopping times within their basic work schedule. When furloughing employees with a flexible work schedule, agencies should identify specific hours during which the employee is in furlough status—e.g., 8:00 am–4:00 pm. Thus, if an employee is called into work (e.g., due to an emergency), it will be clear as to whether the hours of work occur during or outside scheduled furlough hours. Any work ordered during scheduled furlough hours cancels the furlough for those hours, and such work would be subject to normal compensation requirements. (See Question C.6. See also Questions D.4., D.5., and D.6 dealing with employees working outside basic workweek hours during a day or week in which they are placed in administrative furlough status.)

3. How should agencies schedule administrative furlough time off for employees who do not work a standard work schedule (e.g., part-time or uncommon tour of duty)?

A. Agencies must enact furloughs in a manner that reduces operation risks and minimizes impacts on agency core mission in service of the American people, but should strive to impact employees in an equitable manner regardless of work schedule. Furloughs of part-time or uncommon tour of duty employees must comply with the procedures of 5 CFR part 752 or part 351, as applicable, if the employees are otherwise covered.

In determining furloughs for part-time employees, agencies should consider whether or not to prorate furlough hours requirements based on the number of scheduled part-time work hours relative to a full-time work schedule of 80 hours in a biweekly pay period to achieve the same percentage pay reduction for both full-time and part-time employees. For example, a part-time work schedule of 64 hours per biweekly pay period would equate to 64/80 of a full-time work schedule, or 80 percent. This percent could then be multiplied by the number of hours that a full-time employee is furloughed to derive the appropriate number of furlough hours for the part-time employee. Thus, if a full-time employee were required to be furloughed for 40 hours, a part-time employee with a 64-hour biweekly tour could be furloughed for 32 hours ($40 \times .80 = 32$).

In the case of employees with an uncommon tour of duty, such as firefighters and paramedics, agencies should consider the impact that a furlough has on regular pay (in percentage terms), rather than the impact on hours (in percentage terms). An uncommon tour of duty is a tour of duty in excess of 80 hours in a biweekly pay period that is established for the purpose of charging leave. Thus, it includes overtime hours for which an employee receives regular overtime pay or standby duty premium pay. (See definition of “uncommon tour of duty” in 5 CFR 630.201 and 630.210.) Generally, for employees on an uncommon tour of duty, furlough hours will reduce regular pay by a greater percentage than the percentage reduction in hours. In connection with the furlough of employees with an uncommon tour of duty, agencies should consider whether or not the number of furlough hours should be set in a manner that achieves the same percentage pay reduction experienced by full-time employees with an 80-hour biweekly tour of duty who are covered by the same furlough policy.

4. How should agencies schedule administrative furlough time off for employees who work on a seasonal or intermittent basis?

A. Whether either group is called for work during an administrative furlough is discretionary with agencies. Seasonal employees are recalled to duty at identified periods of the year in accordance with pre-established conditions. Intermittent employees are non-full-time employees without a regularly scheduled tour of duty.

M. Procedures—22 Workdays or Less

1. May an agency schedule administrative furlough days consecutively and discontinuously (e.g., one workday per week for 15 weeks)?

A. Yes. Nothing in law or regulation prohibits discontinuous furloughs, and they have been upheld by the Merit Systems Protection Board on appeal. Moreover, discontinuous furloughs can be advantageous to both employees and the agency by distributing the furlough days over time, thereby minimizing the financial impact on employees as well as lessening disruption of agency services to the public.

In *AFGE, Local 32 and OPM*, 22 FLRA 307 (1986), the Federal Labor Relations Authority held that a proposal giving the furloughed employee the right to determine whether his/her furlough was to be continuous or discontinuous is a negotiable 5 U.S.C. 7106(b)(3) “appropriate arrangement.”

For ease of administration and equity, agencies may also schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, all full-time employees would be furloughed for 40 hours, even though for some employees the actual number of furlough days could be more or less than 5 days.

2. How is an administrative furlough documented?

A. Agencies must prepare an SF-50, “Notification of Personnel Action,” for each employee subject to furlough (or a List Form of Notice may be prepared for a group of employees who are to be furloughed on the same day or days each pay period). Chapters 15 and 16 of [*The Guide to Processing Personnel Actions*](#) provide complete guidance on documenting a furlough.

3. If a discontinuous administrative furlough extends for more than 30 calendar days, is it a furlough covered by adverse action procedures in 5 CFR part 752, or is it covered by the reduction in force (RIF) procedures of 5 CFR part 351?

A. Based on the definition of “day” as “calendar day” (5 CFR 210.102 and 752.402), OPM has determined that 22 workdays equate to 30 calendar days for adverse action purposes for employees. Thus, a discontinuous furlough of 22 workdays or less would be covered by adverse action procedures, and one of more than 22 workdays would be covered by the RIF procedures of 5 CFR part 351. (If a holiday is included in a furlough of 22 *consecutive* workdays, the furlough might equate to more than 30 calendar days. For example, the month of November has two holidays: Veterans Day and Thanksgiving Day. Therefore, the number of calendar days will be extended beyond 30 by two days.)

4. What procedural rights would apply for an administrative furlough of 30 calendar days or less for employees covered under 5 CFR part 752?

A. 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. (Typically, the reasons for the action would involve a lack of work or funds.) The 30 calendar day period begins upon an employee’s *receipt* of the written notice. Therefore, agencies should plan accordingly to allow time for mailing the notice when hand-delivery is not possible. (See Sample Notice 1 for proposal to furlough and Sample Notice 2 for decision to furlough.)
- At least seven 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. (A summary of any oral answer must be made and maintained by the agency.)

- 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 the Merit Systems Protection Board.

In addition, OPM's regulations (5 CFR 752.404) require that the agency inform the employee of the right to review the material it relied on to support the reasons for its action. The agency must designate an oral reply official who can either make or recommend a decision, and must issue its decision at or before the effective date of the action. The regulations (5 CFR 752.405) also provide that where applicable, the affected employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to the Merit Systems Protection Board, but not both.

Note: Under 5 CFR 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. Agencies who anticipate furloughing some, but not all employees, should ensure the accuracy of established competitive levels in order to meet their obligations under this regulation. In general, the term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable (see 5 CFR 351.403(a)). Where bargaining unit employees are concerned, additional procedural rights may be provided by their negotiated agreement.

Adverse action procedures in 5 CFR part 752, subpart F, covering Senior Executive Service (SES) career appointees and certain SES limited term or emergency employees do not apply to short furloughs because those procedures provide only for removal from the civil service or suspension for more than 14 days based upon misconduct, neglect of duty, malfeasance or failure to accept a directed reassignment or to accompany a position in a transfer of function.

4a. What supporting material must be made available for review by employees to support an administrative furlough action as required under 5 CFR 752.404?

A. Since decisions on whether to conduct an administrative furlough and the length of any furlough are based on each agency's unique circumstances, each agency would need to identify the appropriate documentation that supports its own particular reasons for any administrative furlough action. Because the reasons and methods to furlough may vary from agency to agency, (e.g. downsizing, reduced funding, lack of work, or any other budget situation) supporting documentation may also vary.

While it is the responsibility of each agency to make an independent determination of supporting documentation for any administrative furlough action due to sequestration, potential general documentation related to sequestration could include, but is not limited to:

- 1) Balanced Budget and Emergency Deficit Control Act of 1985
- 2) Budget Control Act of 2011 - <http://www.gpo.gov/fdsys/pkg/BILLS-112s365enr/pdf/BILLS-112s365enr.pdf>,
- 3) American Taxpayer Relief Act - <http://www.gpo.gov/fdsys/pkg/BILLS-112hr8enr/pdf/BILLS-112hr8enr.pdf>,
- 4) OMB Memorandum M-13-03, "Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources," dated January 14, 2013 - <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2013/m-13-03.pdf>,
- 5) OMB Memorandum M-13-05, "Agency Responsibilities for Implementation of Potential Joint Committee Sequestration," dated February 27, 2013 - <https://obamawhitehouse.archives.gov/sites/default/files/omb/memoranda/2013/m-13-05.pdf>, and
- 6) OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013, dated March 1, 2013 - https://obamawhitehouse.archives.gov/sites/default/files/omb/assets/legislative_reports/fy13ombjseqcsequestrationreport.pdf

4b. What procedural rights apply to employees who are veterans covered under 5 U.S.C. chapter 75 and 5 CFR part 752 for an administrative furlough of 30 calendar days or less?

A. For a short furlough of a covered veteran employee, the law (5 U.S.C. 7513) gives a covered veteran employee the same procedural rights as other covered employees as explained in Question M.4. Employees should consult with their agency human resources office to determine whether they are covered by 5 U.S.C. 7513 and what procedures may apply to them.

5. What procedures are applicable to members of the Senior Executive Service affected by an administrative furlough of 30 calendar days or less?

A. Under SES furlough regulations at 5 CFR part 359, subpart H, an agency need not use competitive procedures in selecting SES appointees to be furloughed for 30 calendar days or less, or for 22 workdays or less if the furlough does not cover consecutive days; however, the agency must provide career SES appointees (other than reemployed annuitants) a 30-day advance written notice of a furlough of any length. The written notice must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. This regulation does not require that appointees be afforded an

opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

6. What procedures and appeal rights are applicable for probationers, employees under temporary appointments in the competitive service, employees who are nonpreference eligible employees in the excepted service with less than 2 years of continuous service, Schedule C employees, and others not covered by 5 U.S.C. chapter 75 but also affected by an administrative furlough?

A. There are no mandatory procedures; however, agencies should ensure that all administrative procedures required by negotiated agreements or internal personnel policies are followed, subject to any exceptions to those procedures that would apply in the event of an administrative furlough.

6a. What if an agency initiates an administrative furlough for a probationer, but the individual satisfactorily completes their probationary period before furlough days are taken or completed?

A. Once a probationer satisfactorily completes the required probationary period and meets the definition of "employee" under 5 U.S.C. 7511, the employee is entitled to the same procedural rights as other covered employees as explained in Question M.4.

Before any furlough days are taken after the individual has become an "employee" under 5 U.S.C. 7511, the agency should provide: at least 30 calendar days advance written notice; at least 7 calendar days for the employee answer orally and in writing; the right of the employee to be represented by an attorney or other representative; a written decision; and the right of the employee to appeal the agency's action to the Merit System Protection Board. See Question M.4. for additional information on these procedural rights.

7. How do agencies implement an administrative furlough for administrative law judges?

A. 5 U.S.C. 7521 provides that adverse action furloughs of 30 calendar days or less may be taken against an administrative law judge "only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board." The Merit Systems Protection Board has adopted procedures for implementing such an action, which are described in 5 CFR 1201.137-141.

8. How should the decision letter for an administrative furlough be framed if the agency

has not set a specific number of furlough days?

A. While it is desirable when possible to inform the affected employee of a specific number of furlough days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible.

9. If an employee decides to challenge a discontinuous administrative furlough, from what point would the time for appeal to the Merit Systems Protection Board run?

A. Employees must file an appeal within 30 days after the effective date of their first furlough day, or 30 days after the date of their receipt of the decision notice, whichever is later.

10. May an agency provide an employee electronic notice of a furlough action?

A. Agencies that issue furlough notices should consult with their respective General Counsels to ensure each step of the process is consistent with regulatory and legal requirements. If an agency determines to electronically notify affected employees of a furlough action, OPM recommends that the agency include each employee's name, address, and/or e-mail address on both the proposal and decision notifications so that it is clear that an employee is receiving personal notification. Agencies should also consider including in the body of the electronic correspondence, the requirement that the employee provide an email acknowledgement of receipt. If an agency doesn't receive a requested acknowledgement of receipt of an e-mail notification, it should consider delivering a paper copy of the proposal and/or decision notifications to the employee at his or her home address by registered mail with a return receipt requested. Similarly, agencies must deliver hard copy furlough notices to those employees without agency email access.

Additionally, OPM recommends that agencies consider informing employees in advance of when and how the furlough notices will be issued and providing a contact person who can confirm whether or not an employee is subject to the furlough and answer questions.

Finally, agencies with bargaining unit employees are reminded that they must provide notice and opportunity to bargain over negotiable procedures and appropriate arrangements to any unions representing their employees.

11. What are an agency's regulatory obligations in providing an appellant the Merit Systems Protection Board (MSPB) appeal information in the adverse action furlough decision notice?

A. As summarized in the April 11, 2013, Federal Register (<http://www.gpo.gov/fdsys/pkg/FR-2013-04-11/pdf/2013-08503.pdf>) an agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. Providing this MSPB appeal hyperlink form electronically (<https://e-appeal.mspb.gov/>) will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if

the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form, including providing the employee with a hard copy of these documents upon the employee's request. See Sample Notice 2 for sample decision notice language.

N. Procedures—More than 22 Workdays (Extended Furlough)

1. When is an agency required to use reduction in force (RIF) procedures to administratively furlough employees?

A. Agencies must follow RIF procedures for an extended furlough of more than 30 continuous calendar days, or of more than 22 discontinuous workdays (though, importantly, a furlough is a temporary placement in non-pay/non-duty status; it is not a permanent separation from service).

2. Is there a maximum period an employee may be administratively furloughed for an extended period?

A. Yes. An employee may be placed on an extended furlough only when the agency plans to recall the employee to his or her position within 1 year. Therefore, the furlough may not exceed 1 year.

3. If an agency needs to administratively furlough employees for more than 30 calendar days (or more than 22 workdays), must the complete 5 CFR part 351 procedures be followed?

A. Yes. The complete procedures in 5 CFR part 351 must be followed, including a minimum 60 days specific written notice of the furlough action. (Question 16 has additional information on notice requirements.) The only exception to the regular procedures involves assignment rights (i.e., "bump" and "retreat" rights; see question 4).

4. When does an employee who is reached for an extended furlough action during an administrative furlough have a right of assignment to another position?

A. An employee reached for release from the competitive level because of an extended furlough has assignment rights to other positions on the same basis as an employee reached for release as a result of other RIF actions (e.g., separation or downgrading).

Because of the requirement in 5 CFR 351.701(a) that assignment rights apply only to positions lasting at least 3 months, an employee reached for an extended continuous furlough does not have assignment rights to a position held by another employee who is not affected by the furlough unless the furlough extends for 90 or more consecutive days. Also, an employee reached for a discontinuous extended furlough action does not have assignment rights to another position.

The undue interruption standard could apply to an extended furlough over 90 consecutive days. (As defined in 5 CFR 351.203, “undue interruption” essentially means that a higher-standing employee who is otherwise qualified for the assignment may exercise the assignment right only if the employee is able to perform the work of the position of the lower-standing employee within 90 days of the assignment.) The agency must consider whether undue interruption would result from both (1) the displacement of a lower-standing employee from the competitive level affected by the furlough, and (2) the recall of both employees to their official positions at the end of the furlough period.

5. Are there any other situations in which agencies may restrict employees’ assignment rights in an administrative furlough situation?

A. An agency may make a temporary exception to order of release and assignment rights to keep the incumbent in his or her position for 90 days or less after the commencement of the furlough when needed to continue an activity without undue interruption. (For additional reasons that a temporary exception may be used, see 5 CFR 351.608(a).)

An agency may make a continuing exception to order of release and assignment rights to keep the incumbent in a position that no higher standing employee can take over within 90 days and without undue interruption to the activity. (See 5 CFR 351.607.)

6. Some employees within a competitive area are paid from appropriated funds. Some are paid from a variety of other funding sources, such as trust funds, working capital, user fees, etc. Are employees who are paid from these other sources exempt from an administrative furlough and the 5 CFR part 351 process?

A. Regardless of the source from which an employee is paid, each employee within a competitive area would be subject to displacement by higher standing employees within the same competitive area.

7. If a program, project, or activity (PPA) takes other actions to obviate or lessen the need for an extended administrative furlough, how will the employees in the PPA be affected by the process?

A. Even though their positions are not subject to furlough, the employees in the PPA would be subject to displacement by higher standing employees in other PPAs within the competitive area.

8. What action is taken if an employee refuses an offer of assignment during an administrative furlough?

A. The employee is furloughed from his or her position.

9. If an employee bumps or retreats to a different job as a result of an administrative furlough, is the employee temporarily assigned to that job?

A. No. The employee becomes the incumbent of that job even though the furlough anticipates the employee's eventual recall to his or her former job.

10. If circumstances change and the agency is unable to recall administratively furloughed employees at the point specified in their extended furlough notice, what additional action is required?

A. In this situation, the agency must issue those employees new notices of either an extended furlough or proposed RIF separation, as the situation requires. This new action must meet all the requirements in the 5 CFR part 351 regulations (for example, 60 days advance notice).

11. Do these requirements also apply if an agency finds that it can recall employees before they have reached the administrative furlough limits specified in their notice?

A. No.

12. Are employees who are appointed by the President with Senate confirmation (PAS), Schedule C employees, and members of the Senior Executive Service (SES) covered by extended furlough procedures of 5 CFR part 351 during an administrative furlough?

A. Extended furlough procedures of 5 CFR part 351 do not apply to an employee who is a member of the Senior Executive Service or to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of the Senate, except a postmaster. All Schedule C employees are covered by part 351 except those under appointments of 1 year or less who have less than 1 year of service.

13. What procedures are applicable to members of the Senior Executive Service (SES) affected by an administrative furlough of more than 30 calendar days, or more than 22 discontinuous workdays?

A. Career SES members (other than reemployed annuitants) are covered by separate furlough procedures in 5 CFR part 359, subpart H, which provide that an agency must use competitive procedures in selecting SES career appointees for furloughs of more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days. SES regulations at 5 CFR part 359, subpart F, do not apply, but agencies may use the same competitive procedures they have established for SES RIF. Any competitive procedures used must be made known to the SES members. These career appointees are entitled to a 30-day advance written notice of a furlough, which must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the

appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. (See, for example, <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough> for information on shutdown furloughs.) This regulation does not require that appointees be afforded an opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

14. What happens to temporary employees serving under appointments limited to 1 year or less in extended administrative furlough situations?

A. An agency may not retain a temporary employee in pay status to furlough a competing employee in the same competitive level. Temporary employees may be either separated or furloughed in such situations, but they are not entitled to the protections of adverse actions or 5 CFR part 351 procedures when this occurs. As a matter of good human resources management, however, the agency should try to give these employees as much advance written notice as possible.

Time spent in furlough status by temporary employees counts the same as time in a pay status toward their appointment's not-to-exceed date and the 2-year limit on their overall service specified in 5 CFR 316.401(c).

15. How do agencies administratively furlough administrative law judges for more than 30 calendar days (or more than 22 workdays)?

A. Administrative law judges are subject to the procedures in 5 CFR part 351. However, since judges are not given performance ratings, the provisions dealing with the effect of performance ratings on retention standing would not apply.

16. What notice must an agency provide an employee of an extended administrative furlough action?

A. An agency must give an employee covered by 5 CFR part 351 a minimum 60-day specific written notice before the effective date of any action, including furlough. The statutory basis for the notice requirements is found in 5 U.S.C. 3502(d). The notice requirements are further implemented through regulations published in 5 CFR part 351, subpart H.

The same notice requirements are applicable to both a continuous and a discontinuous furlough.

17. What option is available if an agency is unable to provide an employee with the minimum required notice of an extended administrative furlough?

A. When the action is caused by unforeseeable circumstance, an agency may request OPM to authorize a notice period of less than 60 days. However, the agency must still provide each employee with a minimum of 30 calendar days specific written notice of the action. (See 5 U.S.C. 3502(e) and 5 CFR 351.801(b).)

18. Section 351.806 of 5 CFR states that during the notice period when, “in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee . . . in a nonpay status without his or her consent.” If an agency is unable to give 60 calendar days notice in an emergency (or longer period if required by administrative or negotiated provisions), may an agency use 5 CFR 351.806 to place employees on administrative furlough before the notice period is satisfied?

A. Yes.

19. Is the agency required (or permitted) to register employees administratively furloughed under 5 CFR part 351 in the agency’s Reemployment Priority List, or is the employee eligible for priority consideration under placement programs such as Career Transition Assistance Program or the Interagency Career Transition Assistance Program?

A. No. All of these programs are available only to employees who are separated, not to employees who are furloughed.

20. During an administrative furlough, competitive service employees may appeal the action to the Merit Systems Protection Board (MSPB). What about excepted service employees?

A. Excepted service employees, as well as competitive service employees, who are covered by 5 CFR part 351 may appeal or grieve as follows: An employee covered by a negotiated grievance procedure that does not exclude 5 CFR part 351 actions must use the negotiated grievance procedure. See 5 U.S.C. § 7121, *et seq.* Otherwise, an employee may appeal to MSPB. See 5 CFR 351.202, 351.901, and 1201.3(c).

21. What if an agency plans for and gives notice of an administrative furlough of 22 workdays or less, but then determines that another furlough is necessary for different reasons? Must the agency use 5 CFR part 351 furlough procedures if it determines that an additional furlough is necessary when the additional furlough follows a 22 workday or less furlough?

A. If an agency's initial assessment resulted in a furlough of 22 workdays or less, OPM recommends that the agency complete that furlough and then issue new furlough notices under either 5 CFR part 752 or 5 CFR part 351, as appropriate depending on the length of the newly required furlough, in the event it determines that additional savings are necessary for different reasons.

O. Labor Management Relations Implications

1. When an agency is required to effect an administrative furlough, what is the agency's obligation to bargain?

A. The decisions whether to furlough employees and which activities to except from a furlough are management rights that are not subject to bargaining. See 5 U.S.C. 7106(a). However, when an agency determines that an administrative furlough is necessary, agencies have a duty to notify their exclusive representatives, if any, prior to initiating and implementing any furlough actions. Upon request, agencies must bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already covered by a collective bargaining agreement.

Agencies should be aware that their collective bargaining agreements may also contain provisions with respect to the time frame within which to provide the labor organization notice of a change in conditions of employment. It is advisable to check the agency's individual labor agreements for applicable notice provisions, and for agencies to comply with those provisions.

Agency contracts may also contain provisions regarding adverse actions and reductions in force (RIF) with which agencies must comply in giving notice to bargaining unit employees of pending furloughs. It is advisable to check the agency's individual labor agreements for applicable adverse action and reduction in force notice provisions, and to comply with those provisions.

However, in the event that agencies are required to absorb unexpected substantial budget cuts during a short-term continuing resolution or because of the limited time remaining in the fiscal year to absorb these unexpected budget cuts, then agencies might be required to furlough without delay because the cuts must be absorbed during the term of the continuing resolution or remainder of the fiscal year and cannot be deferred until later in the year or into a new budget year. In this event, OPM regulation 5 CFR 752.404(d)(2) states that written notice of furlough to individual employees and opportunity to be heard are not required because of unforeseeable circumstances. Unforeseeable circumstances could include

unexpected cuts by the Congress to an agency's budget late in the fiscal year. This regulation does not apply to the statutory requirement that agencies provide appropriate notice to labor organizations of changes in conditions of employment.

1a. Must agencies complete collective bargaining prior to issuing any furlough notices to bargaining unit employees?

A. To the extent required by law, agencies must satisfy applicable collective bargaining obligations prior to issuing any furlough notices to bargaining unit employees. Issuance of a furlough notice itself has been found to constitute a change in employees' conditions of employment, which means that unless the matter is already "covered by" a collective bargaining agreement, an agency must provide a union with advance notice of the proposed change (e.g. furlough notices being sent to employees) and an opportunity to bargain over any aspects of the change that are negotiable.

2. May an agency effect an administrative furlough for employees in a bargaining unit before negotiations are completed?

A. If the parties bargain to impasse and the union does not invoke the services of the Federal Service Impasses Panel in a timely manner, the agency may furlough employees without further delay provided the agency gives the union adequate notice of its intent to implement its last bargaining offer on a specific date. If the union invokes the services of the Federal Service Impasses Panel by that date, the agency may not furlough employees unless it can show it is necessary to do so without further delay.

Agencies required to absorb substantial budget cuts during a short term continuing resolution or because of the limited time remaining in the fiscal year to absorb those cuts might be required to furlough without further delay because the budget cuts must be absorbed during the term of the continuing resolution or the current fiscal year and cannot be deferred until later in the year or into a new budget year. However, in the case of cuts that can be absorbed over the course of the fiscal year, it would be difficult to demonstrate that the furloughs could not be delayed pending resolution of the bargaining impasses. If bargaining is not completed and the agency must furlough employees, the agency should continue to bargain and, if possible, implement any agreement retroactively. We caution agencies that this should be a last resort approach. All attempts should be made to complete the collective bargaining process first, if possible.

3. **While no decision has been made to administratively furlough employees, our union has submitted a midterm bargaining request on furlough procedures regarding any possible future administrative furlough. Our collective bargaining agreement is silent on furlough procedures and the union is invoking its right to initiate mid-term bargaining on matters not covered by the agreement. Do we have an obligation to bargain when no decision has been made to furlough employees?**

A. Even though no decision has been made to furlough employees, it is possible you have a duty to bargain regarding the union initiated mid-term bargaining request, assuming the matter is not already covered by your collective bargaining agreement. The law requires an agency to bargain during the term of a collective bargaining agreement on negotiable union-initiated proposals concerning matters that are not expressly contained in, or otherwise covered by, the collective bargaining agreement, unless the union has waived its right to bargain about the subject matter involved. With this in mind, you will have to evaluate the circumstances of your situation to determine whether you have a duty to bargain on furlough procedures.

4. **Along with a bargaining request on furloughs, our union has submitted an information request under 5 U.S.C. 7114 seeking information such as the agency administrative furlough plan and a list of employees expected to be furloughed, and whether or not the furloughs are planned to be continuous or discontinuous. Do we have to provide this information?**

A. It depends. An agency is required to provide data that is normally maintained, reasonably available, and necessary to perform the representational duties of a union. A union requesting information must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the statute. The union must establish that the requested information is required in order for the union to adequately represent its members. An agency denying a request for information must assert and establish any countervailing anti-disclosure interests. An agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, you will have to evaluate the circumstances of your situation to determine whether you should provide the requested information.

5. **If a bargaining unit employee decides to challenge a discontinuous administrative furlough, what is the timeframe for the employee to file a grievance under the negotiated grievance procedure (NGP)?**

A. The time limits and other procedures applicable to bargaining unit employees are spelled out in applicable provisions of negotiated agreements.

6. May a manager or supervisor have a meeting with employees in a bargaining unit to discuss an administrative furlough without a union representative present?

A. The law grants a union the right to be represented at certain meetings between managers and one or more bargaining unit employees if the meeting concerns issues such as personnel policies or practices or other general conditions of employment. Under the law, this meeting is referred to as a “formal discussion.” With this in mind, you will have to evaluate the circumstances of your situation to determine whether the meeting constitutes a formal discussion. If you have determined the meeting is a formal discussion, advance notice of the meeting must be provided to the union. See 5 U.S.C. 7114(a)(2)(A).

P. Travel

1. Must agencies cover travel expenses during a furlough day, if an employee’s travel status requires his/her stay to include that furlough day?

A. Yes. Agencies must provide per diem or actual expenses to employees whose travel status requires a stay that includes a furlough day.

2. Can an employee be engaged in official travel during furlough hours?

A. No. By statutory definition in 5 U.S.C. 7511(a)(5), a furlough under 5 U.S.C. chapter 75 can apply only when an employee is “without **duties**.” Official travel is a duty within the meaning of the term “duties” in 5 U.S.C. 7511(a)(5). Thus, even if the official travel does not qualify as compensable hours of work, the scheduling of official travel would automatically cancel furlough status during affected hours—just as would the scheduling of work. (See Question A.4. regarding when employees are in furlough status—i.e., only during designated hours *within* the employee’s tour of duty established for leave usage purposes.)

Note: As used in Questions P.2.-P.6., “official travel” refers to actual time spent traveling on officially authorized Government business and does not include time spent between travel trips at a temporary location away from the employee’s official duty station.

3. If official travel cancels furlough status during affected hours, how are those travel hours treated?

A. For days other than holidays, official travel during previously designated furlough hours would be considered compensable hours of work, since those furlough hours would have been within the employee’s regularly scheduled administrative workweek. Any official travel within an employee’s regularly scheduled administrative workweek qualifies as compensable hours of work under 5 U.S.C. 5542(b)(2)(A).

Under certain conditions, an employee may be legitimately scheduled to be furloughed on a holiday (during holiday hours within the employee’s normal tour of duty). (See Section F.) In the case of holidays, official travel during previously designated furlough hours would be

compensated by either holiday premium pay or holiday time off pay. If the travel time qualifies as work under 5 U.S.C. 5542(b)(2)(B), the employee would be entitled to holiday premium pay for those travel hours under 5 U.S.C. 5546(b). If the travel time does not qualify as work under 5 U.S.C. 5542(b)(2)(B), the employee would be entitled to holiday time off pay for those travel hours.

4. Can official travel hours outside the employee’s basic workweek that are compensable hours of work be substituted and paid at a basic rate under the LWOP substitution rule?

A. Yes. Travel time outside the basic workweek that qualifies as work (i.e., meets one of conditions in 5 U.S.C. 5542(b)(2)(B)) is covered by the LWOP substitution rule in 5 CFR 550.112(d), just like any other period of work. (See Questions D.4. and D.5.)

5. Can official travel hours outside the employee’s basic workweek for which an employee earns compensatory time off for travel be substituted and paid at a basic rate under the LWOP substitution rule?

A. No. Hours that are credited under the compensatory time off for travel provision in 5 U.S.C. 5550b and 5 CFR part 550, subpart N, are hours that are not otherwise compensable under title 5. The LWOP substitution rule in 5 CFR 550.112(d) applies to a period of qualifying work—that is, service that would qualify as work for the purpose of applying overtime thresholds and would generate compensation.

6. Can an employee *earn* compensatory time off for travel for official travel time during furlough hours?

A. No. As explained in Question P.2., official travel would cancel the employee’s furlough status. As explained in Question P.3., official travel during previously designated furlough hours would be compensable under the normal pay rules. Since the official travel hours would already be compensable, the employee could not earn compensatory time off for travel for those hours. (Under 5 U.S.C. 5550b, an employee may earn compensatory time off for travel for a period of time only if that period of time is not otherwise compensable.)

7. Can an employee *use* compensatory time off for travel during furlough hours?

A. No. No paid time off may be used during furlough hours. Under 5 U.S.C. 7511(a)(5), the term “furlough” is defined as a period during which an employee is without duties and pay. Use of compensatory time off for travel results in pay and thus is inconsistent with furlough status. (See Question E.1.)

Q. Foreign Area Allowances, Differentials, and Danger Pay

1. Do administrative furloughs interrupt or reduce civilian Living Quarters Allowances (LQA) or a Post Cost of Living Allowances (COLA)?

A. An administrative furlough doesn't interrupt Post COLA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the Post COLA is interrupted for the duration of the furlough status. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2) LQA continues without interruption while the employee is in nonpay status not in excess of 30 consecutive calendar days at any one time. For periods in nonpay status longer than 30 consecutive calendar days, LQA payment shall be suspended as of the day the employee enters such status, and payment is not to be made for any part of such period. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2 and DSSR 132.2b(2))

2. Do administrative furloughs interrupt Danger Pay or Post Hardship Differentials for civilians stationed at a those posts? Do they impact differential eligibility for TDY employees at such posts?

A. Yes. Employees do not receive Danger Pay or Post Hardship Differential for any furlough days. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 052.2)

Furlough days do not count toward differential eligibility for TDY employees. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 052.2 and DSSR 541)

3. Do administrative furloughs interrupt Difficult-To-Staff Incentive Differentials (SND) for civilians stationed at a those posts?

A. No. Length of furlough does not affect SND eligibility. This benefit is based on continuing presence at post. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 1020)

4. Do administrative furloughs interrupt evacuation payments/Subsistence Expense Allowances (SEAs) for civilians evacuated and working from safehavens?

A. An administrative furlough doesn't interrupt an SEA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the SEA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

- 5. I have transferred back to Washington, DC, from a foreign post and am using the subsistence expense portion of the Home Service Transfer Allowance. Do administrative furloughs interrupt my eligibility for reimbursement?**

A. An administrative furlough doesn't interrupt an HSTA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the HSTA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

- 6. I am transferring from Washington, DC, to Pakistan. I've been authorized the pre-departure subsistence expense portion of the Foreign Transfer Allowance. Do administrative furloughs interrupt my eligibility for reimbursement?**

A. An administrative furlough doesn't interrupt an FTA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the FTA are interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

- 7. I am stationed at a foreign post and my family is on Separate Maintenance Allowance (SMA) in the United States. Do administrative furloughs interrupt the SMA?**

A. An administrative furlough doesn't interrupt an SMA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the SMA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

R. VERA/VSIP

1. Can agencies offer early retirements (VERAs) or separation incentives (VSIPs) to furloughed employees? Can VERA/VSIP be offered during sequestration? Can VERA/VSIP be offered in lieu of a furlough?

A. Both Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP) are programs to incentivize voluntary separations to avoid involuntary personnel actions associated with an agency's decision to restructure its workforce. Agencies with OPM-approved VERA and or VSIP may continue offering these options to covered employees during a furlough.

VERA and VSIP result in permanent separations from the agency workforce. (Please note that VSIP recipients may not be reemployed by the Federal Government within 5 years unless they repay the VSIP to the agency that paid it.) Furloughs are associated with temporary issues, such as lack of work or funds, with the intention that employees would return to their jobs after the furlough. The agency would decide which option to take based on its situation, e.g., the need to permanently reduce or restructure its workforce or to save funds by furloughing employees.

S. Federal Employees Health Benefits Program

1. If an employee is furloughed, does their FEHB coverage continue or terminate?

A. The employee's FEHB coverage will continue if the employee's salary is sufficient to pay the premiums. If pay becomes insufficient to cover premiums, an employee that has FEHB coverage and participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) has several options available.

If the furlough results in pay for a regular pay period to be insufficient for the employee's employing office to withhold the employee's share of premium from that pay (after the agency applies all deductions in accordance with the required order of precedence, see Question D.1.), the employing office must notify the employee and give the employee an opportunity to elect to either continue or terminate FEHB coverage. If the employee does not respond to this notice within the time for response, the employing office will terminate the FEHB coverage. In some instances, an employee may cancel FEHB coverage. See Questions S.7., S.8., and S.9. for more information.

2. Can an employee terminate FEHB coverage because he/she thinks it's not affordable?

A. No, the employee's view of his/her ability to afford FEHB coverage is not a basis for terminating coverage. However, if the employee has insufficient pay to cover the employee share of the premium (as explained in Question S.1.), the employee may choose to terminate coverage.

3. How can an employee continue FEHB coverage if his or her pay is not enough to cover the premium?

A. If an employee elects to continue FEHB coverage, the employee may directly pay the employing office to keep premiums current, or the employee may incur a debt that the employing office will recover when the employee's pay becomes sufficient to cover the premium.

4. What happens if FEHB coverage terminates for insufficient pay during furlough?

A. If an employee elects to terminate FEHB coverage, or if the employee does not respond to the election notice, the coverage will end retroactive to the last day of the last pay period in which the premium was withheld from pay. The employee and any covered family members are entitled to a 31-day temporary extension of coverage which commences retroactively to the day after the coverage ended. The employee will also have the right to convert to an individual contract for health benefits.

5. If an employee's coverage terminates, can the employee re-enroll once pay returns to a level that covers the employee's share of the FEHB premium?

A. Yes. An employee may re-enroll in FEHB upon returning to sufficient pay status and does not have to wait for an open season to re-enroll. The employee must reenroll within 60 days of becoming eligible as a result of renewed sufficient pay. Otherwise, the employee will be required to wait for an open season or a Qualifying Life Event (QLE) that allows for enrollment outside of open season.

6. How will the employee's termination affect his or her 5-year participation for purposes of continuing FEHB after retirement?

A. For purposes of meeting the 5-year participation requirement, counting of the time the employee is covered under FEHB will *stop* when the employee's enrollment terminates and *resume* upon re-enrollment ***provided*** the employee reenrolls within 60 days of becoming eligible as a result of renewed sufficient pay. In other words, the employee does not start a new 5-year participation period in this circumstance. However, the period of time in which the employee is not covered due to insufficient pay will be considered a period of ineligibility for FEHB, and will not be held against the employee for purposes of meeting the 5-year continuous coverage requirement.

An employee who does not re-enroll within 60 days but postpones re-enrollment until the next open season must begin a new 5-year participation period for purposes of continuing FEHB coverage into retirement.

7. Can an employee who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) just cancel FEHB coverage if the employee is furloughed?

A. No. For employees participating in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis), an administrative furlough is not a Qualifying Life Event (QLE) that would allow a cancellation.

If the administrative furlough causes an employee's pay for a pay period to become insufficient for the employing office to withhold his or her share of the FEHB premium for that pay period, the employing office must give the employee an opportunity to elect to continue his or her FEHB and incur a debt or to terminate enrollment. The employing office will terminate FEHB coverage if no response is timely received. This termination, either by election or by default, is not a cancellation for FEHB purposes.

8. What options are available to an employee who does not participate in premium conversion (therefore, paying his or her share of FEHB premiums after taxes) and gets furloughed?

A. An employee who specifically waived premium conversion (therefore, paying their share of FEHB premiums after taxes), and whose pay for a pay period is insufficient to cover the employee's share of premium, will be offered the same choices available to an employee covered by Question S.7. However, unlike an employee who participates in premium conversion, he or she may cancel FEHB coverage at any time. He or she does not need a QLE.

9. If an employee cancels his or her FEHB enrollment, will the employee forfeit rights to a 31-day temporary extension, Temporary Continuation of Coverage and conversion to an individual policy, coverage while receiving workers' compensation, continuation into retirement, and coverage for survivors?

A. An employee who elects to cancel coverage should be made fully aware that if coverage is cancelled:

(1) the employee and all eligible family members do not get a 31-day temporary extension of coverage upon cancellation, and the employee may not reenroll in FEHB until he or she has another QLE that permits enrollment, or the next FEHB Open Season, even upon transfer to another Federal agency;

(2) if the employee separates from employment without reenrolling before separation, he or she will not be eligible to purchase temporary continuation of coverage (TCC) or an individual conversion policy;

(3) if the employee is injured and receives benefits from the Office of Workers' Compensation Programs (OWCP) during the time coverage is cancelled, the employee will

not have an FEHB enrollment to continue during the period of OWCP coverage;

(4) if the employee retires while coverage is cancelled, the employee will not have a FEHB enrollment to continue into retirement. Moreover, even if the employee while still employed reenrolls in FEHB on account of a QLE or at FEHB Open Season, the period of cancellation is considered a break in FEHB coverage that may preclude his or her ability to continue FEHB coverage into retirement;

(5) if an employee dies while coverage is cancelled, there will be no self and family enrollment for survivors to continue, even if they are eligible for a survivor annuity.

10. Can an employee make an enrollment change because the employee is under an administrative furlough?

A. No. An administrative furlough is not a QLE that would permit an employee to change his or her FEHB plan or option. An employee who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) may not change to a self only enrollment.

Note that an employee who waived premium conversion (therefore, paying his or her share of FEHB premiums after taxes) may change to self only at any time. However, the employee should be aware that this will deprive his or her covered family members of FEHB coverage and the employee cannot change back to self and family until the employee has a QLE or the next FEHB Open Season. In the event of the employee's death, there will be no FEHB enrollment for surviving family members to continue, even if they are eligible for a survivor annuity.

11. Will full-time employees receive a lower, pro-rated Government share of FEHB premiums if their hours are reduced under an administrative furlough?

A. No. FEHB law (title 5, U.S. Code, section 8906(b)(3)) requires the Government contribution toward FEHB premiums to be prorated (thus a larger employee share) for *part-time career employees*, i.e. employees with a documented regularly scheduled workweek of 16-32 hours per week. An administrative furlough does not change an employee's *regular work schedule*, e.g., from full-time to part-time.

Thus, as long as a full-time employee does not change to *part-time career employment*, the employee remains entitled to a full Government contribution and the proration does not apply even if the number of hours per pay period is reduced during the furlough to within 16-32 hours per week.

12. Will part-time employees receive a lower prorated Government share of the FEHB premiums if their hours are reduced under an administrative furlough?

A. No. The Government contribution toward the FEHB premium for an employee working part-time is prorated based on the employee's *regular work schedule*. An employee's Notification of Personnel Action (SF 50) documents the employee's work schedule and number of part-time hours the employee is scheduled to work per pay period (blocks 32 and 33). This part-time schedule should be the part-time schedule established for leave usage purposes (i.e., the schedule from which leave is charged for absences). A furlough action will place the employee in a non-duty/non-pay status during an otherwise scheduled workday, but it does not change the employee's *regular work schedule*. Therefore, the Government's prorated share of FEHB premium will not decrease.

Note to Section S: Additional Sources of Information

A list of QLEs for the FEHB Program may be obtained at http://www.opm.gov/forms/pdf_fill/sf2809.pdf.

OPM's FEHB webpage on Leave Without Pay and Insufficient Pay Status may be found at <http://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/leave-without-pay-status-and-insufficient-pay>.

T. Federal Employees' Group Life Insurance Program

1. Will an employee continue to be covered under the Federal Employees' Group Life Insurance (FEGLI) Program during an administrative furlough that results in a reduction of hours and pay during a pay period, if there is sufficient pay in the pay period to cover the employee's share of the FEGLI premium for that pay period?

A. If the furlough is for only part of a pay period and the pay for that pay period is sufficient to cover the full FEGLI premium, then the full FEGLI premium will be withheld and the employee will continue to be covered under FEGLI, even during the furlough period.

2. Will an employee continue to be covered under FEGLI during an administrative furlough that results in no pay at all for at least one pay period and less than 12 months?

A. The employee's FEGLI coverage continues while in a leave without pay (LWOP) status due to furlough for up to 12 months, without cost to the employee or to the agency. Neither the employee nor the agency incurs a debt during this period of furlough. This provision does not apply if the employee in LWOP status is receiving workers' compensation from OWCP.

3. Will an employee continue to be covered under FEGLI during an administrative furlough that results in no pay at all for more than 12 months?

A. Generally, Basic and Optional insurance of an insured employee who is in LWOP status stops on the date the employee completes 12 months in LWOP status. Your life insurance coverage terminates at the end of this 12-month period, with a 31-day extension of coverage and right to convert to an individual policy.

4. What happens if, due to an administrative furlough that results in a reduction of hours and pay during a pay period, an employee's regular pay for a pay period, after all other deductions, will not be enough to cover the employee's share of premium for all of the employee's FEGLI Options?

A. As a general matter, if an employing agency determines that an employee's regular pay for a pay period, after all other deductions, will not be enough to cover the employee's share of premium for all of the employee's FEGLI Options, the employing agency must notify the employee. The employing office must provide the employee with a choice to either terminate some or all FEGLI coverage, or to make premium payments directly.

If the employee elects to continue coverage and pay directly, the process is detailed in the FEGLI regulations at 5 CFR 870.405(c). See <http://www.opm.gov/healthcare-insurance/life-insurance/reference-materials/#url=Regulations>.

If the employee elects to terminate coverage, any amount available for life insurance withholdings must be applied first to Basic, with any remainder applied to Optional insurance (first to Option B, then Option A, then Option C). If the employee does not respond to the election notice in a timely manner, the employing agency will terminate coverage in the order stated above to the extent required due to insufficient pay. Terminated coverage is subject to a free 31-day extension of coverage and the employee has a right to convert.

As provided for in 5 CFR 870.603, when group coverage terminates for any reason other than voluntary cancellation, an employee may apply to convert all or any part of his or her Basic and Optional insurance to an individual policy. An employee who elects to make premium payments directly and whose coverage is cancelled for nonpayment is not entitled to a 31-day extension of coverage and is not entitled to convert to an individual policy. For more information regarding conversion of insurance, please see 5 CFR 870.603.

5. If an employee's FEGLI coverage is terminated for insufficient pay during a furlough because the employee initially declined to elect direct premium payments, can the employee reinstate the FEGLI coverage when the furlough ends or pay becomes sufficient?

A. Yes the employee may reinstate any FEGLI coverage terminated for insufficient pay, back to the original elections, upon return to sufficient pay.

6. Will an employee incur a debt to the agency if the agency underwithholds FEGLI premium as a result of insufficient pay during a furlough?

A. Yes, the agency may consider underwithholding to be a debt. In such cases, agencies must follow their regular processes (including any applicable processes set forth by statute) regarding the collection of these debts.

Sample Notice 1
Furlough Proposal Due to Planned Reduction In Agency Expenditures (5 CFR Part 752)

[Note: This is the advance written notice required by 5 U.S.C. 7513, when an agency effects an administrative furlough in order to absorb reductions in funding over a period of time. This sample has been written for the scenario where an agency chooses to furlough on discontinuous days. Agencies who choose to furlough on a continuous-day basis should amend the sample accordingly.]

This memorandum notifies you that [agency name] proposes to furlough you no earlier than 30 days from receipt of this notice. The furlough is being proposed under the authority of 5 CFR part 752, subpart D [briefly explain reason for furlough, e.g., because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding and the present rate of spending when annualized will result in an expenditure in excess of our authorized budget]. This furlough is proposed to promote the efficiency of the service by avoiding a deficit of funds in FY [year].

If other employees in your competitive level (i.e., generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous (intermittent) days, beginning [date], through approximately [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time off will be prorated, based on your work schedule.

[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]

2. Due to the uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.
4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

At this time, we do not reasonably anticipate the need for furlough beyond 22 workdays. However, should additional furlough days be necessary, employees will be given another notice. We recognize the difficult personal financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

You will be allowed seven calendar days from receipt of this letter to respond orally and/or in writing, to review the supporting material, and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose. If you are in active duty status, you and/or your representative, if an agency employee, will be allowed up to four hours of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. The deciding official has designated representatives to hear oral replies in his/her behalf. To arrange for an oral reply or review the supporting materials, please contact the appropriate individuals listed below:

[contact names, phone numbers, and email addresses.]

Your written reply should be mailed to the deciding official, Mr./Ms.[name and title],[address] or may be delivered to [address/room number].

A final written decision, including an explanation of the specific reasons for the action taken, will be given to you as soon as possible after the seven days allowed for your reply.

No decision to furlough you has been made or will be made until full consideration is given to your reply.

Proposing Official Date

I acknowledge receipt of this notice.

Employee's signature Date

Sample Notice 2
Notice of Decision to Furlough (5 CFR Part 752)

By written notice of [date], you were notified of a proposal to furlough you pursuant to the authority in 5 CFR part 752, subpart D.

All written and oral replies received in response to that notice have been reviewed and carefully considered. I have determined that all of the reasons for the proposed furlough, as stated in the notice of the proposal, remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning [date] through [date].

In accordance with the procedures and conditions outlined in the notice of proposal, dated [insert date], if you are a full-time employee, you will be furloughed for no more than [number] hours in each of the pay periods or parts thereof, between [date] and [date]. The maximum furlough time for full-time employees will be no more than 22 workdays, or 176 hours. For full-time employees, this maximum is based on a regular work schedule of 80 hours per pay period. If you are a part-time employee, the number of hours required for furlough will be prorated according to your specific work schedule.

Your supervisor will inform you of the amount of furlough time off required prior to each pay period. To schedule your furlough time off, contact your supervisor.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, but must remain away from your workplace.

If you have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment you may appeal this action to the Merit Systems Protection Board (MSPB). If you are a preference eligible employee in an excepted service appointment you may appeal to the MSPB if you have completed one year of current continuous service in the same position or positions similar to the one you now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to the MSPB if they have completed two years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to two years or less. You have the right to be represented in this matter by an attorney or other person you may choose.

If you have the right of appeal and wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB

website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [contact information including the official's mailing address, email address, telephone and fax number.]

If you are a bargaining unit employee, you may grieve this action in accordance with the applicable negotiated agreement [negotiated agreement citation] or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. Your election to proceed under one process will be considered made when you timely file a grievance in writing, or timely file a notice of appeal, whichever event occurs first. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

[Under the Board's October 2012 regulations, notices must also include:

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

- (1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;*
- (2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;*
- (3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and*
- (4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]*

Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

Deciding Official Date

I acknowledge receipt of this decision.

Employee's signature Date

Sample Notice 3

Notice of Career SES Furlough (5 CFR Part 359)

This is a sample of the 30 day advance written notice of furlough required for career SES appointees by 5 CFR part 359, subpart H. It should be used only as an illustration in preparing an agency's own notice, which must be based on specific circumstances in the agency. This sample communicates the agency's decision to implement an administrative furlough on discontinuous days (i.e., 22 workdays or less). Agencies choosing to furlough on a continuous-day basis (i.e., 30 calendar days or less) should amend the sample accordingly.

This memorandum notifies you that [agency name] intends to furlough you no earlier than 30 calendar days from receipt of this notice. This furlough is being taken pursuant to the authority in 5 CFR part 359, subpart H [briefly explain the reason for furlough, e.g., "because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding, and the present rate of spending, when annualized, will result in an expenditure in excess of our authorized budget"]. Although many actions are being taken within the agency to curtail spending, this furlough is being taken to avoid a deficit of funds in FY [year].

If other employees in your organization are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous [intermittent] days, beginning [date], through [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time will be prorated, based on your work schedule.

[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]

2. Due to uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.

4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer but must remain away from your workplace. At this time, we do not reasonably anticipate the need for furlough of more than 22 workdays; however, should additional days be necessary to meet this agency's financial obligations, affected appointees will be given another notice consistent with the provisions of 5 CFR part 359 subpart H.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359 subpart H or this agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board (MSPB). Career SES appointees may inspect the regulations and records pertinent to this action at the following location [identify location and times, as appropriate].

If you wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [contact information including the official's mailing address, email address, telephone and fax number.] You also have the right to be represented in this matter by an attorney or other person you may choose.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

Issuing Official

I acknowledge receipt of this notice.

Employee's signature

Date

[Note: For a probationary SES employee, an agency should advise that, as provided in 5 CFR 317.503(d)(2): 1) time in a nonpay status (e.g., LWOP and furlough) while in an SES position is credited up to a total of 30 calendar days (or 22 workdays) toward completion of the SES probationary period; and 2) after 30 calendar days, the probationary period is extended by adding time to it equal to that served in a nonpay status.]

Sample Notice 4
Furlough Due to Planned Reduction in Agency Expenditures (5 CFR Part 351)
More Than 22 Discontinuous Workdays

[Note: This is a sample written notice for a furlough of more than 22 discontinuous days under the reduction in force procedures of 5 CFR 351 (implementing 5 U.S.C. 3502(d)) when an agency effects an administrative furlough to absorb funding reductions. Agencies choosing to furlough on a continuous basis for more than 90 calendar days may have to conduct full reduction in force procedures (, such as round I competition to remain in the competitive level and round II to determine assignment rights to another position).]

SUBJECT: Specific Notice of Furlough under Reduction in Force Procedures

I regret to inform you that [agency name] will furlough you for 25 discontinuous workdays between [date] and [date]. You will be placed in a non-duty and non-pay status on your designated furlough days. You will continue in your position of record on your non-furlough days.

[Insert the reason for furlough, e.g., The [agency name] has received a 20 percent reduction in salaries and expenses funding. At the present rate of spending, this reduction will result in an expenditure in excess of our authorized budget. Although we have taken other cost-cutting measures, furlough is required to avoid a deficit of funds in FY [year]. You are included in the furlough because you occupy a position that is directly affected by the funding reduction.]

This action is taken in accordance with the reduction in force (RIF) regulations in title 5, Code of Federal Regulations, part 351. Importantly though, while this action is taken in accordance with RIF regulations, a furlough is a temporary action, not a permanent separation from service. We have determined that assigning you to a different position for [number of days] per pay period would result in an undue interruption to required work. Therefore, under 5 CFR 351.607, you do not have a right to another position in your competitive level or within your competitive area.

Your retention standing as of the first furlough date is as follows:

Competitive area:

Service [*i.e., competitive or excepted*]:

Position title, series, and grade:

Competitive level:

Tenure and subgroup:

Service computation date (SCD):

Three most recent performance rating with years credited:

Adjusted SCD (SCD-RIF):

Your furlough will be on discontinuous (intermittent) days, beginning [date] through [date]. As a full-time employee, you will be furloughed 25 workdays or 200 work hours. You may request a specific schedule for your discontinuous furlough days or switch your designated furlough day(s)

within a pay period through a written request to your supervisor. We will consider all change requests with approvals based on position function, workload considerations, and employee retention standing.

[If part-time: As a part-time employee with a work schedule of [xx] hours per pay period, your prorated furlough is XX work hours to be served within your designated work schedule.]

Annual, sick, court, or military leave which was approved for a designated furlough day is hereby cancelled. However, you may request that the furlough day be rescheduled if you wish to use leave as approved.

Attachment 1 has general information about leave and benefits during a furlough. Attachment 2 has information on *[State]* unemployment insurance program.

At this time, we do not reasonably anticipate the need for furlough beyond 25 workdays. However, should additional furlough days be necessary, you will be issued another notice.

You may review the information related to your furlough action. Copies of retention registers, RIF regulations, and related records are available in the Human Resources Office. You may make an appointment to review this material by contacting *[HRO name and contact information]*.

You may appeal this action to the Merit Systems Protection Board (MSPB). You may file an appeal within 30 calendar days after the effective date of your first furlough day. If you do not file an appeal within this 30-day time limit, the MSPB may dismiss it unless you can show good cause for the delay. A copy of the appeal form and the MSPB's regulations are available on the Board's website at www.mspb.gov. You should send your appeal to the MSPB office at *[appropriate office address]*. The Board will send an Acknowledgment Order and copy of your appeal to *[contact information including the official's mailing address, email address, telephone and fax number.]* *[Note: MSPB appeal rights for furloughs apply to non-bargaining unit employees or bargaining unit employees where the negotiated grievance procedure excludes furloughs from coverage.]*

[If the employee is a bargaining unit employee and furloughs are covered under the negotiated grievance procedure: You may grieve this action in accordance with the applicable negotiated agreement [negotiated agreement citation] in accordance with the procedures outlined in the agreement. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

[Under the Board's October 2012 regulations, notices must also include:

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

(1) Whether the election of any applicable grievance procedure will result in

waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]

Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

This furlough under the RIF regulations does not reflect on your service, performance, or conduct. It is taken solely for the reason stated in this notice.

We recognize the difficult personal financial implications of any furlough, no matter its length. We will make every effort to keep you informed as additional information regarding agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*].

Agency Official Signature

Date

Attachments

I acknowledge receipt of this notice.

Printed name

Employee signature

Date

Table of Recent Changes to Guidance for Administrative Furloughs

Date	Question	Change	Description
June 10, 2013	Note	New	Added a note regarding the applicability of the guidance (located before Section A)
	P.2.	New	Effect of scheduling official travel during designated furlough hours
	P.3.	New	Treatment of official travel hours during previously designated furlough hours
	P.4.	New	Treatment of official travel hours outside the basic workweek that are compensable hours of work
	P.5.	New	Treatment of official travel hours outside the basic workweek that are credited as compensatory time off for travel
	P.6.	New	Inability to earn compensatory time off for travel for travel hours during previously designated furlough hours
	P.7.	New	Inability to use compensatory time off during furlough hours
May 23, 2013	G.3.	Revised	Directs readers to new Section T (Federal Employees' Group Life Insurance Program)
	T.1.	New	Impact of employee receiving sufficient pay in pay period to cover employee's share of premium
	T.2.	New	Impact of employee receiving no pay for at least 1 pay period but less than 12 months
	T.3.	New	Impact of employee receiving no pay for more than 12 months
	T.4.	New	Impact of employee's pay in pay period being insufficient to cover premium for all FEGLI options
	T.5.	New	Reinstatement of FEGLI coverage after coverage is terminated because of insufficient pay and employee declines to make direct premium payments
	T.6.	New	Employee's debt to agency if agency underwithholds FEGLI premium as a result of insufficient pay
April 25, 2013	A.4.	New	Explanation of what it means to be in a furlough status
	A.5.	New	Clarification that furlough does not affect an employee's status as full-time or part-time
	C.3.	Revised	Added a link to a relevant Office of Government Ethics legal advisory
	C.6.	New	Effect of an agency ordering an employee to work during his or her scheduled furlough hours
	E.5.	New	Retroactive substitution of annual leave for furlough hours taken in certain limited circumstances
	E.6.	New	Retroactive substitution of excused absence for furlough hours taken in certain limited circumstances

	L.2.	Revised	Added language about identifying specific furlough hours for employees on a flexible work schedule
	M.4a.	New	Appropriate supporting documentation for an administrative furlough action
	M.4b.	New	Procedural rights applicable to veterans for an administrative furlough of 30 calendar days or less
	M.6a.	New	Procedural rights for a probationer who completes his or her probationary period before fulfilling the agency's furlough time off requirement
	M.11.	New	Obligation to provide Merit Systems Protection Board (MSPB) appeal information in adverse action furlough decision notices
	N.21.	Revised	Clarified the previous language about the appropriate procedures to use if an agency determines an additional furlough is necessary
April 2, 2013	G.1.	Revised	Directs readers to new Section S (Federal Employees Health Benefits Program)
	Section K Title	Revised	Changed title of Section K from "Injury While on Furlough" to "Benefits under the Federal Employees' Compensation Act (FECA)"
	K.1.	Revised	Minor edits to guidance involving workers' compensation benefits under the FECA
	K.2.–K.5.	New	Department of Labor guidance on workers' compensation benefits during an administrative furlough
	Section K Note	New	Note regarding additional information on Federal workers' compensation benefits
	M.2.	Revised	Directs readers to OPM's SF-50 processing guidance in its entirety for a fuller understanding of the requirements
	S.1.	New	Continuation of FEHB coverage
	S.2.	New	Ability to afford FEHB coverage
	S.3.	New	Continuing FEHB coverage if pay is insufficient to cover premium
	S.4.	New	Termination of FEHB coverage for insufficient pay
	S.5.	New	Re-enrollment following termination of FEHB coverage
	S.6.	New	Impact of terminating FEHB coverage on 5-year participation requirement for purposes of continuing coverage after retirement
	S.7.	New	Cancellation of FEHB coverage for employees participating in premium conversion
	S.8.	New	Options available to employees not participating in FEHB premium conversion
	S.9.	New	Impact of cancelling FEHB coverage
	S.10.	New	FEHB enrollment changes

	S.11.	New	Government share of FEHB premiums
	S.12.	New	Government share of FEHB premiums for part-time employees
	Section S Note	New	Note regarding additional information on FEHB Program
March 25, 2013	A.3.	Revised	Added language generally describing shutdown furloughs
	Q.1.	New	Living Quarters Allowance and Post Cost of Living Allowance
	Q.2.	New	Danger Pay, Post Hardship Differential, and differential eligibility for TDY employees
	Q.3.	New	Difficult-To-Staff Incentive Differential
	Q.4.	New	Subsistence Expense Allowance
	Q.5.	New	Home Service Transfer Allowance
	Q.6.	New	Foreign Transfer Allowance
	Q.7.	New	Separate Maintenance Allowance
	R.1.	Moved	VERA/VSIP guidance formerly posted as Question H.1. of OPM's "Supplemental Guidance for Sequestration and Administrative Furloughs," which was removed from the OPM website on March 25, 2013
March 8, 2013	B.1.	Revised	Factors used in determining coverage of furlough
	B.6.	Revised	Treatment of detailees
	B.8.	New	Volunteering for leave without pay
	H.2.	Revised	Resources for Thrift Savings Plan guidance
	H.3.	New	Resources for Thrift Savings Plan guidance
	L.3.	Revised	Scheduling furlough time off for employees with part-time or uncommon tours of duty
	M.10.	New	Providing electronic notice of a furlough action
March 5, 2013	B.5.	New	Treatment of detailees
	B.6.	New	Treatment of detailees
	B.7.	New	Treatment of detailees
	E.2.	Revised	Treatment of employees on approved leave without pay
	E.3.	Revised	Taking leave without pay under the Family and Medical Leave Act (FMLA)
	H.1.	Revised	Resources for unemployment compensation guidance
	O.1.	Revised	Collective bargaining obligations
	O.1a.	New	Satisfying collective bargaining obligations before issuing furlough notices
February 27, 2013	P.1.	New	Travel expenses during a furlough
February 26, 2013	E.4.	New	Accrual of annual and sick leave
	G.6.	New	Retirement annuity benefits
February 20, 2013	D.4.	New	Assigning work hours outside the basic workweek
	D.5.	New	Compensating employees who work hours outside the basic workweek

	D.6.	New	Earning credit hours
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U.S. Office of Personnel Management

Employee Services

1900 E Street, NW, Washington, DC 20415

OPM.GOV



SOCIAL SECURITY
Office of Budget, Finance, and Management

August 14, 2023

Ms. Shalanda Young
Director
Office of Management and Budget
725 17th Street, NW
Washington, DC 20503

Dear Ms. Young:

This letter sets forth the contingency plan of the Social Security Administration (SSA) to continue activities during a potential lapse in Federal appropriations and resulting partial shutdown of agency operations.

Lapse Plan Summary Overview	
Estimated time (to nearest half day) required to complete shutdown activities:	0.5 days
Total number of agency employees expected to be on board before implementation of the plan:	61,869
Total number of agency employees expected to be furloughed under the plan (unduplicated counts):	8,512
Total number of employees to be retained under the plan for each of the following categories (may include duplicated counts):	
Compensation is financed by a resource other than annual appropriations:	509
Necessary to perform activities expressly authorized by law:	0
Necessary to perform activities necessarily implied by law:	52,556
Necessary to the discharge of the President's constitutional duties and powers:	0
Necessary to protect life and property:	292
	53,357
Brief summary of significant agency activities that will continue during a lapse:	
<i>We will continue activities critical to our direct-service operations and those needed to ensure accurate and timely payment of benefits. Please refer to Enclosure 1 for additional information.</i>	
Brief summary of significant agency activities that will cease during a lapse:	
<i>We will cease activities not directly related to the accurate and timely payment of benefits or not critical to our direct-service operations. Please refer to Enclosure 1 for additional information.</i>	

We are excepting about 53,000 employees from furloughs under applicable exceptions to the Antideficiency Act. The functions of the excepted employees will remain largely the same as those described in our most recent plans. We are excepting staff to support our information technology (IT) programmatic applications and infrastructure and our fraud prevention activities related to the timely and accurate payment of benefits to the public. Since our current appropriation extends the period of availability for dedicated program integrity funds to 18 months, any program integrity funds carried over would be available during a lapse in appropriations beginning the following fiscal year. I have enclosed a chart setting forth our estimated total employee count by agency component and a brief description of the functions excepted employees from each component will perform in the event of a partial shutdown. This letter further explains our legal basis for conducting those functions during a partial shutdown.

During a lapse in appropriations, we must cease all activities for which our annual funding has expired, unless an exception to the Antideficiency Act applies. *See* 1980 and 1981 Opinions from Attorney General Civiletti (1980 and 1981 Opinions). Three exceptions apply to our work: the wind-down activities exception, the protection of life and property exception, and the Necessary Implication exception. *See id.* With respect to the wind-down exception, Attorney General Civiletti explained that, “[F]ederal officers [may] incur those minimal obligations [during a lapse in appropriations] necessary to closing their agencies.” 1980 Opinion. In 1981, Attorney General Civiletti advised that Federal agencies may obligate funds during a lapse under the protection of life and property exception by showing a “reasonable necessity” of the funded activity to ensure the safety of human life or protection of property. 1981 Opinion. Attorney General Civiletti also opined that the Necessary Implication exception allows a limited number of Government functions funded through annual appropriations to continue despite a lapse in their appropriations because the lawful continuation of other activities necessarily implies that these functions continue as well. *Id.*

In 1995, the Department of Justice, Office of Legal Counsel (OLC), issued a memorandum specifically noting that the activities necessary for disbursing Social Security benefits that “operate under indefinite appropriations” are examples of activities permitted by necessary implication. Further, the 1995 OLC memorandum extended the Necessary Implication exception to those functions performed by one agency necessary to support the funded functions of another agency.

Funding for the programs under Titles II, XVI, and XVIII of the Social Security Act will continue, even in the event of a lapse in appropriations. Indefinite trust funds supply Title II and Title XVIII benefits. General revenues fund Title XVI payments. However, the current appropriation funds those payments through the first quarter of the following fiscal year. Because there is funding to pay these benefits, the Necessary Implication exception allows us to perform those activities needed to ensure that benefits are accurately and timely paid, despite a lapse in appropriations. Our continuing functions related to making accurate payments during a lapse in appropriations is consistent with our previous contingency plan and is legally justified under the 1981 Opinion that permits us to “continue the administration of the program[s] to the extent of the remaining benefit funding.”

The enclosed charts detail the critical functions we would continue during a lapse in annual appropriations lasting between one and five days. Should a partial shutdown last longer than five days, we would reevaluate the number of excepted employees performing such functions and possibly increase the number of excepted employees as we did during the 2013 shutdown. Under the Necessary Implication exception, we will except only those employees critical to our direct-service operations and those employees whose work and oversight are critical to support those operations. Specifically, with respect to the Office of Hearings Operations, we will except decision writers, administrative law judges, and support staff necessary to conduct hearings. We will also retain a limited number of SSA employees and necessary law enforcement agents from our Office of the Inspector General under the protection of life and property exception. We anticipate allowing employees to conduct orderly wind-down activities for no more than four hours on the first day of a lapse in appropriations consistent with the guidance of your office.

If we have a lapse in appropriations, we will encourage the disability determination services (DDS) to continue limited services during a lapse under the Necessary Implication exception with the understanding that we will reimburse the DDSs for their work once we receive funding. However, because DDS employees are State employees, we cannot direct the States to except or furlough their employees during a lapse. Each State will have to determine whether it can maintain limited DDS operations and pay its employees during a lapse.

Once we received restored appropriations, we will resume normal operations by:

- Notifying employees that the shutdown furlough has ended and that they are to return to work on a specified date;
- Providing supervisors with flexibility regarding leave and attendance issues if employees encounter problems returning to work on the day specified;
- Ensuring that IT systems are running smoothly for employees returning to work; and
- Resuming program activities related to grants and contracts and other fiscal and financial matters.

We will keep your office informed about any other actions required to resume normal operations after a shutdown. We are committed to ensuring that, consistent with the constraints of a partial shutdown, we conform with applicable law, regulation, and guidance, yet continue to serve the American people in these difficult times.

Sincerely,

A handwritten signature in black ink, appearing to read 'Chad Poist', with a long horizontal flourish extending to the right.

Chad Poist
Deputy Commissioner
for Budget, Finance, and Management

Enclosures

Social Security Administration Contingency Plan – Fiscal Year 2024

Status of Service Activities During a Funding Lapse

To promote service to the public and fiscal responsibility, we will implement the following plans:

Operations Frontline Activities	
Continued Activities	Discontinued Activities
<ul style="list-style-type: none"> ▪ Application for benefits (including appointments; limited data exchanges and record corrections, including claims-related earnings, for mandatory benefits) ▪ Request for appeals (reconsiderations, hearings, Appeals Council) ▪ Post-entitlement actions (changes of address, Supplemental Security Income living arrangement changes, non-citizen verification/changes, direct deposit, death inputs, processing of remittances for overpayments and administrative fees, etc.) ▪ Non-receipts and critical payments ▪ Payee changes ▪ Direct contact reinstatement of benefits ▪ Issuance of original and replacement Social Security cards ▪ Prisoner activities—beneficiary-initiated reinstatement of benefits only ▪ Program integrity workloads (redeterminations and continuing disability reviews (CDR)) due to the extended availability of appropriations (<i>DCBFM will notify components at the time of a lapse as to the availability of funds</i>) ▪ Critical information technology (IT) support for daily processing activities ▪ IT multi-factor authentication (MFA) acceleration work supported by the extended availability of the Technology Modernization Fund.¹ 	<ul style="list-style-type: none"> ▪ Benefit verifications ▪ Earnings record corrections and updates ▪ Payee accountings ▪ Prisoner activities--suspension ▪ Requests from third parties for queries ▪ Freedom of Information Act (FOIA) requests ▪ IT enhancement activities, public relations, and training ▪ Replacement Medicare cards ▪ Overpayments processing

¹ MFA acceleration work is led by the Office of Systems/Chief Information Officer.

State Disability Determination Services Activities	
Continued Activities	Discontinued Activities
<ul style="list-style-type: none">▪ Initial claims, including terminally ill, compassionate allowances, quick disability determinations, dire need, and wounded warriors▪ Reconsiderations▪ Critical IT support for daily processing activities▪ Program integrity workloads (redeterminations and CDRs) due to the extended availability of appropriations. <i>(DCBFM will notify components at the time of a lapse as to the availability of funds)</i>▪ Assistance requests for hearings	<ul style="list-style-type: none">▪ End-of-line quality assurance reviews, IT enhancements activities, public relations, and training

Hearings and Appeals Activities	
Continued Activities	Discontinued Activities
<ul style="list-style-type: none"> ▪ Hearing cases ▪ Deciding cases ▪ Drafting relevant notices for claimants ▪ Preparing electronic records for claimants and representatives ▪ Identifying missing evidence and developing the record ▪ Exhibiting case files for administrative law judges ▪ Decision writing ▪ Screening cases for on-the-record decisions ▪ Scheduling hearings ▪ Providing critical IT support for daily hearings ▪ Hearing appeals ▪ Deciding appeals ▪ Docketing and tracking new cases ▪ Adding new medical and vocational experts to blanket purchase agreements ▪ Conducting quality assurance review activities related to allowances 	<ul style="list-style-type: none"> ▪ Conducting quality assurance review activities other than those related to allowances ▪ Processing bias complaints from claimants and representatives ▪ Responding to congressional inquiries regarding support for casework on constituent hearings and appeals ▪ Conducting all activities dependent on Operations support, including enrollment of appointed representatives for eFolder access ▪ Responding to FOIA requests and public inquiries ▪ Providing training and IT support or enhancements for hearing offices

SSA Staff On Duty Exceptions and Furloughs for a Government Shutdown Lasting 5 Days or Less Estimated Numbers as of June 28, 2023						
Office	Total ¹	Required for Wind-down	Exceptions ²	Authority for Exceptions	Furloughs	Explanation for Exceptions
Actuary	50	50	3	Necessary implication	47	Respond to shutdown-related inquiries as needed; and complete necessary work to update the cost of living adjustment
Analytics, Review, and Oversight	1,945	1,945	1,297	Necessary implication	648	Processing of disability claims, appeals, and detecting, deterring, and mitigating fraud
Budget, Finance, and Management	870	870	287	Necessary implication; protection of life and property; other funds	583	Health and safety; budget and contract support for excepted activities; and benefit payment certification
Civil Rights and Equal Opportunity	143	143	2	Necessary implication	141	Respond to shutdown-related inquiries as needed.
CREO - Reasonable Accommodations	213	213	165	Necessary implication	48	Accommodations under the Rehab Act to employees in DCO and DCHO who provide benefits to the public and to members of the public that need accommodations.
Commissioner	28	28	5	Necessary implication	23	Executive leadership necessary for wind-down activities and continuity of operations
Communications	150	150	3	Necessary implication	147	Organizational guidance and leadership on all communications-related issues, including Press Office, web, and social media support
Hearings Operations	8,086	8,086	7,481	Necessary implication	605	Hearing and deciding cases; decision writing; and work necessary to support and conduct hearings
General Counsel	744	744	84	Necessary implication	660	Headquarters and regional offices for legal support and litigation
Human Resources	845	845	32	Necessary implication	813	Payroll, labor relations, benefits, and personnel policy support
Inspector General	534	534	123	Necessary implication; protection of life and property	411	Protection of field offices, responses to threats against employees and property; investigations of fraud, waste, and abuse against SSA programs
Legislation and Congressional Affairs	60	60	3	Necessary implication	57	Communication with Congress
Operations	44,316	44,316	43,148	Necessary implication; other funds	1,168	Frontline work
Retirement and Disability Policy	482	482	3	Necessary implication	479	Policy support of payment of benefits and reimbursable work
Systems/Chief Information Officer	3,403	3,403	721	Necessary implication; protection of life and property; other funds	2,682	Critical information technology infrastructure; programmatic and end user support; cybersecurity; activities for annual/electronic wage reporting; and multi-factor authentication acceleration
Total	61,869	61,869	53,357		8,512	

¹ Total staff counts (FTP, temp, other) estimated for October 1, 2023. Budget, Finance, and Management (189) and Operations (29) total staffing counts include delegations (218). Advisory Board count of 20 is not included.

² Systems exception count includes work by employees on a less than full-time basis for Multi-Factor Authentication acceleration, which is funded by the Technology Modernization Fund.

Guidance for Shutdown Furloughs



Overview

The U.S. Office of Personnel Management (OPM) has prepared human resources guidance for agencies and employees on shutdown furloughs (also called emergency furloughs). A shutdown furlough occurs when there is a lapse in annual appropriations. Shutdown furloughs can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed.

In a shutdown furlough, an affected agency would have to shut down any activities funded by annual appropriations that are not excepted by law. Typically, an agency will have very little to no lead time to plan and implement a shutdown furlough.

This guidance has been updated to incorporate the requirements of the Government Employee Fair Treatment Act of 2019 (Public Law 116-1, January 16, 2019). That Act amended section 1341 of title 31, United States Code, to provide retroactive pay for Federal employees affected by a lapse in appropriations as soon as possible after the lapse in appropriations ends, regardless of scheduled pay dates, and subject to the enactment of appropriations Acts ending the lapse.

NOTE: This guidance applies to activities that are funded by annual appropriations. Some agency functions have alternative funding sources and, as a result, are not directly affected by a lapse in annual appropriations. Employees performing those functions will generally continue to be governed by the normal pay, leave, and other civil service rules. Agencies should consult with their legal counsel if they have further questions concerning this distinction. Employees should consult with their Human Resources office.

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Note: Certain Q's and A's in this document, "Guidance for Shutdown Furloughs," assume coverage under provisions of law or regulation specified in the given Q and A. To the extent that a particular employee is not covered by those specified provisions, the guidance in the Q and A may not be applicable.

A. General

1. What is a furlough?

A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. What is a shutdown furlough and why is a shutdown furlough necessary?

A. In the event that funds are not available through an appropriations law or continuing resolution, a "shutdown" furlough occurs. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities which are not excepted pursuant to the Antideficiency Act (31 U.S.C. 1341-1342). (See guidance from the Office of Management and Budget (OMB) and the Department of Justice (DOJ) for further information on appropriation matters.)

B. Employee Coverage

1. Who are "excepted" employees?

In the context of shutdown furloughs, the term "excepted" is used broadly to refer to employees whose work is funded through annual appropriations but who are not furloughed because they are performing tasks that, by law, are allowed to continue during a lapse in appropriations. Those tasks are referred to as "excepted work." Such tasks may include emergency work involving the safety of human life or the protection of property or the performance of certain other types of "excepted work activities" as defined in DOJ and OMB guidance.

In addition to emergency work involving the safety of human life or the protection of property, work performed "by necessary implication" as described in DOJ and OMB guidance is considered to be excepted work. For example, an employee's performance of authorized orderly shutdown activities (as described in OMB and DOJ guidance) is considered excepted work. In addition, work necessary to implement a funded function, where the suspension of such work during the lapse would prevent or significantly damage the execution of the terms of the applicable statutory authorization or appropriation, is considered "excepted work" (e.g., cutting the checks for a benefit program for which funding remains available during the lapse and from which the law requires payments to be made). (See, e.g., OMB, [Frequently Asked Questions During a Lapse in Appropriations](#) (Sept. 28, 2021).)

Agency legal counsel, working with senior agency managers, determine which employees are designated to be handling “excepted” and “non-excepted” functions. (See [Shutdown Furlough Guidance](#) for copies of the applicable OMB and DOJ issuances, which provide guidance on the application of these criteria.)

An employee may be required to perform excepted work activities during part of a lapse period and furloughed for the rest of the time. The use of paid leave is also permissible in certain situations, if taken pursuant to 31 U.S.C. 1341(c)(3). (See Questions D.1a. and F.2. for more information.)

(Note: Presidential appointees who are not covered by the leave system in 5 U.S.C. chapter 63 are not “excepted” as discussed above. However, they are not subject to furlough because their salary is an obligation incurred by the year, without consideration of hours of duty required, so they cannot be placed in a nonduty, nonpay status.)

1a. To the extent that agencies need employees to be available to help process Form 931s, *Request for Wage and Separation Information*, or other requests from State unemployment offices, can agencies except employees who are furloughed due to the lapse in annual appropriations to assist with this?

A. Yes. Agencies can except employees who have previously been furloughed due to the lapse in annual appropriations in order to come back into work to assist with processing Form 931s and other related unemployment issues. It is up to the discretion of the agency to identify which employees and the number of employees that are needed to be called back into work for this purpose.

2. Are all employees who qualify as “emergency employees” for the purpose of weather emergencies considered to be “excepted employees” for the purpose of a shutdown furlough?

A. Not necessarily. “Emergency employees” are those employees who must report for work in emergency situations—e.g., severe weather conditions, air pollution, power failures, interruption of public transportation, and other situations in which significant numbers of employees are prevented from reporting for work or which require agencies to close all or part of their activities. Emergency employees are not automatically deemed excepted employees for purposes of shutdown furloughs. Each agency must determine which employees are excepted employees based on the law.

3. Who are “exempt” employees?

A. Employees are “exempt” from furlough if they are not affected by a lapse in appropriations. This includes employees whose functions are not funded by annually appropriated funds. Employees performing those functions will generally continue to be governed by the normal pay, leave, and other civil service rules.

4. What about employees whose work is neither “excepted” nor “exempt”?

A. Employees whose work is funded through annual appropriations but is not designated as excepted work are barred from working during a shutdown, other than to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. These employees will be furloughed.

5. How will employees be notified whether they have been designated to be handling “excepted” functions or not?

A. Each agency will determine the method and timing of notifying employees of whether their work has been determined to be excepted.

6. Why are leave-exempt Presidential appointees not subject to furlough?

A. Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. An exemption from the chapter 63 leave system may be based on 5 U.S.C. 6301(2)(x) or (xi). (See also OPM regulations at 5 CFR 630.211.) These leave-exempt Presidential appointees are not subject to furloughs because they are considered to be entitled to the pay of their offices solely by virtue of their status as an officer, rather than by virtue of the hours they work. In other words, their compensation is attached to their office, and, by necessary implication of the President’s authority to appoint such employees, their service under such an appointment creates budgetary obligations without the need for additional statutory authorization. Based on opinions of the Office of Legal Counsel, Department of Justice, the Antideficiency Act prohibition on creating a budgetary obligation before an appropriation is made is not applicable if the obligation is otherwise “authorized by law.” (See [31 U.S.C. 1341](#) and [36 Op. O.L.C. 1](#), April 8, 2011.)

A leave-exempt Presidential appointee cannot be placed on nonduty status. Thus, the appointee’s pay cannot be reduced based on placement in nonduty status, including via the mechanism of a furlough. As explained above, a leave-exempt Presidential appointee is entitled to the established pay of the position based on the holding of the office, not on the hours of duty.

Presidential appointees who are covered by the chapter 63 leave system are not considered to be entitled to pay based solely on their status as officers; thus, these individuals are subject to furlough in the same manner as other Federal employees. (See 5 U.S.C. 5508.) Any Presidential appointee who is a member of the Senior Executive Service (SES) or in a senior level (SL/ST) position paid under 5 U.S.C. 5376 is not exempt from the chapter 63 leave system (unless specifically designated for exemption under 5 U.S.C. 6301(2)(xi) and 5 CFR 630.211). All SES and SL/ST employees covered by the chapter 63 leave system are subject to furlough on the same basis as other employees. (The furlough of career SES members is subject to the procedures in 5 CFR 359, subpart H, and the furlough of SL/ST employees is subject to the procedures in 5 CFR 752, subpart D, or 5 CFR part 351, as applicable.)

While employees may be subject to furlough, the applicable procedures depend on the type of employee in question. For example, all Presidential appointees are excluded from the adverse action procedures in 5 U.S.C. chapter 75, based on 5 U.S.C. 7511(b)(1) and (3). In addition, Presidential appointees subject to Senate confirmation are excluded from reduction in force procedures, based on 5 CFR 351.202(b). If a Presidential appointee is subject to furlough but not subject to adverse action or reduction in force procedures, the agency should follow any administrative procedures required by any applicable internal personnel policies.

Note: A former career Senior Executive Service (SES) appointee who receives a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. 3392(c). If SES leave benefits are so elected, such a Presidential appointee would be subject to furlough under 5 CFR 359, subpart H.

C. Working, and Work Schedules, During Furlough

1. May an employee volunteer to do his or her job on a nonpay basis during a shutdown furlough?

A. No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an employee. (See 31 U.S.C. 1342.)

2. What happens to employees scheduled for training during a shutdown furlough?

A. Employees who are neither excepted nor exempt and are scheduled for training during a shutdown furlough must be placed in a furlough status and ordered not to attend the scheduled training.

3. May employees take other jobs while on furlough?

A. While on furlough, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct (the standards), at 5 CFR part 2635). In addition, there are specific statutes which prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, employees should review these regulations and then consult their agency ethics official to learn if there are any agency-specific supplemental rules governing the employee.

4. If an employee receives a temporary appointment in another agency while furloughed, what happens to his/her benefits (e.g., retirement, health benefits, life insurance, leave)?

A. Retirement, health benefits, and life insurance are handled as if the employee had actually transferred to the new agency. Leave balances are transferred as if the employee had actually transferred. (See Comptroller General opinion B-167975, September 1, 1970.)

5. How should an agency determine the number of furlough hours for alternative work schedule (AWS) employees during a shutdown furlough? Can an employee reschedule a non-workday that occurred during the furlough?

A. Employees are furloughed based on the number of hours they are scheduled to work on the days for which there is a shutdown furlough. There are two types of alternative work schedules—a flexible work schedule and a compressed work schedule. Normally, once a compressed work schedule is established, the days and hours are fixed and cannot be changed; however, changes in an employee’s flexible work schedule may be made under agency policies and collective bargaining agreements (if applicable). For example, in appropriate circumstances, the AWS day off for an employee with a flexible work schedule may be changed to a different day in the same biweekly pay period.

Once a lapse in appropriations begins, a furloughed employee must not be permitted to reschedule an AWS day off under a flexible work schedule that was scheduled to occur during the lapse—except when rescheduling is related directly to the timing of the employee’s orderly shutdown activities. Thus, if the lapse ends in the middle of a pay period, a furloughed employee may not move an AWS day off that was scheduled to occur during the portion of the pay period covered by the lapse.

However, if a furloughed employee’s AWS day off was scheduled to occur during the portion of the pay period that falls after the lapse in appropriations has ended, it may be possible for the employee to move the AWS day off to a later date in that same pay period. For example, an employee may want to move an AWS day off scheduled to occur after the lapse has ended to a later date because the employee needs more time to reestablish child-care arrangements after the lapse ended. Any changes to an employee’s AWS day off are subject to agency policies and collective bargaining agreements, as applicable.

After the lapse in appropriations has ended, retroactive pay at the standard rate of pay is based on each employee’s established (standard) schedule. No retroactive pay is provided for an AWS day off. An employee cannot move an AWS day off in order to obtain retroactive pay for a normal day off under the employee’s established schedule. (See section D (Pay) for additional information on retroactive pay after a lapse of appropriation ends.)

5a. What happens to employees on detail during a shutdown furlough?

A. Detailed employees remain officially assigned to their permanent position of record during the detail. During a shutdown furlough, each agency will determine the status of their employees on detail, either within the agency or to another agency. This determination is driven by the funding source of the work performed by the detailed employees.

In the case of any detailee under an authorized non-reimbursable agreement whose permanent work the home agency designates as excepted and whose home agency agrees to continue the detail, the home and receiving agencies should carefully consult with one

another about what, if any, activities are appropriate for the detailee to perform during a lapse. Any such activities must be consistent with the reasons why the home agency designated the employee's work as excepted. This communication is especially important in the event that the activities of the receiving agency are not subject to the lapse.

6. How are personnel working for Federal agencies under mobility agreements pursuant to the Intergovernmental Personnel Act (IPA) treated in a shutdown furlough?

A. The specific authority for furloughing personnel who are working under mobility agreements pursuant to the IPA, either inside the Federal Government or with other organizations, will depend upon the nature of individual agreements, the status of the appointments, and/or the funding arrangements for the assignments. As a general rule, the following principles are applicable in determining whether to furlough personnel on IPA mobility assignments:

- Personnel from non-Federal organizations on appointments to the Federal Government are subject to furlough in the same manner as other employees if the Federal agencies hosting them are paying their salaries and benefits.
- Personnel from non-Federal organizations on detail to Federal agencies may continue working and are not subject to furlough, provided that the non-Federal organizations are paying the total costs of their details.
- Personnel on detail to Federal agencies from non-Federal organizations that share part of the costs of the detail may continue to work if the Federal portion of the costs was previously obligated from amounts available at the time of the IPA mobility agreements. In the event that a shutdown furlough takes place during a time for which no funds are available, the assignment should be terminated.
- Personnel on detail to Federal agencies from non-Federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees because the Federal agency is covering the costs of the detail.

D. Pay

1. Will employees performing excepted work be paid for performing such work during a shutdown furlough? If so, when will excepted employees receive such payments?

A. Yes. After the lapse in appropriations has ended, employees who were required to perform excepted work during the lapse will receive retroactive pay for those work periods. (See 31 U.S.C. 1341(c)(2).) Retroactive pay is provided at the employee's "standard rate of pay." If the retroactive pay cannot be provided on the normal pay date for the given pay period, it must be provided at the earliest date possible after the lapse ends.

(Note: Presidential appointees who are not covered by the leave system in 5 U.S.C. chapter 63 are not subject to furlough, but are also barred from receiving pay during a lapse in appropriations. These Presidential appointees will be paid after the lapse in appropriations has ended. See Question B.6.)

1a. How is the “standard rate of pay” computed for employees whose work is excepted?

A. Employees who perform excepted work during a lapse in appropriations must receive retroactive pay for that work at the employee’s “standard rate of pay” (31 U.S.C. 1341(c)(2)). The “standard rate of pay” for excepted hours of work is the pay to which the employee normally is entitled for actual hours of work under the applicable pay rules. For example, if an excepted employee performs authorized overtime work beyond the normal requirements for his or her job, he/she will be paid for that actual authorized overtime work. All excepted hours of work are treated as time in a pay status for pay, leave, and benefit purposes.

Excepted employees who elect to use paid leave under 31 U.S.C. 1341(c)(3) to cover an authorized absence from work during a lapse in appropriations will receive pay for that leave under the normal leave rules when the lapse ends. (See Question F.2.) Consistent with the normal leave rules, an excepted employee may not use paid leave during periods when the employee is found to be absent without leave (AWOL). The standard rate of pay during AWOL periods is zero. If an otherwise excepted employee has an authorized absence from work during the lapse and elects not to use paid leave under 31 U.S.C. 1341(c)(3), the employee will be placed in furlough status during the authorized absence. The employee will be paid for the furlough time when the lapse ends as described in Questions D.3. and D.4. The employee will not be charged paid leave or other paid time off for authorized periods of absence from duty during the lapse, except as provided under 31 U.S.C. 1341(c)(3). (See Question F.2.)

2. May an employee who performs excepted work be permitted to earn premium pay (e.g., overtime pay, Sunday premium pay, night pay, availability pay) during the furlough period?

A. Yes. An employee who performs excepted work and who meets the conditions for overtime pay, Sunday premium pay, night pay, availability pay, and other premium payments will be entitled to receive payment in accordance with applicable rules, subject to any relevant payment limitations, once the lapse ends. Premium pay may be earned during the lapse but cannot be paid until Congress passes and the President signs a new appropriation or continuing resolution.

3. Will employees who are furloughed get paid?

A. Yes. After the lapse in appropriations has ended, employees who were furloughed as the result of the lapse will receive retroactive pay for those furlough periods. (See 31 U.S.C. 1341(c)(2).) Retroactive pay will be provided on the earliest date possible after the lapse ends, regardless of scheduled pay dates. (See 31 U.S.C. 1341(c)(2).) If retroactive pay cannot be provided by the normal pay date for the given pay period, it will be provided as soon as possible thereafter. Retroactive pay is provided at the employee’s “standard rate of pay.” (See Question D.4. Note that retroactive pay may be zero if an employee was scheduled (before the lapse took effect) to be in a nonpay status during the period when the lapse was in effect.)

4. How is the “standard rate of pay” computed for furloughed employees?

A. For periods of time during which an employee was furloughed during the lapse in appropriations, the “standard rate of pay” is the pay the employee would have received for the furlough hours had the lapse in appropriations not occurred and had the employee performed work. Therefore—

- An employee is entitled to receive his or her rate of basic pay for the furlough time to the extent that he or she would have been in a basic pay status but for the lapse in appropriations. (See 31 U.S.C. 1341(c)(2).)
- An employee receives retroactive pay for furlough time without being charged paid leave or other paid time off, since a lapse in appropriations generally prevents the use of paid leave or other paid time off. (However, an excepted employee may seek approval of paid leave under 31 U.S.C. 1341(c)(3). See Questions D.1a and F.2.)
- All furlough hours for which retroactive pay is received are treated as time in a pay status for pay, leave, and benefit purposes. For example, for the purpose of applying General Schedule waiting periods associated with within-grade increases, the furlough time during the lapse in appropriations is treated as time in pay status.
- A furloughed employee who, during the lapse in appropriations, had been regularly scheduled to perform overtime work or to perform work at night or during a period for which any other form of premium pay would otherwise be payable is entitled to receive overtime pay, night pay, or other premium pay as if the work had been performed.
- Allowances, differentials, and other payments otherwise payable on a regular basis (e.g., administratively uncontrollable overtime pay and law enforcement availability pay) must be paid as if the furloughed employee actually continued to work.
- All periods of time during which a furloughed employee would, but for the lapse in appropriations, have been in a pay status (including regularly scheduled overtime hours and standby duty) must be considered “hours of work” for pay administration purposes under the Fair Labor Standards Act.
- A furloughed employee is not entitled to retroactive pay for furlough periods if the employee had been previously scheduled (i.e., scheduled before the lapse) to be in nonpay status during those periods. For example, an employee may have scheduled leave without pay (LWOP) for an extended period or be in a suspension status (i.e., pay suspended based on an adverse action). In effect, those already-in-place periods of nonpay status override the furlough status. The “standard rate of pay” for such previously scheduled periods of nonpay status is zero. In addition, an employee who was directed to perform excepted work during a lapse in appropriations but failed to report to duty could have been placed in absent-without-leave (AWOL) status for missed work hours, in accordance with agency policy and procedures. For such an employee, the “standard rate of pay” for AWOL hours is also zero.

5. Will employees receive a paycheck for hours worked prior to a lapse in appropriations?

A. Yes. Although the payroll for the last pay period before the lapse will be processed potentially during the lapse, the minimum number of payroll staff necessary for this process will be excepted for the minimum time required to issue the checks, including checks for the last pay period before the lapse. (See [OMB, Frequently Asked Questions During a Lapse in Appropriations \(Sept. 28, 2021\)](#); [OMB M-96-01, Planning for Agency Operations \(Nov. 9, 1995\)](#); and [OMB, Bulletin No. 80-14, Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations \(Aug. 28, 1980\)](#).)

6. When an employee's pay is insufficient to permit all deductions to be made because a shutdown furlough occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?

A. Agencies will follow [the guidance on the order of precedence](#) for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions.

E. Performance Awards and Within-Grade Increases

1. If agency performance management policies and practices require the payment of performance awards to employees, can the payment be delayed until after the shutdown furlough?

A. Yes. Neither law nor regulation requires agencies to pay performance awards granted under 5 U.S.C. chapters 43 and 45 and 5 CFR 451.104(a)(3). If agency performance management policies and practices require the payment of performance awards, agencies may delay payment until after the furlough when funds are available.

2. Are agencies required to pay performance awards to Senior Executive Service (SES) career appointees during a shutdown furlough?

A. No. The applicable law (5 U.S.C. 5384) and regulation (5 CFR 534.405) do not specify when an SES performance award must be paid to a career appointee, nor do they provide a basis to pay awards when no appropriated funds are available for that purpose. Therefore, if a shutdown furlough intervenes, an agency may defer payment of SES performance awards until after the furlough, when funds are available.

3. May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage System employees who are furloughed during a lapse in appropriations?

A. Once the lapse in appropriations ends and retroactive pay is payable, employees will be considered to be in pay status during the furlough period. Thus, the effective date of within-grade or step increases for eligible General Schedule and Federal Wage System employees based on service is not affected by time in a furlough status. Quality step increases cannot be retroactively approved and made effective as of a retroactive date absent a nondiscretionary agency policy or collective bargaining agreement that requires a specific effective date.

F. Leave and Other Time Off

1. May a furloughed employee take previously approved paid time off (e.g., annual leave, sick leave, paid parental leave, disabled veteran leave, court leave, military leave, or leave for bone marrow/organ donor leave, or compensatory time off, including religious compensatory time off) during a lapse in appropriations?

A. No, a furloughed employee may not use previously approved paid time off during a lapse in appropriations. Consistent with the Constitution, the Antideficiency Act does not allow authorization of any expenditure before an appropriation is made. Also, the Antideficiency Act does not allow the Government to incur budgetary obligations before an appropriation is made—unless authorized by law (31 U.S.C. 1341(a)(1)(B)). Based on law and OMB and DOJ guidance, certain types of obligations (but not expenditures) are allowed during a lapse in appropriations. The use of previously approved paid time off during a lapse in appropriations would create an obligation or a debt owed by the Government that is not authorized by the Antideficiency Act or other law during a lapse (except under a special provision for excepted employees in 31 U.S.C. 1341(c)(3)), and is thus prohibited. (See Question F.2. regarding paid time off for excepted employees.)

2. May an excepted employee take previously approved paid time off or be granted new requests for paid time off during a shutdown furlough?

A. A lapse in appropriations cancels an excepted employee's previously approved paid leave or other paid time off, for the same reasons that apply to furloughed employees. (See Question F.1.) This does not mean that an excepted employee cannot seek approval to be excused from duty during a lapse. An agency may excuse an excepted employee from duty and place the employee in furlough status for approved periods. An agency may allow an excepted employee to be off duty during periods when the employee was previously scheduled to be on paid leave. That off-duty time may be accommodated by workplace arrangements. (See Question F.2a. for information on use of workplace flexibilities.)

If that off-duty time cannot be accommodated by workplace flexibilities, the excepted employee will be placed in a furlough status for any approved absence unless the employee requests to use paid leave under 31 U.S.C. 1341(c)(3). We expect that excepted employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) because 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under

either approach, any payment will be delayed until after the lapse ends.

If an excepted employee chooses to request leave under 31 U.S.C. 1341(c)(3) instead of the default approach of being placed in a furlough status, the employee may make new requests to use paid leave under 5 U.S.C. chapter 63 (or under other applicable law governing the use of leave if chapter 63 is not applicable). Such “paid leave” does not include the various types of paid time off found outside chapter 63 (e.g., compensatory time off, time off award, credit hours). Use of paid leave is subject to the normal rules for the applicable leave program, including leave request and approval procedures. While the paid leave can be used (i.e., resulting in a Government obligation of funds), compensation for the leave cannot be paid until after the lapse ends.

An excepted employee cannot use paid leave under 31 U.S.C. 1341(c)(3) to cover an unauthorized period of absence. If an excepted employee is directed to perform excepted work but fails to report to duty, the employee may be placed in absent without leave (AWOL) status for missed work hours, in accordance with agency policy and procedures. For such an excepted employee, the “standard rate of pay” for AWOL hours is zero. In other words, no retroactive pay is provided for AWOL hours after the lapse in appropriations ends.

2a. Are excepted employees allowed to have intermittent absences from work during a shutdown furlough?

A. Yes. As explained in Question F.2., an excepted employee may be excused from duty for intermittent periods during a shutdown furlough. While excused from performing excepted duties, the employee will be placed in furlough status (default approach) unless the employee elects to use paid leave under 31 U.S.C. 1341(c)(3). (See Question F.7. for specific guidance on employees scheduled to take leave under the Family and Medical Leave Act.)

However, if an excepted employee needs to be absent from work for brief periods, agencies are encouraged to explore the use of workplace flexibilities such as alternative work schedules and telework (subject to applicable laws, regulations, agency policies, and collective bargaining agreements) to accommodate the employee’s need to be absent. (See Question C.5. for guidance on alternative work schedules.) If use of workplace flexibilities is not appropriate for the situation, excepted employees must be furloughed for any brief absence or allowed to request paid leave under 31 U.S.C. 1341(c)(3), as explained in Question F.2. (See Question F.2b. for guidance on excepted employees who must be furloughed during an approved absence from work. Also see Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee.)

In making determinations regarding whether to grant requests for time off that result in placement in furlough status, agencies are encouraged to consider the same principles that guide the granting of various types of paid leave during normal periods of funded operations, while keeping in mind any special work requirements for excepted employees during the lapse in appropriations.

2b. If an agency is willing to approve intermittent absences from work for an excepted employee and use of workplace flexibilities is not appropriate, does the excepted employee have to be placed in a furlough status for these intermittent absences?

A. Generally, when excepted employees are authorized to be absent from work they must be furloughed. As explained in Question F.2, however, excepted employees have the option to request approval to use paid leave under 31 U.S.C. 1341(c)(3). We expect that in most circumstances excepted employees will choose to have the default furlough status applied to any approved absence because that status provides retroactive pay without charge to leave. These furlough periods must be documented by a shutdown furlough notice with applicable appeal rights. Any time an excepted employee is absent from work must be properly documented by a shutdown furlough notice that spells out whatever appeal rights are applicable.

One option would be for the agency to issue a furlough notice for the period of time when the employee will be absent, and then recall the employee when the employee is once again available to come to work and perform excepted activities.

Another option, which may be easier to administer for an employee who will have multiple intermittent absences over a period of time, would be for the agency to issue a modified shutdown furlough notice, which states that the employee is excepted from furlough except for those periods of time they are not working but would otherwise be scheduled to work. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee.) The periods of time an employee is not working should be listed and clearly identified in the modified shutdown furlough notice. As with any modified furlough notice, agencies should issue such notices as soon as practicable.

The above options are examples of two approaches to consider to ensure appropriate procedural rights are provided to furloughed employees. If agency officials elect to pursue an alternative approach in providing a furlough notice to excepted employees approved to be absent from work intermittently, they should consult with their legal counsel to ensure appropriate procedural rights are provided to furloughed employees.

3. May an employee work during the furlough period to accumulate religious compensatory time off hours for religious observances?

A. An employee who is not “excepted” may not work during the furlough period, even to accrue religious compensatory time. However, an excepted employee may work additional hours to earn compensatory time off for religious purposes if the employee is performing excepted activities, though the employee may not use those hours until after the lapse in appropriations is over.

4. If an employee is scheduled to take approved unpaid leave during a shutdown furlough, should the agency provide the employee with a furlough notice?

A. It depends. If the employee is not expected to work during the furlough period (e.g., a 1-year period of leave without pay to accompany a military spouse overseas), then agencies are

not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from unpaid leave to Federal service during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return), unless the employee is expected to be at work performing an excepted activity.

In the case of an employee who was on preapproved leave without pay (LWOP) during the lapse in appropriations, the employee must continue to be charged LWOP for all periods of such preapproved LWOP that occurred during the lapse.

5. If an employee is scheduled to take unpaid leave under the Family and Medical Leave Act (FMLA) during a shutdown furlough, should the agency provide the employee with a furlough notice?

A. It depends. If the employee is not expected to work during the furlough period (e.g., has requested 12 weeks of unpaid leave (leave without pay (LWOP) under the FMLA), the agency is not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from LWOP to Federal service during the furlough period, the employee should be provided with a furlough notice (effective on the date of scheduled return), unless the employee is expected to be at work performing an excepted activity. An employee scheduled to take FMLA LWOP throughout the furlough period continues to be charged LWOP. However, the LWOP will not be treated as FMLA leave to the extent it occurs during a furlough period unless the employee chooses to use leave under 31 U.S.C. 1341(c)(3). (As stated in Question F.2., we expect that employees generally will not choose to use leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave.) Thus, the days of LWOP during a furlough period will not count against the employee's 12-week FMLA leave limit. The employee is not entitled to receive retroactive pay for scheduled LWOP periods that occur during a furlough period, since the standard rate of pay for LWOP is zero.

6. Does leave under FMLA that is scheduled to be taken during a shutdown furlough period count toward the employee's 12-week FMLA leave entitlement?

A. No. OPM has revised its previous policy. OPM will consider any previously scheduled FMLA leave that occurs during a lapse in appropriations to be canceled—unless the employee is an excepted employee who elects to use leave under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any LWOP that was previously scheduled to be used under FMLA during a period when there is a lapse in appropriations will remain as LWOP, but the LWOP will not be considered FMLA leave and will not count against the FMLA 12-week limit. If an employee had previously scheduled to substitute qualifying paid leave for unpaid FMLA leave during a period covered by a lapse, the paid leave will be canceled (see Questions F.1. and F.2.) and converted to LWOP—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). We expect that employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends. The converted LWOP time will not be considered to be FMLA leave and will not count against the FMLA leave 12-week limit.

7. If an employee is scheduled to take appropriate paid leave under FMLA during a shutdown furlough, should the employee be furloughed? Will the employee be paid for the periods scheduled to be in paid leave status by substituting paid leave under FMLA?

A. During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including paid leave substituted for FMLA LWOP) during the furlough period is automatically canceled. Thus, any days of scheduled paid leave or other paid time off are documented as furlough days.

For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will remain in LWOP status, but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.) For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting paid leave for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.)

7a. What should an agency do if an excepted employee faces FMLA-qualifying circumstances?

A. During a lapse in appropriations, an excepted employee must either be (1) working (i.e., excepted from furlough) —unless he or she elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3), or (2) in a furlough status, as referenced in Question F.7. An excepted employee may face circumstances that would normally qualify him or her for unpaid leave under FMLA. The employing agency should allow such an excepted employee to be placed in a furlough status (a form of unpaid leave) for appropriate periods, consistent with his or her rights under FMLA.

8. Are employees who are not excepted from the furlough allowed to take paid leave or other paid time off during periods when other employees are performing work necessary for an orderly suspension of agency operations?

A. No. For such employees, all paid leave or other paid time off is canceled during a period when a lapse in appropriations is in effect. There is no authority to obligate funds for paid time off during a lapse in appropriations. Employees who are not excepted from the furlough are allowed to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. Being on paid leave is not an activity necessary to execute an orderly shutdown of agency operations. Agencies should determine on a case-by-case basis whether it is necessary to require employees who had been scheduled to take paid time off to report to duty to perform orderly suspension activities or whether to

direct such employees to conduct their orderly shutdown activities on the first day after they had originally planned to return to work.

9. May an excepted employee be permitted to earn compensatory time off and credit hours (under flexible work schedules) during the shutdown period?

A. Yes. With agency approval, excepted employees may earn compensatory time off and/or credit hours subject to requirements found in 5 U.S.C. 5543 and 6120–6133; 5 CFR 550.114, 551.531, and part 610, subpart D; or other applicable authority. Each agency is responsible for approving the number of hours an excepted employee can work related to the performance of excepted activities. Employees will not be permitted to use earned compensatory time off or credit hours during the shutdown period.

10. If an employee has properly scheduled “use-or-lose” annual leave before the start of the third biweekly pay period prior to the end of the leave year, but is unable to use some or all of the scheduled leave because of the furlough, does the furlough constitute an “exigency of the public business” that would permit an agency to restore the leave after the beginning of the new leave year?

A. Yes. Employees in this situation should make every effort to reschedule “use-or-lose” annual leave for use before the end of the current leave year. However, OPM and OMB have determined that a lapse in appropriations qualifies as an exigency of the public business for purposes of annual leave restoration. (See OPM, [CPM 2019-02](#), Restoration of Annual Leave for Employees Affected by the Lapse in Appropriations (January 9, 2019).) Therefore, as long as the leave was properly scheduled in advance, agencies must restore any annual leave that was forfeited because of the lapse in appropriations—regardless of whether the affected employees were furloughed or excepted from the furlough.

In order for forfeited annual leave to be considered for restoration under 5 U.S.C. 6304(d)(1)(B), it must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year, in accordance with 5 CFR 630.308(a). Employing agencies are responsible for determining whether an employee met the advance scheduling requirement, based on OPM regulations and agency policies and procedures. As allowed by those agency policies and procedures, the “in writing” requirement may be met in various ways, including electronic communications such as email, electronic calendar scheduling, or submissions to a time and attendance system.

11. If an employee has properly scheduled use of “restored annual leave” that is due to expire at the end of the leave year (because it is the end of the 2-year restoration period) but that leave is canceled and lost due to lapse in appropriations, may the employing agency restore that leave again?

A. Unfortunately, no—unless Congress enacts legislation providing otherwise. There is nothing in existing law or regulation that allows restored annual leave to be restored a second time. In fact, the Comptroller General has determined that unused restored annual leave may not be restored after expiration of the 2-year period. (See [B-188993](#), December 12, 1977.)

Any previously restored annual leave that was due to expire at the end of the leave year, and was subsequently forfeited, may not be restored again—even if the forfeiture was due to the lapse in appropriations.

12. Does a shutdown furlough affect the accrual of annual leave and sick leave?

A. No. Under 31 U.S.C. 1341(c)(2), after the lapse in appropriations has ended, an employee is entitled to be paid the employee's standard rate of pay during any furlough period. If the employee was scheduled to be in a pay status but for the furlough, the employee will receive the employee's regular pay for furlough periods, and there will be no effect on the accrual of annual and sick leave. However, if an employee was previously scheduled to be in a nonpay status without regard to the furlough, the employee's standard rate of pay will be zero, and the employee will remain in the scheduled nonpay status, which can affect the accrual of annual and sick leave under normally applicable rules governing the treatment of nonpay status periods.

Excepted employees earn pay and accrued leave during the periods they perform excepted work activities—even though no payments can be made during the lapse. With the payment of retroactive pay, agencies should ensure that excepted employees' leave accrual is properly credited.

13. How are employees affected if, during a shutdown furlough, their Federal office is closed or announces a change in operating status due to an emergency, severe weather condition, natural disaster, and other incident causing disruption of agency operations?

A. Furloughed employees will not be affected if their Federal office is closed or announces a change in operating status during a shutdown furlough and will remain in furlough status.

Exempt employees are not affected by a shutdown furlough and will follow normal operating status announcements and emergency procedures.

Excepted employees will follow normal operating status announcements and emergency procedures during a Federal office closure or change in operating status, which may result in excepted employees being placed in furlough status for any hours of work not performed. This is because during a shutdown furlough, excepted employees must be either (1) working (i.e., excepted from furlough) —unless he or she elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3) or (2) in a furlough status. Furlough of an excepted employee must be documented by a shutdown furlough notice with applicable appeal rights. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee.) Excepted employees who are required to and do perform work on a day their Federal office is closed during a shutdown furlough (e.g., employees required to report even during an emergency or telework) will be paid after Congress passes and the President signs a new appropriations bill or continuing resolution. If necessary due to a disruption of agency operations, a furlough may be documented after the fact. However, a written notice of decision to furlough must be provided as soon as possible after the furlough begins. (See Question P.2.)

14. What effect does a Government shutdown based on a lapse in appropriations have on an employee who had scheduled use of donated annual leave?

A. Just as with other paid leave, any donated annual leave that is scheduled to be used during a lapse in appropriations must be canceled and converted to furlough status time—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). If the employee is furloughed during periods when the employee had been scheduled to use donated annual leave, the employee is entitled to retroactive pay for the furlough periods under 31 U.S.C. 1341(c)(2). (This is a change from previous OPM policy.)

15. What happens to compensatory time off in lieu of overtime that expires during a shutdown furlough?

A. Although there is no authority to extend the use of compensatory time off in-lieu-of overtime not used within the 26 pay period limitation, payment for the unused compensatory time off must be made at the overtime rate in effect when earned in the following circumstances:

- For FLSA-exempt (i.e., not covered) employees, under 5 CFR 550.114(d)(2), payment must be made if an exigency of the service beyond the employee's control prevented the employee from using the compensatory time off within the regulatory time limits. A lapse in appropriations is considered be an exigency of the service beyond the employee's control; thus, if an agency determines that the lapse prevented the employee from using the compensatory time off that would otherwise be forfeited, the agency must provide payment for the unused compensatory time off. (See OPM, [CPM 2019-06, Pay and Benefits for Employees Affected by the Lapse in Appropriations](#) (January 27, 2019).)
- For FLSA-nonexempt (i.e., covered) employees, under 5 CFR 551.531(d), if, for any reason, earned compensatory time off is not taken within 26 pay periods during which it was earned, the employee must be paid for the overtime work.

16. What happens to compensatory time off for travel that expires during a shutdown furlough?

A. If an employee fails to use his or her accrued compensatory time off for travel before the end of the 26th pay period after the pay period during which it was earned due to an exigency of the service beyond the employee's control under 5 CFR 550.1407(e), the head of an agency, at his or her sole and exclusive discretion, may extend the time limit for using compensatory time off for travel for up to an additional 26 pay periods.

OPM considers a shutdown furlough to be an exigency of the service beyond the employee's control.

17. What happens to credit hours in excess of 24 credit hours that were earned in the days prior to shutdown that could not be used because of the shutdown?

A. Unfortunately, any credit hours earned by an employee in the days prior to the lapse in appropriations that were in excess of 24 credit hours cannot be carried over into the next pay period and are lost. Under 5 U.S.C. 6126(a), the number of credit hours an employee may carry over from a biweekly pay period to a succeeding biweekly pay period is limited to 24 hours for a full-time employee. There is no authority to provide payment for excess credit hours. The law does not provide for any exceptions.

18. How are advanced annual and sick leave treated during a shutdown furlough?

A. Advanced annual and advance sick leave are automatically canceled during a lapse in appropriations. Since employees would have been scheduled to be in a pay status during any advanced leave period, they will receive retroactive pay under 31 U.S.C. 1341(c)(2) during any such period once the lapse has ended.

19. Can agencies grant administrative leave to employees who are not able to return to work on the next workday immediately following the end of a shutdown?

A. Agencies are encouraged to be as flexible as possible for employees returning to work following the end of a shutdown. Some employees may face extenuating circumstances or personal challenges that impact their ability to return to work on their next workday immediately following the end of a lapse in appropriations. Accordingly, we encourage managers to take these individual challenges into consideration, and to the extent possible, provide appropriate flexibility to employees who are facing difficulties that may delay their return to work.

Agencies have the flexibility to grant limited amounts of excused absence (administrative leave) for nonwork periods after the lapse is over if deemed necessary based on extenuating personal circumstances that delay the employee's return to duty.

20. Does a shutdown furlough cancel all leave scheduled before the lapse in appropriations, even if the leave occurs after the lapse is over?

A. No. Approval remains in effect for leave approved before a lapse in appropriations that is scheduled for use on a date occurring after the lapse is over. Only paid leave scheduled to be taken during the lapse is canceled.

However, an agency may cancel previously approved leave prospectively under its normal authority. An employee may also cancel a leave request prospectively.

G. Holidays

1. Will an employee “exempt” from furlough be paid for a holiday that occurs during a shutdown based on a lapse in appropriations?

A. Employees are “exempt” from furlough if the work they perform has a separate source of funding and is not affected by a lapse in appropriations. For that reason, an “exempt” employee will be paid for a holiday according to the normal rules governing holidays.

2. Will employees affected by a lapse in appropriations be paid for a holiday that occurs during the lapse?

A. Lapse-affected employees—whether excepted or furloughed—will not receive pay for a holiday that occurs during a lapse in appropriations until after the lapse had ended. After the lapse has ended, an employee affected by the lapse will, except as otherwise provided below, receive his or her regular holiday pay for a holiday (or an “in lieu of” holiday, if applicable) and, if applicable, an excepted employee will receive holiday premium pay for work performed during his or her normal hours of duty on the holiday, and overtime pay for work in excess of the normal hours of duty on the holiday. (See 31 U.S.C. 1341(c)(2).) Also, if an employee was regularly scheduled to work on a holiday and was instead furloughed, the employee is now entitled to holiday premium pay, as discussed in Question D.2.

An employee who was on preapproved LWOP during the lapse in appropriations must continue to be charged LWOP for the duration of the period approved as LWOP. If such an employee was on LWOP on both the last workday before a holiday and the first workday after the holiday, he or she will not be paid for the holiday. This rule is consistent with OPM’s longstanding guidance and a Comptroller General decision (56 Comp. Gen. 393 (1977)).

3. What is the status of an “excepted” employee who does not perform work on a holiday that occurs during a lapse in appropriations?

A. An “excepted” employee who does not perform work on a holiday during a lapse must be placed in a furlough status for the holiday and must be provided written notice of the agency’s decision to furlough in accordance with the guidance in section P (Procedures). This is because during a lapse in appropriations all affected employees must be (1) at work performing excepted activities or (2) furloughed. This applies with respect to any period of time that is part of an affected employee’s regularly scheduled administrative workweek, including a holiday. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee.)

4. Will an “excepted” employee who does not work on a holiday that occurs during a lapse in appropriations be paid for the holiday?

A. Yes, after the lapse has ended. (See 31 U.S.C. 1341(c)(2).) An “excepted” employee who does not work on a holiday that occurs during a lapse will be placed in a furlough status for the holiday and will receive retroactive pay for the holiday as soon as possible after the lapse ends. (See Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee Due to a Lapse in Appropriations.)

5. Can an “excepted” employee voluntarily report to work on the holiday?

A. No. Each agency must determine which excepted activities must be performed on a holiday, and which employees are needed to perform those functions. Employees who are not otherwise needed to perform excepted functions on the holiday must be placed in furlough status for that day.

6. Can “excepted” employees be required to perform work on a holiday that occurs during a lapse in appropriations?

A. Yes. Each agency is responsible for determining which excepted activities must be performed on a holiday in order to carry out functions related to such excepted activities. Failure to report to duty on a holiday is no different than failure to report to work on any other day (see Question F.2).

7. What pay entitlements will accrue to an “excepted” employee who performs work on a holiday during a shutdown furlough?

A. The Federal Government will be obligated to pay an excepted employee who performs work on a holiday according to the normal rules governing pay for work on a holiday. For example, under 5 U.S.C. 5546(b), a covered employee would receive his or her rate of basic pay, plus holiday premium pay at a rate equal to the employee’s rate of basic pay. In addition, if such an employee performs officially ordered or approved overtime work on a holiday (i.e., work in excess of his or her basic non-overtime work requirement for that day), the employee would receive overtime pay (or compensatory time off) for that work. As explained under Question G.2., an excepted employee cannot receive payment for working on a holiday until an appropriations act or a continuing resolution is enacted. Please note, holiday premium pay and overtime pay are not applicable to certain employees, such as heads of agencies and members of the Senior Executive Service.

8. How do the “in lieu of” holiday rules apply during a lapse in appropriations?

A. Under normal circumstances, all full-time employees, including those on flexible or compressed work schedules, are entitled to an “in lieu of” holiday when a holiday falls on a nonworkday. [See OPM guidance on “in lieu of” holidays.](#)

During a shutdown furlough, generally—

- The normal “in lieu of” holiday rules apply to employees “exempt” from furlough.
- The “in lieu of” holiday rules do not apply to furloughed employees (i.e., employees do not receive an “in lieu of” holiday if they are in a furlough status on a holiday).
- When scheduling holidays for “excepted” employees, the normal “in lieu of” holiday rules apply. However, as explained in Questions G.4., G.5., and G.6., otherwise excepted employees must be furloughed on the “in lieu of” holidays unless they are working.

H. Benefits

1. What happens if agency employees responsible for processing Federal Employees Health Benefits (FEHB) or Federal Employees’ Group Life Insurance (FEGLI) transactions are furloughed?

A. Agencies will continue to process FEHB and FEGLI transactions during a lapse in appropriations. Employees responsible for processing FEHB or FEGLI transactions must be excepted to perform this work because the law designates the processing of these transactions as emergency services that must continue under the Antideficiency Act. (See 5 U.S.C. 8702(d), 8905(i); 5 CFR 870.106, 890.113.)

Federal Employees Health Benefits Program—General

2. Will an enrolled employee continue to be covered under the FEHB Program during a lapse in appropriations if the agency is unable to make its premium payments on time?

A. Yes. The employee’s FEHB coverage will continue even if an agency does not make the premium payments on time. Following the lapse, each employee who returns to pay status will automatically begin to repay their share of FEHB premium that accumulated during the lapse through payroll withholding. If FEHB premiums are not withheld from retroactive pay, one additional payment in addition to the current pay period amount will be withheld in each subsequent pay period until the employee’s accumulated share of premiums have been paid.

3. What happens if an employee wants to terminate FEHB coverage while in a non-pay status in order to avoid the expense?

A. Unlike other types of non-pay status, employees in a non-pay status due to a lapse in appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage outside of Open Season or experiencing a qualifying life event. The employee will remain covered; the enrollee’s share of their FEHB premium will accumulate and be withheld from pay upon return to pay status.

4. Can an employee who has been furloughed enroll or make changes to their FEHB enrollment during a furlough due to a lapse in appropriations?

A. Yes. An employee who is furloughed and experiences a qualifying life event can enroll or make changes in enrollment in the FEHB Program. (See 5 CFR 890.301.) Employees can also enroll or make changes during the annual Open Season. Employees are encouraged to contact appropriate agency human resources staff to ensure they follow the proper processes.

FEHB Program—Open Season Enrollments/Changes

5. Would a lapse in appropriations alter the effective date of an FEHB Open Season enrollment change if an enrollment request was fully processed by an agency and submitted to the health plan prior to the lapse?

A. No. If an enrollment change request was submitted to the health plan and processed, the effective date of an FEHB Open Season change would still be the first day of the first full pay period in January.

6. An employee is in a non-pay status due to a shutdown furlough and is enrolled in a new FEHB plan effective at the beginning of the plan year because their current plan is terminating participation in the FEHB Program. Which carrier is responsible for providing benefits for covered services in January?

A. It depends upon the date in January that services are needed. Coverage under the new plan begins on the first day of the first pay period that begins on or after January 1. Before that coverage effective date, the terminating plan is responsible for providing benefits for covered services.

Other Insurance Programs

7. What happens to an employee's Federal Employees' Group Life Insurance (FEGLI) Program coverage if furloughed?

A. The employee can maintain their FEGLI coverage for up to 12 months in a non-pay status. When the lapse ends, the employee will receive retroactive pay under 31 U.S.C. 1341(c)(2) and retroactive FEGLI premiums may be withheld from that pay. If FEGLI premiums are not withheld from retroactive pay, no more than one additional payment will be withheld in each subsequent pay period until all premiums have been paid.

8. What happens to an employee's Flexible Spending Account (FSAFEDS) coverage if furloughed?

A. Payroll deductions will cease for any employee that does not receive pay. The employee remains enrolled in FSAFEDS, but claims for eligible health care expenses incurred during a non-pay status will not be reimbursed until the employee returns to a pay status following the lapse and allotments are successfully restarted. The remaining

allotments are recalculated over the remaining pay periods to match the participant's election amount. However, any claim submitted with dates of service prior to an employee entering non-pay status will be paid in accordance with existing procedures, up to the balance of the employee's annual election.

Eligible dependent care expenses incurred during a non-pay status may be reimbursed up to whatever balance is in the employee's dependent care account—as long as the expense incurred during the non-pay status allows the employee (or spouse if married) to work, look for work, or attend school full-time.

9. Will the effective date of my FSAFEDS enrollment be affected?

A. No.

10. What happens to an employee's Federal Long Term Care Insurance Program (FLTCIP) coverage if furloughed?

A. FLTCIP coverage will continue for enrollees who are furloughed or excepted from furlough and working without pay during a shutdown furlough based on a lapse in appropriations. In addition, FLTCIP coverage may not be canceled as a result of non-payment of premiums or other periodic charges due to a lapse in appropriations. (See 5 CFR 875.302.) Employees paying premiums via Direct Bill or Automatic Bank Withdrawal will continue to be billed, but the insurer will not terminate for non-payment of premium during the lapse in appropriations. Regarding claims eligibility requests for FLTCIP during a shutdown furlough, claim benefits will not be reimbursed to the enrollee until all past due premiums are paid.

At the end of the shutdown, FLTCIP premiums will be paid from retroactive pay provided under 31 U.S.C. 1341(c)(2) or may be paid back from another source (i.e., automatic bank withdrawal) for FLTCIP enrollees who elected to make payments directly to the Carrier.

If missed premium payments are unable to be collected via automatic bank withdrawal or deductions from the enrollee's payroll or annuity/pension, enrollees will be billed directly for the premium amount due. After the shutdown, if the enrollee elected to pay their premium via automatic bank withdrawal, past due premiums will be collected by withdrawing up to two months of premiums from the enrollee's bank account each month until it is current. For enrollees who did not elect to make payment directly, FLTCIP premiums will be paid to the Carrier from enrollees' retroactive pay made available as soon as practicable upon the end of the lapse.

11. What happens to an employee's Federal Employees Dental and Vision Insurance Program (FEDVIP) coverage if furloughed?

A. Coverage will continue for an individual enrolled in FEDVIP who is furloughed or excepted from furlough and working without pay during a lapse in appropriations, and an enrollment may not be canceled as a result of nonpayment of premiums or other

periodic charges due to a lapse. (See 5 CFR 894.405.) Payroll deductions will temporarily cease for any employee that does not receive pay.

Employees are entitled to retroactive pay under 31 U.S.C. 1341(c)(2) for excepted work performed during the lapse and for furlough periods at the standard rate of compensation. At the end of the shutdown, the accumulated FEDVIP premium for this period will be withheld from their pay. If FEDVIP premiums are not withheld from retroactive pay, no more than one additional payment will be withheld in each subsequent pay period until all premiums have been paid.

12. Will the effective date of my FEDVIP Open Season enrollment be affected?

A. No.

I. Employee Assistance

1. Are employees entitled to unemployment compensation while on furlough?

A. It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Employees" at <https://oui.doleta.gov/unemploy/unemcomp.asp>.) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor's website provides links to individual State offices. See [a list of Federal Identification Codes](#) (FIC) needed for unemployment compensation applications.

2. Can I take a Thrift Savings Plan (TSP) loan while I'm furloughed?

A. Agencies and employees should refer to the TSP website at www.tsp.gov or contact their agency representative for information. Agency representatives may contact the Federal Retirement Thrift Investment Board at (202) 942-1450 for additional information.

3. What resources are available if a Federal employee needs financial assistance during a Government shutdown?

A. Some agency employee assistance programs (EAP) include financial consultation services. In addition, employees may want to contact their financial institution, credit union, or learn about their options through the Thrift Savings Plan (www.tsp.gov).

4. How will Federal employees access Employee Assistance Program (EAP) services in the event of a Government shutdown?

A. EAP services can be helpful in providing confidential counseling and coaching with experienced, licensed counselors—including legal and financial consultation. Federal employees are advised to contact their agency’s EAP office to determine whether services will be available in the event of a lapse in appropriations. Employees may use OPM’s searchable database to find contacts for their agency’s EAP provider and/or EAP office. The contact tool can be accessed at <https://www.opm.gov/cclcontact/>. Many Federal agency EAPs are serviced by Federal Occupational Health (FOH), a division of the Department of Health and Human Services (HHS). Employees who know that their agency uses FOH as a provider may contact FOH’s toll free EAP phone number, (800) 222-0364 (TTY (888) 262-7848), to find out how to access EAP services during a lapse in appropriations. Agency websites can also be consulted to identify the contact information of other EAP providers and to receive program details.

J. Service Credit for Various Purposes

1. Is furlough or leave without pay (LWOP) considered a break in service?

A. No. Both terms mean that the employee continues to be employed but in a nonpay, nonduty status for those days/hours. Under normal circumstances, an extended period of nonpay status could affect the calculation of creditable service for certain purposes. However, under 31 U.S.C. 1341(c)(2), furlough periods are generally retroactively converted to pay status periods once the lapse has ended. (An employee who was in a scheduled nonpay status (e.g., LWOP, AWOL, suspension status) during a furlough period will not be placed in a pay status. Also, an employee who refused to perform excepted work during a furlough period may be placed in AWOL status.) For all employees who are retroactively placed in a pay status during a furlough period, the time will be fully creditable service.

2. To what extent does nonpay status affect Federal employee benefits and programs?

A. See answer to Question J.1.

K. Federal Employees on Military Duty

1. Can employees who have previously scheduled military leave under 5 U.S.C. 6323 for days covered by a lapse in appropriations take this leave during the lapse?

A. No. As with other types of paid leave, paid military leave must be canceled for days covered by the furlough. An employee who had previously scheduled military leave under any of the provisions in 5 U.S.C. 6323 for absences during a lapse in appropriations would have been in a pay status but for the lapse. Accordingly, such an employee is entitled to receive retroactive pay at the employee’s “standard rate of pay” after the lapse in

appropriations ends.

For employees on active military duty, their status as Absent-Uniformed Service (formerly Leave Without Pay-Uniformed Service (LWOP-US)) is unchanged by periods of intermittent annual or military leave, per the guidance in the [Frequently Asked Questions on Military Leave](#).

2. Will employees continue to receive a reservist differential payment (5 U.S.C. 5538) while on active duty when they are furloughed from their Federal civilian employment?

A. No. The reservist differential payments are intended to make up the difference between the employee's customary civil service compensation and his or her military pay, and are made from the funds of the employing agency appropriated for the payment of employees' salaries. Since funds are not available for employees' salaries during a furlough, no funds may be obligated towards any type of payment for reservist differential. However, after the lapse in appropriations ends and employees receive retroactive pay for the period of the furlough pursuant to 31 U.S.C. 1341(c)(2), it will be necessary for the agency to calculate any reservist differential payments that may be owed.

3. Will there be an impact on an employee's General Schedule or Federal Wage System within-grade increase (WGI) waiting period due to an employee being in an Absent-Uniformed Service status during a shutdown furlough?

A. No. The furlough has no impact on an employee's General Schedule or Federal Wage System WGI waiting period if the employee is in an Absent-Uniformed Service status. An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when the employee returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. (See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).)

4. Can employees retroactively substitute military leave under 5 U.S.C. 6323 for Absent-US LWOP (absent uniformed services leave without pay) on a day before or after a holiday during a lapse in appropriations in order to receive pay for the holiday?

A. No. Employees may not retroactively substitute military leave for LWOP during the furlough period since furloughed employees generally may not be charged any other form of paid leave (i.e., annual leave, sick leave, or other paid leave), compensatory time off in lieu of overtime, compensatory time off for travel, religious compensatory time off, or credit hours under a flexible work schedule during the furlough period. (See Questions F.1. and F.4.) Any military leave that had been scheduled (before the lapse in appropriations) for use during the lapse is canceled during the lapse, and the employee generally would be furloughed during the time the employee was scheduled to be on military leave. After the lapse in appropriations ends, employees are entitled to retroactive pay at the standard rate of pay pursuant to 31 U.S.C. 1341 for any furlough period. Thus, if an employee was scheduled to use military leave on the day before or after a holiday but the military leave was canceled due to a lapse in appropriations, and the employee was instead furloughed on the holiday, the

employee will receive retroactive pay for that holiday equal to the normal paid time off for a holiday. However, if an employee was scheduled to be on Absent-US LWOP on the workdays before and after a holiday, the employee will not receive retroactive pay for the holiday.

5. Must agencies recredit military leave canceled during a shutdown?

A. Yes. As a result of the cancellation of scheduled military leave during the lapse in appropriations, agencies must recredit an employee's military leave account. This reccredited military leave may be used after the end of the lapse in appropriations.

L. Retirement

1. If a shutdown furlough occurs during the employee's highest years of salary, what effect will time in a furlough status have on an employee's high-3 average pay?

A. Once the lapse in appropriations ends, employees who would have been in pay status but for the lapse will receive retroactive pay for furlough periods pursuant to 31 U.S.C. 1341(c)(2). Thus, there will be no effect on such an employee's high-3 average pay.

2. Are the retirement rules concerning the effect of a shutdown furlough the same for employees under the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS)?

A. Yes.

3. What will happen to employees who would have retired during a shutdown furlough?

A. For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, agencies should, when the lapse in appropriations ends, make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement), and can be either mailed or personally submitted to the agency. Any additional required paper work, such as the formal retirement application form, may be completed when the agency reopens. No time spent by the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the agency.

4. If an employee is scheduled to retire before the end of the leave year with an annual leave balance of over the maximum leave ceiling (e.g., 240, 360, or 720 hours, as applicable) and the furlough prevents the employee's retirement from getting processed until January, does the employee lose his or her annual leave above the maximum leave ceiling?

A. No. The employee's retirement would be retroactively applied to a date prior to the end of the leave year, and the employee would receive the full amount of accumulated and accrued annual leave in a lump-sum payment.

M. Retirement Services: Government Closure

1. I'm a Federal retiree. Will I still receive my monthly annuity payment during a Government shutdown?

A. Yes. Federal retirees under the CSRS and FERS retirement systems will still receive their scheduled annuity payments on the first business day of the month.

2. How can I make updates or changes to my retirement account?

A. OPM's Retirement Services is available to assist you with your retirement account. As always, you can make many of these changes online through [Services Online](#) or by calling Retirement Services at (888) 767-6738. Due to the volume of calls, we recommend that you first use the online services site to make immediate updates and changes.

3. How do I report the death of a family member during a Government shutdown?

A. You can refer to our website www.opm.gov/retire for information on reporting the death of a current retiree and applying for any benefits, or by calling us directly at (888) 767-6738. If the family member was a Federal employee at the time of death, survivors must contact the agency for which the deceased worked. If the employing agency is closed, you may need to wait until after the shutdown ends to begin the process.

4. I recently retired from Federal service. Will my retirement application be delayed by a Government shutdown?

A. If your agency or payroll center submitted your retirement application to OPM, you will begin receiving interim annuity payments while OPM Retirement Specialists process your application. Because OPM Retirement Services is funded by the trust fund it manages, OPM Retirement Services employees will still be working normal operating hours during a Government shutdown.

If your agency or payroll center has not yet submitted your retirement application or the application is incomplete, you will likely experience some delay as OPM must wait on other agencies to submit all of the information needed to process your retirement. Some of these agencies may not be operating during a Government shutdown.

5. I applied for disability benefits. Will my application still be processed?

A. Employees in Retirement Services at OPM will continue working on your application. If the application requires additional information from other agencies, expect delays during a Government shutdown.

6. Can I submit a Court Ordered Benefit during a Government shutdown?

A. Yes. OPM employees will continue working to process court ordered benefits. If the application requires additional information from other agencies, however, there may be delays during a Government shutdown.

N. Payments upon Separation from Federal Service

1. If there is a shutdown furlough, how does this impact a separating employee's lump-sum payment for their unused annual leave?

A. In the event of a shutdown furlough, any payments incurred by the agency for an employee's lump-sum payment will be delayed until funds are available.

2. How are separated employees' entitlements to severance pay affected by a shutdown furlough?

A. Funds for severance pay are obligated on a day-to-day basis as the recipient accrues continuing entitlement to severance pay by not being reemployed by the Government of the United States. (Severance pay is suspended or terminated when the individual is reemployed by the Federal Government.) Severance pay is paid at the same pay period intervals as if the recipient were still employed. Any severance payment (on a payroll payday) is linked to the corresponding pay period during which the recipient accrued continuing entitlement to severance pay. If the recipient is reemployed by the Federal Government during a pay period, he or she is entitled to a prorated severance payment covering the days in the period prior to reemployment (e.g., 2/5 of one week's pay if the recipient was reemployed on the third workday of the pay period).

Thus, in the case of a shutdown furlough, accrued but unpaid severance pay represents an obligation to be paid from funds available before the lapse in appropriations occurred. Just as payroll checks for work performed prior to a lapse in appropriations can be processed as part of the orderly suspension of nonexcepted activities, severance pay checks covering days before the lapse may also be processed.

No funds may be authorized for severance payments for days during the lapse until an appropriation is enacted.

See [additional information on severance pay](#) (including eligibility criteria and payment formulas).

O. Benefits under the Federal Employees' Compensation Act (FECA)

1. How is Continuation of Pay (COP) under the Federal Employees' Compensation Act affected by a Government shutdown?

A. The Department of Labor's Office of Workers' Compensation Programs, which administers the Federal Employees' Compensation Act (FECA), advises that, in the event of a Government shutdown, an employee who is disabled due to his or her injury is to be maintained in COP status during the shutdown unless the agency does not have monies available to pay the salary of that employee. When funding is restored, COP can be retroactively paid, but it cannot be paid for the same period as retroactive salary is paid. In the event an agency is legally unable to pay COP to an employee because of a lapse in appropriations, the employee may file a claim for regular FECA wage loss compensation for that period.

Employees in COP status will not receive retroactive pay under the Government Employee Fair Treatment Act of 2019 (31 U.S.C. 1341(c)(2)). They are already receiving pay for the time periods under the workers' compensation program. Even if agencies coded employees in COP status as being in furlough status, or gave them a furlough notice, the COP status was unaffected and thus excused absences do not apply.

2. Are employees who are injured while on furlough or LWOP eligible to receive workers' compensation?

A. No. Workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. An employee who is receiving workers' compensation payments will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

Note to Section O: Any additional questions regarding Federal workers' compensation benefits should be directed to the [Division of Federal Employees' Compensation](#), Office of Workers' Compensation Programs, U.S. Department of Labor.

P. Procedures

1. How is a shutdown furlough documented?

A. Unlike an administrative furlough, agencies should *not* prepare an SF-50, “Notification of Personnel Action” (or a List Form of Notice for a group of employees who are to be furloughed on the same day or days each pay period) at the outset of a shutdown furlough. Instead, employees will receive a shutdown furlough notice citing the reasons for the furlough because the ultimate duration of a shutdown furlough is not known by agencies at the outset of the furlough. Once an appropriation has been signed by the President, agencies will be instructed on the appropriateness of preparing documentation consistent with Chapters 15 and 16 of [*The Guide to Processing Personnel Actions*](#).

1a. In addition to a shutdown furlough notice, what other documentation should be provided to furloughed employees?

A. Agencies should provide each furloughed employee a Form SF-8 (Notice to Federal Employee about Unemployment Insurance). This form provides information on filing unemployment compensation claims, including the agency’s mailing address and Federal identification code. Employees may be asked to provide or refer to this form when they file a claim with their State unemployment insurance agency.

2. In the event of a shutdown furlough, can an employee be furloughed without first receiving a written notice of decision to furlough?

A. While an employee must ultimately receive a written notice of decision to furlough, it is not required that such written notice be given prior to effecting the emergency furlough or in person, although it is recommended. Advance written notice (including through email) is preferable, but when prior written notice is not feasible, then any reasonable notice (e.g., telephonic, oral, personal email, or by mail promptly after the furlough) is permissible when the furlough decision is made. However, a written notice of decision to furlough must be provided as soon as possible after the furlough begins. See Question P.2a. for providing electronic notice of a furlough action.

2a. May employees conduct orderly shutdown activities remotely? May an agency provide an employee electronic notice of a furlough action?

A. In many cases, orderly shutdown activities (including the distribution of furlough notices and, where necessary, the adjustment of voicemail and email messages to reflect the agency’s operating status) may be conducted remotely. Agencies that issue furlough notices should consult with their legal counsel to ensure each step of the process is consistent with legal requirements. If an agency determines it will electronically notify affected employees of a furlough action, OPM recommends that the agency include each employee’s name, address, and/or e-mail address on the decision notification so that it is clear that an employee is receiving personal notification. Agencies should also consider including in the body of the electronic correspondence, the requirement that the employee provide an email

acknowledgement of receipt. If an agency does not receive a requested acknowledgement of receipt of an e-mail notification, it should consider delivering a paper copy of the decision notification to the employee at his or her home address by registered mail with a return receipt requested. Similarly, agencies must deliver hard copy furlough notices to those employees without email access.

Additionally, OPM recommends that agencies consider informing employees as soon as practicable whether or not an employee is subject to the furlough and provide a contact person who can answer questions related to this issue. Finally, agencies with bargaining unit employees are reminded that they must provide notice and opportunity to bargain over negotiable procedures and appropriate arrangements to any unions representing their employees.

2b. What are an agency's regulatory obligations in providing an appellant the Merit Systems Protection Board (MSPB) appeal information in the adverse action furlough decision notice?

A. An agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. (5 CFR 1201.21). Providing a link to this MSPB appeal form electronically (<https://e-appeal.mspb.gov/>) will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form, including providing the employee with a hard copy of these documents upon the employee's request. See Sample Notice for sample decision notice language.

2c. What is the treatment of employees who are serving, or about to serve, a suspension during a lapse in appropriations?

A. If an employee is serving a suspension or scheduled to serve a suspension when a shutdown furlough becomes effective, agencies have the option of holding the suspension in abeyance during the period of shutdown, or delaying the commencement of suspension until after the shutdown ends. During the shutdown, such employees should be properly designated by the agency as exempt, excepted, or non-excepted and treated accordingly. If the employee is subject to furlough, the employee should receive the appropriate shutdown adverse action furlough notice.

2d. What is the treatment of employees who are in AWOL status at the beginning of the lapse in appropriations?

A. If an employee is AWOL at the beginning of the lapse in appropriations, and the employee is otherwise subject to furlough during the shutdown, he or she should be provided a furlough notice and placed in a temporary non-duty, non-pay status because of the lack of appropriated funds. Thus, the employee cannot be AWOL during this time, despite any belief the employee would not have otherwise reported to work. The employee should be

coded the same as all other employees who are furloughed during this time. If the employee fails to report to work following the end of the shutdown, he or she will be considered AWOL, and subject to any consequences that may follow from being AWOL after the end of the shutdown. Conversely, if the employee is *excepted* from furlough, ordered to report to work during the shutdown yet failed to do so, he or she would be considered AWOL during this time, and subject to any consequences that may follow from being AWOL.

3. What information should be included in the notice of decision of a shutdown furlough when no advance notice is issued?

A. The notice must specify the reason for the furlough and state that the usual 30 calendar days advance notice was not possible due to the emergency requiring curtailment of agency operations. If some employees in a competitive level will not be furloughed because they are performing one of the excepted activities defined by OMB standards, OPM recommends a statement such as the following:

“If employees are being retained in your competitive level, they are required for orderly suspension of agency operations, or they are performing one of the excepted activities defined by law.”

For career members (except reemployed annuitants) of the Senior Executive Service (SES), the written notice must provide the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; and, if the notice period is less than 30 calendar days, the reason for the shortened period. For an SES probationer, the notice should also explain the effect (if any) on the duration of the probationary period. See Question P.6a. regarding noncareer, limited term, or limited emergency appointees and reemployed annuitants holding career appointments.

All notices must include a statement of applicable appeal and grievance rights. An agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. Providing a link to the MSPB appeal form electronically (<https://e-appeal.mspb.gov/>) will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB’s regulations and the appeal form including providing the employee with a hard copy of these documents upon the employee’s request.

See “Sample Shutdown Furlough Decision Notice Due to Lapse in Appropriations.” This sample can be used for SES and non-SES employees.

3a. How should the decision letter for a shutdown furlough be framed if the specific number of furlough days is unknown?

A. While it is desirable when possible to inform the affected employee of a specific number of furlough days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible.

3b. What procedural rights apply to employees who are veterans covered under 5 U.S.C. chapter 75 and 5 CFR part 752 for a shutdown furlough?

A. For a shutdown furlough of a covered veteran employee, the law (5 U.S.C. 7513) gives a covered veteran employee the same procedural rights as other covered employees. Employees should consult with their agency Human Resources office to determine whether they are covered by 5 U.S.C. 7513 and what procedures may apply to them.

3c. If an employee decides to challenge a shutdown furlough, from what point would the time for appeal to the Merit Systems Protection Board run?

A. Employees must file an appeal within 30 days after the effective date of their first furlough day, or 30 days after the date of their receipt of the decision notice whichever is later.

4. In addition to statutory and regulatory procedural requirements, what other forms of communication should an agency consider when implementing a shutdown furlough?

A. Considering the uncertain and changing circumstances surrounding a shutdown furlough, agencies should make efforts to ensure that employees are provided with up-to-date and accurate information. If time permits before a furlough starts, this may be done through effective union-management communication, employee briefings, periodic bulletins, and newsletters. Once a furlough begins, agencies can also consider using toll-free hotlines and emails to home email accounts.

5. How does the length of a shutdown furlough affect the procedures that are used to implement the furlough of employees?

A. The length of a shutdown furlough does not affect the procedures that are used.

For most employees, shutdown furloughs lasting 30 calendar days or less (22 workdays) are covered by OPM regulations under 5 CFR part 752, adverse action procedures. Shutdown furloughs lasting 30 calendar days or less (22 workdays) for career appointees in the Senior Executive Service (except reemployed annuitants) are covered under 5 CFR part 359, subpart H. See Question P.6a. regarding noncareer, limited term, or limited emergency appointees in the SES and reemployed annuitants holding career appointments.

Shutdown furloughs lasting more than 30 calendar days (22 workdays) are also covered by OPM regulations under 5 CFR part 752, adverse action procedures or 5 CFR part 359,

subpart H, as applicable. When the shutdown furlough goes beyond 30 days, agencies should treat it as a second shutdown furlough and issue another adverse action or furlough notice.

Note: Reductions in force (RIF) furlough regulations and SES competitive furlough requirements are not applicable to emergency shutdown furloughs because the ultimate duration of an emergency shutdown furlough is unknown at the outset and is dependent entirely on Congressional action, rather than agency action. The RIF furlough regulations and SES competitive furlough requirements, on the other hand, contemplate planned, foreseeable, money-saving furloughs that, at the outset, are planned to exceed 30 days.

6. What procedures and appeal rights are applicable for noncareer, limited term and limited emergency employees in the SES and reemployed annuitants holding career SES appointments?

A. Noncareer, limited term, and limited emergency SES appointees and reemployed SES annuitants holding career appointments are not covered by 5 CFR part 359, subpart H, and they may be furloughed under agency designated procedures, which should include certain minimum features, e.g., whenever possible, a written notice at least 1 day before the furlough that states the reason for, duration of, and effective dates of the furlough.

6a. What impact does the shutdown have on employees whose probationary period ended during the lapse in appropriations? Can the probationary period be extended?

A. Placement of a probationary employee in a non-duty status due to a shutdown furlough does not extend the probationary period (for either non-SES or SES employees). This is because the Government Employee Fair Treatment Act of 2019 (31 U.S.C. 1341(c)(2)) ensures that all furloughed and excepted employees “shall be paid” for the period of the lapse, and in accordance with regulations, periods of absence while in a pay status count toward completion of probation. Once an individual completes the probationary period, s/he is covered by relevant adverse action procedural and appeal rights.

7. How do agencies implement a shutdown furlough for Administrative Law Judges?

A. The Antideficiency Act applies to Administrative Law Judges (ALJs). Accordingly, they should be furloughed unless they are performing functions that are not funded by annual appropriations or meet one of the Antideficiency Act’s exceptions. The Merit Systems Protection Board (MSPB) has adopted procedures for implementing furloughs for ALJs, which are described in 5 CFR 1201.137–141. Those procedures, however, do not specifically address the unique issues raised by an emergency furlough necessitated by a Government shutdown. Accordingly, agencies should consult their legal counsel about how to implement a furlough of ALJs.

8. What happens to new employees who are scheduled to report to work for the first time during a shutdown furlough?

A. By law, individuals do not become Federal employees until they report for work and are sworn in. Agencies should consider delaying the entrance-on-duty (EOD) date for new employees who are scheduled to report to work for the first time during a shutdown furlough.

9. At the time of an appropriations lapse, an employee who is funded through a lapsed appropriation is on temporary duty assignment away from the employee's normal duty station. The agency notifies the employee to return to the employee's normal duty station. Can the employee elect to delay the return? If the employee decides to delay the return, and as a result the employee incurs additional travel costs, who is liable for those additional travel costs?

A. Employees who are notified to return home should do so as soon as practicable. When an employee returns promptly, the travel expenses that the employee incurs in the return are properly-incurred obligations of the agency (as part of the agency's orderly-shutdown activities), and the agency will reimburse these travel costs after appropriations are enacted and are available for that purpose. If, however, an employee elects not to return promptly and, as a result of this decision, the employee incurs additional travel expenses, those additional travel expenses are not obligations of the agency, and will not be reimbursed (instead, the employee is personally liable for the additional travel expenses); while the employee will be personally liable for the additional travel expenses, the agency will continue to incur the obligation for those travel costs that would have been incurred if the employee had returned promptly, and the agency will reimburse such "prompt return" travel costs after appropriations are enacted and are available for that purpose. Finally, in the case of those employees who are notified by their agency that they are to remain on travel, because the continuation of their travel is in direct support of an excepted agency activity, their travel expenses are properly-incurred obligations of the agency (as part of the agency carrying out an excepted activity), and the agency will reimburse the travel costs after appropriations are enacted and are available for that purpose.

10. What happens to current Federal employees who are scheduled to transfer to a new agency during a shutdown furlough?

A. Agencies should consider delaying the entrance-on-duty date for employees who are scheduled to transfer to a new agency during a shutdown furlough. Such employees would remain on the rolls of their former agency until the new transfer effective date can be redetermined by the former agency and the new employing agency once the lapse in appropriations has ended.

11. Will the Merit Systems Protection Board (MSPB) be addressing furlough related appeals during the shutdown?

A. Please consult the [MSPB website](#) for additional information on the processing of appeals during any lapse in appropriations.

12. If a Government shutdown occurs, how will furloughed employees be informed when it is over?

A. Employees should follow their agency procedures, including any applicable collective bargaining agreements, which may include monitoring OPM's website (www.opm.gov) and media outlets for notification that a continuing resolution or appropriation has been signed by the President.

13. When a Government shutdown ends, when are furloughed employees expected to return to work?

A. If a shutdown were to occur, guidance concerning when furloughed employees should come back to work at the conclusion of the shutdown would have to be tailored to the specific situation. In the absence of such guidance, agencies should apply a rule of reason in requiring employees to return to work as soon as possible, taking into account the disruption in the lives and routines of furloughed employees that a shutdown causes.

Q. Labor Management Relations Implications

1. When a lapse in appropriations requires a shutdown furlough, what is an agency's obligation to bargain?

A. The decision whether to furlough employees and which activities are excepted from a furlough are management rights that are not subject to bargaining. (See 5 U.S.C. 7106(a).) However, when an agency determines that a shutdown furlough is necessary, agencies have a duty to notify their exclusive representatives and, upon request, bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already "covered by" a collective bargaining agreement.

In the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities due to a Government shutdown, whatever bargaining that can occur prior to taking action should occur to the extent possible before furlough actions are necessary. However, if agreement is not reached in the time allowed, the agency should tell the union what actions it will take and offer to continue bargaining on a post implementation basis.

2. Do agencies have an obligation to bargain before it is known whether a lapse in appropriations will occur?

A. The law requires an agency to bargain during the term of a collective bargaining

agreement on negotiable union-initiated proposals concerning matters that are not expressly contained in, or otherwise covered by, the collective bargaining agreement, unless the union has waived its right to bargain about the subject matter involved. Accordingly, there may be a bargaining obligation if a union makes negotiable proposals in advance of a shutdown that address procedures and appropriate arrangements for affected employees. Agencies should evaluate the circumstances of their situation to determine whether there is a duty to bargain on union proposals concerning furlough procedures.

3. What is the agency's obligation in responding to a union request under 5 U.S.C. 7114 seeking the agency's furlough plan and a list of excepted and nonexcepted employees?

A. An agency is required to provide data that is normally maintained, reasonably available and necessary to perform the representational duties of a union. A union requesting information must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the statute. The union must establish that the requested information is required in order for the union to adequately represent its members. An agency denying a request for information must assert and establish any countervailing anti-disclosure interests. An agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, agencies will have to evaluate the circumstances of their situation to determine whether they should provide the requested information.

4. Can union officials perform representational work on "official time" during a shutdown?

A. Exempted employees (i.e., employees not affected by a lapse in appropriations—see Question B.3. explaining "exempt" employees) serving as union officials may continue to be granted official time to the same extent and in the same manner as they would under non-shutdown conditions. In general, other employees serving as union officials may not work on official time during a shutdown, because they would be authorized to work official time only while they are in a duty status. Union officials, like other employees, may utilize up to four (4) hours to participate in the orderly suspension of operations.

There may be a narrow set of circumstances where exercise of a union's statutory rights could itself constitute an excepted activity and thereby fall within the Antideficiency Act's exceptions. If an agency official who is excepted (i.e., an individual paid by annual appropriations who is excepted from furlough because he or she is performing work that may continue to be performed during a lapse in appropriations—see Question B.1. explaining "excepted" employees) has determined, for example, that an investigation or the initiation of a personnel action is necessary to protect life and property, and must be undertaken prior to the enactment of appropriations, such an action could also fall within excepted activity. If this excepted activity triggers union representational rights under 5 U.S.C. chapter 71 (e.g., a formal discussion, a *Weingarten* interview, or the representation of an employee in connection with an adverse personnel action), a union's representational function would be

required in order for the Agency to move forward with such an action and would, itself, in that narrow circumstance, constitute excepted activity. In such a case, therefore, official time should be granted to employees to serve in this representational function. With this in mind, agency officials should consult with Human Resources representatives and their legal counsel to evaluate whether contemplated management actions are necessary during the shutdown and whether they will trigger statutory representation rights.

5. Will union officials have access to their union offices if they are in furlough status?

A. Generally, access to facilities during a furlough may be restricted based on funding, security, or other issues. Depending on agency operations, a particular facility, or portions of a facility, may be fully or partially operational.

If a facility is operational and accessible, and a union official is either an exempt employee or is engaged in an excepted activity (in accordance with the requirements discussed in Question Q.4.), he or she would have access to the union office to engage in representational work in an official time capacity.

Sample Shutdown Furlough Decision Notice Due to a Lapse in Appropriations

[Ensure that an SF-8 is attached to this notice]

This notice would be used for a “shutdown” furlough, where the agency no longer has the necessary funds to operate and must curtail those activities not excepted by OMB standards. In such instances there is no advance written notice proposing the action (see 5 CFR 752.404(d) and 359.806(a)), although a written furlough decision notice should be given as soon as possible after the furlough starts.

Notice

In the absence of either a Fiscal Year (FY) [state year] appropriation, or a continuing resolution for [agency name], no further financial obligations may be incurred by [agency name], except for those related to the orderly suspension of [agency’s name] operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) memorandum for Heads of Executive Departments and Agencies dated November 17, 1981. Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective [enter date]. This furlough, i.e., nonduty, nonpay status, is not expected to exceed 30 days. Therefore, this furlough notice expires on [enter date]. You should monitor public broadcasts and the Internet. When a continuing resolution or an FY [state year] appropriation for [agency name] is approved, you will be expected to return to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the agency’s activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. After the lapse ends, you will receive your “standard rate of pay” for the furlough period in accordance with 31 U.S.C. 1341(c) as soon as possible. (This means that employees who would have been in pay status but for the lapse in appropriations will receive their full regular pay for any furlough period.)

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the

excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following location: [identify location and times, as appropriate].

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. You may wish to check MSPB's website for its operating status during this time. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

Note: [Under the Board's October 2012 regulations, notices **must also include**:

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part;

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board; and

(5) Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

[An agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. (5 CFR 1201.21). Providing this MSPB appeal hyperlink form electronically (<https://e-appeal.mspb.gov/>) will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form, including providing the employee with a hard copy of these documents upon the employee's request.]

Attached is the SF-8, *Notice to Federal Employee about Unemployment Insurance*. Additional information about unemployment insurance is available at <http://www.servicelocator.org/OWSLinks.asp>.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*]

Deciding Official

Date

I acknowledge receipt of this decision.

Employee's signature

Date

Attachment: SF-8

Sample Notice of Furlough During Holiday to Excepted Employee Due to a Lapse in Appropriations

[Ensure that an SF-8 is attached to this notice]

In the absence of either a Fiscal Year (FY) [state year] appropriation, or a continuing resolution for [agency name], no new financial obligations may be incurred by the Agency for functions funded through annual appropriations, except with respect to certain personnel who are otherwise authorized to continue to work.

As you are aware, as an employee who has been excepted from furlough and continued to work during the shutdown, you are required to work on those days you would normally be scheduled to work. The upcoming [state holiday] on [state date], is not a day you would normally be scheduled to work, and we are not requiring you to work on that day. Because of the operation of the shutdown furlough rules, we must place you in a furlough status for the [state holiday] holiday. As an excepted employee, you are expected to return to work on your next regularly scheduled workday following the [state holiday] holiday. For the vast majority of you, this means you would return to work on [state date].

If you have a work schedule that does not include [state date], as a workday, you will follow the normal holiday rules for an “in lieu of” holiday. All full-time employees, including those on flexible or compressed work schedules, are entitled to an “in lieu of” holiday when a holiday falls on a non-workday. For example, if you have a Monday through Friday alternative work schedule (AWS), and [state holiday] is your regularly scheduled AWS day off, you will do as you have generally done for previous holidays and take your “in lieu of” holiday the work day immediately preceding Monday. For example, if the holiday is Monday, [insert date], your “in lieu of” holiday would be Friday, [insert date]. You would be in furlough status on Friday instead of Monday in this example. You would return to work on Tuesday, [insert date], because your regular day off is on Monday, [insert date].

This can be a bit confusing, so if you do not fall in the category above of working a Monday through Friday schedule and/or are unclear of when your “in-lieu of” holiday is to occur, please consult with your supervisor. In the event your supervisor is unavailable, please call or email [state agency] Human Resources.

This action is being taken because of a sudden emergency requiring curtailment of the agency’s activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted

to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. After the lapse ends, you will receive your “standard rate of pay” for the furlough period in accordance with 31 U.S.C. 1341(c) as soon as possible. (This means that employees who would have been in pay status but for the lapse in appropriations will receive their full regular pay for any furlough period.)

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

Career SES appointees (except reemployed annuitants) who believe requirements of 5 CFR part 359, subpart H, or the agency’s procedures have not been correctly applied may also appeal to MSPB. Career SES appointees may inspect the regulations and records pertinent to this action at the following location: [identify location and times, as appropriate].

If you have the right of appeal to MSPB and wish to appeal this action to the MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>. You may wish to check MSPB’s website for its operating status during this time. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing.

Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

Note: *[Under the Board’s October 2012 regulations, **notices must also include:***

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

(1) Whether the election of any applicable grievance procedure will result in waiver of the employee’s right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part;

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board; and

(5) Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

[An agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. (5 CFR 1201.21). Providing this MSPB appeal hyperlink form electronically (<https://e-appeal.mspb.gov/>) will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form, including providing the employee with a hard copy of these documents upon the employee's request.]

Attached is the SF-8, *Notice to Federal Employee about Unemployment Insurance*. Additional information about unemployment insurance is available at:
<http://www.servicelocator.org/OWSLinks.asp>.

We recognize the difficult financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [*contact name, phone number, and email address*]

Deciding Official

Date

I acknowledge receipt of this decision.

Employee's signature

Date

Attachment: SF-8