



## **Frequently Asked Questions**

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### **Department of the Navy Policy & Programs**

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## EMERGENCY FURLOUGH 2023

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The following Frequently Asked Questions (FAQs) and responses address what is known as an emergency or unplanned “shutdown” furlough arising from a lapse in appropriations. Shutdown furloughs may occur at the beginning of a fiscal year if no funds have been appropriated or with the expiration of a Continuing Resolution. During a shutdown furlough, the Department of the Navy (DON) is required to shut down any activities funded by annual appropriations that are not excepted by law.

Future revisions will be shared on the Secretary of the Navy (SECNAV) Private SharePoint Portal at <https://portal.secnav.navy.mil/orgs/MRA/DONHR/OCHRHQ/Pages/Furlough.aspx>.

Additional information may be found at <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

Please note, in many instances, more than one FAQ addresses the same, a similar or a related issue, so for a fuller understanding, review all of the FAQs as a whole or, at a minimum, related topics, for a more complete understanding.

### A. General

#### 1. What is a furlough?

A. A furlough is the placing of an employee in a temporary nonduty, non-pay status because of lack of work or funds, or other non-disciplinary 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 or emergency furlough occurs. A shutdown furlough is necessary when an organization no longer has the necessary funds to operate and must shut down those activities not excepted under the Antideficiency Act, see 31 U.S.C. §§1341-1342.

#### 3. Under what authority is a furlough taken?

A. For most employees, furloughs are covered under adverse action procedures found in subpart D of part 752 of title 5, Code of Federal Regulations (C.F.R.). Furloughs for Senior Executive Service members are covered in subpart H of part 359 of title 5, C.F.R. Refer to the OPM guidance website for additional information.

### B. Employee Coverage

#### 4. Who are “excepted” employees?

A. In the context of shutdown furloughs, the term “excepted” refers to employees whose work is funded through appropriations but 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



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property or the performance of certain other types of “excepted work activities” as defined in Department of Justice (DOJ) and OMB guidance.

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

A. Not necessarily. “Emergency employees” are those employees who must report for work during 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.

**6. Who are “exempt” employees?**

A. Employees are “exempt” from furlough if they are not affected by a lapse in appropriations.

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

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

**8. What are the excepted activities employees may perform during a furlough?**

A. Excepted activities are addressed in the “Guidance for Continuation of Operations During a Lapse in Appropriations” issued by the Deputy Secretary of Defense at the time of the shutdown.

<https://media.defense.gov/2023/Sep/12/2003299418/-1/-1/1/GUIDANCE-FOR-CONTINUATION-OF-OPERATIONS-DURING-A-LAPSE-IN-APPROPRIATIONS.PDF>

**9. How are employees notified whether or not they have been designated to be handling “excepted” functions?**

A. Each command will determine the method and timing of employee notifications regarding whether their work has been determined to be excepted.

**10. Should foreign nationals be furloughed?**

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



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### **11. Are Foreign Military Sales (FMS) employees subject to the furlough?**

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

### **12. Are non-appropriated funds (NAF) employees furloughed during a shutdown furlough?**

A. Activities funded entirely through NAF sources will not be affected. NAF employees may be furloughed if their position is paid in whole or in part with appropriated funds or derived from transfers or reimbursements from appropriated funds. Sometimes activities furlough NAF employees as a means to absorb reductions in resources necessitated by downsizing, lack of work, or other budget situations.

## **C. Working and Work Schedules during Furlough**

### **13. May a furloughed employee volunteer to do his or her job on a non-pay basis during a shutdown furlough?**

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

### **14. 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, at 5 CFR Part 2635). In addition, there are specific statutes, which prohibit certain outside activities, and DON-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 consult with their Command's ethics official to learn if there are any specific supplemental rules governing the employee.

### **15. How should a Command 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. 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 Command policies



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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.

Employees are furloughed based on the number of hours they are scheduled to work on the days for which there is a shutdown furlough. *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 Command 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 E, Pay for additional information on retroactive pay after a lapse of appropriation ends.)

### **16. 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 command will determine the status of their detailed employees, either within the command or to another agency. This determination is driven by the funding source of the work performed by the detailed employees.

For a detailed employee under an authorized non-reimbursable agreement, if the home command agrees to continue the detail and designates such employee’s permanent work as excepted, the home and receiving agencies should carefully consult with one another regarding what activities, if any, are appropriate for the detailed employee to perform during a lapse. Any such activities must be consistent with the reasons why the home Command designated the employee’s work as excepted. This communication is especially important in the event that the activities of the receiving command are not subject to the lapse.



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### **17. 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. Generally, 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, if 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 command is covering the costs of the detail.

### **D. Appointments and Promotions**

### **18. What effect does a furlough have on time limited appointments or promotions?**

A. Furloughs do not extend the not-to-exceed date of time limited appointments or promotions. Commands have the option to separate temporary employees rather than include them in the furlough.

### **19. What happens to time limited appointments that expire during a furlough?**

A. Furloughs do not extend the time limits for temporary and term appointments. The command may extend the time limited appointment prior to the furlough, or the individual may be reappointed after the furlough in accordance with 5 C.F.R. § 316.302(b) (7) or 5 C.F.R. § 316.401(c).



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**20. Can an Organization extend a temporary or term appointment that was scheduled to expire during the furlough?**

A. No, because the duration of temporary or term appointments is based on calendar time, there is no basis to extend such appointments if they expired during the lapse period.

**21. Does time in a furlough status due to a lapse in appropriations count toward time-in-grade requirements for promotion purposes?**

A. Yes, the time an individual spends in furlough status counts towards time-in-grade requirements for purposes of promotion.

**22. How should commands handle career ladder promotions that were due to go into effect during the lapse in appropriations?**

A. An authorized management official must approve a promotion prior to the effective date. A promotion may not be retroactively authorized [see Comptroller General decisions 3CG559 and 9CG20 (A-27284)]. However, if an HR office was prevented from processing a properly authorized career ladder promotion in a timely manner, the HR office is required to process the action retroactively to honor the authorized effective date. If management approved the Request for Personnel Action (RPA) prior to the effective date, then it can be effected for that effective date even if the effective date is during the furlough. It may not be processed until after the shutdown.

### E. Pay

**23. Will furloughed employees and those performing excepted work be paid?**

A. Yes. After the lapse in appropriations has ended, furloughed and excepted employees will receive retroactive pay. See 31 U.S.C. §1341(c) (2). Retroactive pay is provided at the employee's "standard rate of pay" and must be provided on the normal pay date for the given pay period or at the earliest date possible after the lapse ends.

**24. How is the "standard rate of pay" computed for employees whose work is excepted?**

A. 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



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receive pay for that leave under the normal leave rules when the lapse ends. 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.

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 also FAQ 26, below.

### **25. 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 their 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).
- 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.



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- 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 non-pay 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). Such already-in-place periods of non-pay status effectively override the furlough status. The “standard rate of pay” for such previously scheduled periods of non-pay status is zero. In addition, the “standard rate of pay” for AWOL hours is also zero. During a lapse in appropriations, this would apply to employees, who were directed to perform excepted work but failed to report to duty and under command policies and procedures could be placed in an AWOL status for the unexcused absence.

**26. 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.

**27. 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 CommandOperations \(Nov. 9, 1995\)](#); and [OMB, Bulletin No. 80-14, Shutdown of CommandOperations Upon Failure by the Congress to Enact Appropriations \(Aug. 28, 1980\)](#).)

**28. 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?**



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A. The DON will follow OPM’s guidance about the precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions. The guidance is located at <https://www.chcoc.gov/content/ppm-2008-01-order- precedence-when-gross-pay-not-sufficient-permit-all-deductions>.

The below Order of Precedence for civilian federal employees applies **only** when gross pay is not sufficient to permit all deductions; it will be used to determine the order in which authorized deductions from an employee’s pay will be processed.

1. Retirement – Deductions for Defined Benefit Plan (including Civil Service Retirement System/Federal Employees Retirement System (CSRS/FERS))
2. Social Security (OASDI) Tax
3. Medicare Tax
4. Federal Income Tax
5. Federal Employees Health Benefits (FEHB) premium (pre-tax or post-tax)
6. Basic Federal Employees’ Group Life Insurance (FEGLI) premium
7. State Income Tax
8. Local Income Tax
9. Collection of Debts Owed to the U.S. Government (e.g., tax debt, salary overpayment, failure to withhold proper amount of deductions, advance of salary or travel expenses, etc.; debts which may or may not be delinquent; debts which may be collected through the Treasury Offset Program, an automated centralized debt collection program for collecting Federal debt from Federal payments)
10. Court-Ordered Collection/Debt (Child Support, Alimony, Bankruptcy, Commercial Garnishments)
11. Optional Benefits Premiums (Health care Flexible Spending Accounts (FSA), Dental, Vision, Health Savings Accounts (HSA). Optional FEGLI, Long Term Care, Dependent FSA, TSP (loans, basic and catch-up contributions, then other optional benefits)
12. Other Voluntary Deductions/Allotments (Military Service Deposits, Professional Assoc., Union Dues, Charities, Bonds, personal allotments, additional voluntary deductions)
13. IRS Paper Levies

**29. If an employee performs National Guard or Reserve duty while furloughed, is it a dual compensation situation?**

A. No. It is not a dual compensation situation because furloughed employees are not in a pay status. They will be compensated by the military and continue to be carried in an “Absent-US” status.

**30. Will employees going overseas with advanced pay be able to get advanced pay or recoup their expenses?**



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A. No. Employees will not be able to get advanced pay as long as there is no appropriation in place to pay them. Once appropriations are in place, the employee can file a claim for reimbursement. Exceptions would include employees paid from “trust” or the Defense Business Operations Fund, if funds are available.

### F. Performance Awards and Within-Grade Increases

**31. Can the DON delay the payment of performance awards to employees during a shutdown furlough?**

A. Yes. Neither law nor regulation requires the DON to pay performance awards granted under 5 U.S.C. Chapters 43 and 45 and 5 CFR §451.104(a) (3). The DON may delay payment until after the furlough when funds are available.

**32. Is the DON 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, payment of SES performance awards may be deferred until after the furlough, when funds are available.

**33. Are within-grade or step increases for General Schedule and Federal Wage System employees who are furloughed during a lapse in appropriations delayed?**

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 command policy or collective bargaining agreement that requires a specific effective date.

### G. Leave and Other Time Off

**34. How will employees on home leave be affected?**

A. Employees on home leave will be placed in a furlough status. Home leave may be extended at the discretion of senior management officials.

**35. 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?**



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A. No, a furloughed employee may not use previously approved paid time off during a lapse in appropriations. Upon furlough, all scheduled leave is cancelled for furloughed employees.

### **36. 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. An excepted employee may be excused from duty and be placed in furlough status for approved periods. An excepted employee may also be allowed 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. 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 (leave will not be charged under this option), 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.

Please note that 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 AWOL status for missed work hours, in accordance with DON 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.

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

A. Yes, 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 selects to use paid leave under 31 U.S.C. §1341(c) (3).

However, if an excepted employee needs to be absent from work for brief periods, Commands are encouraged to explore the use of workplace flexibilities such as alternative work schedules and telework (subject to applicable laws, regulations, command policies, and collective bargaining agreements) to accommodate the employee's need to be absent. 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).



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**38. If a Command is willing to approve an excepted employee's intermittent absences from work 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. However, excepted employees have the option to request approval to use paid leave under 31 U.S.C. §1341(c) (3). 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. A shutdown furlough notice with applicable appeal rights must document these furlough periods. Any time an excepted employee is absent from work a shutdown furlough notice that spells out whatever appeal rights are applicable must properly document information.

Another option would be for the command to issue a furlough notice for the period of times 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. The command may 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. 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, Commands should issue such notices as soon as practicable.

**39. 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" or furloughed employee 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. Compensatory time off for religious purposes earned by an excepted employee may not be used until after the lapse in appropriations is over.

**40. If an employee is scheduled to take approved unpaid leave during a shutdown furlough, should the employee be provided 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 Commands 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 LWOP during the lapse in appropriations, the employee must continue to be charged LWOP for all periods of



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such preapproved LWOP that occurred during the lapse.

**41. If an employee is scheduled to take unpaid leave under the Family and Medical Leave Act (FMLA) during a shutdown furlough, should the employee be provided 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 (LWOP under the FMLA), the Command is not required to provide the employee with a furlough notice. If, however, the employee is scheduled to return from FMLA 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).

**42. 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 considers 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). 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 must be canceled and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). Excepted 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 canceled FMLA unpaid leave periods (converted to regular LWOP) and the canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit.

**43. 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). Any previously scheduled paid leave (including paid leave substituted for FMLA LWOP) during the furlough period



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must be automatically canceled. Thus, any periods of scheduled paid leave or other paid time off must be documented as furlough periods.

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. 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.

#### **44. What 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. An excepted employee may face circumstances that would normally qualify him or her for unpaid leave under FMLA. The command 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.

#### **45. 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 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 operations related to non-excepted activities. Being on paid leave is not an activity necessary to execute an orderly shutdown of 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.

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

A. Yes, 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 command is responsible for approving the number of hours an excepted employee



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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.

**47. 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 the DON 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, Commands 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 (i.e. including electronic communications such as email, electronic calendar scheduling, or submissions to a time and attendance system) 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 command policies and procedures.

**48. 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 leave be restored 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



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forfeiture was due to the lapse in appropriations.

### **49. 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 non-pay status without regard to the furlough, the employee's standard rate of pay will be zero, and the employee will remain in the scheduled non-pay status, which can affect the accrual of annual and sick leave under normally applicable rules governing treatment of non-pay 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, Commands should ensure that excepted employees' leave accrual is properly credited.

### **50. 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 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 may be affected during an 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.

### **51. What effect does a shutdown furlough 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).



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### **52. Should an employee that is on investigative leave continue to be carried in that status in the event of a shutdown furlough?**

A. No. A furloughed employee may not use previously approved paid time off of any kind 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.

When appropriations are available, the employee may be returned to an investigative leave status. If the employee is placed on investigative leave under 5 U.S.C. section 6329b, the command must provide the employee a written explanation that, at the conclusion of the period of leave, the command shall take an action under section 6329b(b)(5).

### **53. 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 an exigency of the service beyond the employee's control; thus, if the lapse prevented the employee from using the compensatory time off that would otherwise be forfeited, payment must be provided 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.



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### **54. 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 (such as a shutdown furlough) 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.

### **55. What happens to credit hours in excess of 24 credit hours that were earned in the days prior to a 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 forfeited. 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.

### **56. 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.

### **57. Can Commands 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 affect their ability to return to work on their next workday immediately following the end of a lapse in appropriations. Manager should consider these individual challenges, and to the extent possible, provide appropriate flexibility to employees who are facing difficulties that may delay return to work.

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



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**58. 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, previously approved leave may be canceled prospectively under its normal authority. An employee may also cancel a leave request prospectively.

**59. How does a shutdown furlough affect an employee who is scheduled to take approved paid parental leave (PPL) in substitution for unpaid FMLA leave? Does PPL that is scheduled to be taken during a shutdown furlough period count toward the employee's limited entitlement to 12 weeks of FMLA leave and 12 weeks of PPL in an applicable 12-month period?**

A. In order to receive paid parental leave (PPL), an employee must invoke unpaid leave under the Family and Medical Leave Act (FMLA) for the birth of a child or placement of a child with the employee for adoption or foster care. PPL is a form of paid leave provided via substitution for FMLA unpaid leave.

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). Any previously scheduled paid leave (including PPL substituted for FMLA LWOP) during the furlough period must be automatically canceled. Thus, any absences on days of scheduled PPL, other paid leave, or other paid time off are documented as furlough days. For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting PPL 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. 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.

If an employee had previously scheduled to substitute PPL for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled and converted to a furlough period—unless the employee performs excepted work or elects to use leave under 31 U.S.C. 1341(c)(3). 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



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payment will be delayed until after the lapse ends. The canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the FMLA leave 12-week limit in a 12-month period.

**60. In order to be eligible for FMLA leave (and to substitute paid parental leave (PPL) or other paid leave for FMLA unpaid leave), an employee must have 12 months of creditable Federal civilian service as specified in 5 U.S.C. 6381(1)(B). Does time spent in furlough status count towards this 12 months of required Federal service?**

**A.** Yes, furlough time counts toward the FMLA 12-months-of-Federal-service eligibility requirement in 5 U.S.C. 6381(1) (B). The title 5 FMLA law and regulations do not provide for excluding furlough time or any other non-pay status time in determining whether an employee has 12 months of creditable service for purposes of FMLA eligibility. A Federal employee who is furloughed continues to be employed; the placement of the employee in a temporary nonduty, non-pay status does not terminate the employment relationship. Note that under U.S.C. 1341(c) (2) furlough periods are generally retroactively converted to pay status periods once the lapse has ended.

**61. Under the title 5 paid parental leave (PPL) law, an employee who has substituted PPL for unpaid FMLA leave is required to work for the applicable employing agency (i.e., the agency employing the employee at the time paid parental leave concludes) for 12 weeks after the day on which use of PPL concludes. Does time spent in furlough status count towards the required 12 weeks of work?**

**A.** No. By definition, a furlough period is a period on non-duty status. It does not count as a period of work meeting the 12-week work obligation. See the definition of “work” in the PPL regulations at 5 CFR 630.1705(b) (2).

### H. Holidays

**62. Will employees be paid for a holiday that occurs during a shutdown based on a lapse in appropriations?**

**A.** Exempt employees have a separate source of funding and are 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.

Lapse-affected employees—whether excepted or furloughed—will receive pay for a holiday that occurs during a lapse in appropriations 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). Excepted employees will receive holiday premium pay for work



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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.

Employees, who were regularly scheduled to work on a holiday and were instead furloughed, will now be entitled to holiday premium pay.

Employees preapproved for 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)).

**63. 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 Command’s decision to furlough.

**64. 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, 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 31 U.S.C. §1341(c) (2).)

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

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

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

A. Yes. Each Command 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 from failure to report to work on any other day.



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### **67. 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. Eligible employees will receive payment after an appropriations or 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.*

### **68. 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 non-workday.

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, if an excepted employee does not work on a holiday during a lapse in appropriation, the employee must be put on furlough status.

## **I. Benefits**

### **69. If an employee receives a temporary appointment in another Command 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 Command. Leave balances are transferred as if



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the employee had actually transferred. (See Comptroller General opinion B-167975, September 1, 1970.)

### **70. Will the furlough impact mass transit subsidy/benefits?**

**A.** Furlough does not change the maximum monthly limit (currently \$300 per month for calendar year 2023) for mass transit subsidy/benefits. Since participants may claim only the days for which mass transit was used, furloughed participants--commuting fewer days in a month--will claim fewer days.

### ***Federal Employees Health Benefits Program – General***

### **71. What benefit transactions will the DON Civilian Benefits Center (CBC) process during the emergency furlough?**

**A.** Death cases, and work associated with health and life insurance coverage matters which need to be resolved so coverage continues.

### **72. Will Federal Employee's Health Benefits Open Season dates change?**

**A.** No

### **73. Who should DON employees contact if they do not have computer access to process an election?**

**A.** Contact the Benefits Line at 888-320-2917 or by email at [navybenefits@us.navy.mil](mailto:navybenefits@us.navy.mil). Benefits Line counselors are available Monday through Friday, 7:30 AM until 7:30 PM (Eastern Time), except on federal holidays. The TTY number is 866-359-5277.

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

**A.** Yes. The employee's FEHB coverage will continue even if no premium payments are being made. Following the lapse, each employee who returns to pay status will automatically begin to repay his or her 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.



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**75. 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.

**76. Can an employee who has been furloughed enroll or make changes to their FEHB enrollment during a shutdown furlough?**

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.

### *FEHB Program – Open Season Enrollments/Changes*

**77. Would a lapse in appropriations alter the effective date of an FEHB Open Season enrollment change if an enrollment request were fully processed 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.

**78. 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. 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*

**79. What happens to an employee's Federal Employees' Group Life Insurance (FEGLI) Program coverage during a shutdown furlough?**

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



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additional payment will be withheld in each subsequent pay period until all premiums have been paid.

### **80. 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.

The effective date of an employee's FSAFEDS will not be affected by the lapse in appropriations.

### **81. 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 or emergency furlough. In addition, FLTCIP coverage may not be canceled because 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. Claim benefits, however, 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



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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.

### **82. What happens to an employee's Federal Employees Dental and Vision 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. The effective date of an Open Season enrollment will not be affected, and an enrollment may not be canceled because 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.

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.

FEDVIP Coverage may not be cancelled as a result of nonpayment of premiums or other periodic charges due to such a shutdown furlough. FEDVIP premiums will be paid from back pay or may be paid back from another source for FEDVIP enrollees who elected to make payments directly to the Carrier.

Employees can mail direct bill premiums to:

BENEFEDS-FEDVIP P.O. Box 414095 Boston, MA 02241-4095

Visit the FEDVIP website, <https://www.benefeds.com> for more information.

## **J. Employee Assistance**

### **83. 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. 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 at: <https://www.careeronestop.org/LocalHelp/UnEmploymentBenefits/unemployment-benefits.aspx>. Excepted employees cannot file an Unemployment Compensation claim, since they are not unemployed. Additionally, in order to receive



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Unemployment Compensation benefits, an individual must be able and available to accept work. Excepted employees would not meet this requirement since they are already working.

**84. Is the Unemployment Compensation claim based on the state where the employee lives, or where the employee works?**

A. Unemployment Compensation claims are based on the state in which the work was performed.

**85. Are Human Resources Offices required to provide furloughed Federal employees with an SF-8, “Notice to Federal Employee about Unemployment Insurance?”**

A. Yes, Federal agencies are required to provide a Form SF-8 to employees in addition to the furlough notice. For furlough purposes, a completed SF-8 for each component is located on the Defense Civilian Personnel Advisory Service (DCPAS) external website.

<https://www.dcpas.osd.mil/policy/benefits/unemploymentcompensation> American citizens who are Federal civilian employees (which includes non-appropriated fund activities of the Armed Forces) who are furloughed (placed in non-pay status) while outside of the United States, are eligible for unemployment insurance and should be given an SF-8 no later than on the last day of work. No claim for benefits under the Unemployment Compensation for Federal Employees program may be filed until he/she returns to the United States, the District of Columbia, Puerto Rico or the Virgin Islands.

**86. Can I take a Thrift Savings Plan (TSP) loan while I am furloughed?**

A. A lapse in appropriations does not prevent TSP participants from requesting a new TSP loan. The established eligibility requirements continue to apply. TSP participants can go to [TSP.gov/tsp-loans](https://www.tsp.gov/tsp-loans) or read the TSP Loans booklet for more information about eligibility requirements.

**87. Are Commands agencies required to send in a Form TSP-41, “NOTIFICATION TO TSP OF NON-PAY STATUS (AGENCY USE),” notifying the TSP when employees have been furloughed?**

A. No.

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

A. Employees may want to contact their financial institution, credit union, or learn about their options through the Thrift Savings Plan ([www.tsp.gov](https://www.tsp.gov)).

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

A. Department of the Navy Civilian Employee Assistance Program (DONCEAP) can be helpful in providing confidential counseling and coaching with experienced,



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licensed counselors—including legal and financial consultation. Contact DONCEAP at 1-844-DON-CEAP (1-844-366-2327), TTY: 1-800-635-2883, or visit <https://www.magellanasend.com/> for more information. DONCEAP is available for employees and their families and can be reached 24/7/365

### K. Service Credit for Various Purposes

#### 90. Is furlough or LWOP considered a break in service?

A. No. Both terms mean that the employee continues to be employed in a non-pay, nonduty status for those days/hours. Under normal circumstances, an extended period of non-pay 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 non-pay status (e.g., LWOP, AWOL, suspension status) during a furlough period will not be placed in a pay status retroactively when the lapse has ended. 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.

#### 91. Does the lapse have an impact on completion of requirements for career tenure?

A. No. OPM interprets the Government Employee Fair Treatment Act of 2019 (GEFTA) to have placed furloughed employees, retroactively, into a pay status, as of the beginning of the furlough (and will place future employees into a pay status throughout any future shutdown furlough). Accordingly, in the case of the most recent furlough, the lapse had no impact on completion of requirements for career tenure. Similarly, any future lapse will have no impact as long as GEFTA remains in effect.

### L. Federal Employees on Military Duty

#### 92. 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



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periods of intermittent annual or military leave, per the guidance in the [Frequently Asked Questions on Military Leave](#).

**93. 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 Command 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 Command to calculate any reservist differential payments that may be owed.

**94. 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 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).)

**95. 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. 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.



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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.

**96. Must agencies re-credit military leave canceled during a shutdown?**

A. Yes. Because of the cancellation of scheduled military leave during the lapse in appropriations, Commands must re-credit an employee's military leave account. This re-credited military leave may be used after the end of the lapse in appropriations.

**97. Are commands required to notify civilian employees who are absent due to reserve duty of the shutdown furlough?**

A. If the employee is not expected to work during the furlough period then the command is not required to provide the employee with a furlough notice. If the employee is scheduled to return from reserve duty to civilian 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.

If the reservist is expected to return within the next 30 days, prepare the notice and provide it to the excepted on-site supervisor in case the reservist returns during the shutdown.

## M. Retirement

**98. 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. There will be no effect on an employee's high-3 average pay. 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).

**99. Are the retirement rules concerning the effect of a shutdown furlough the same for employees under the Civil Service Retirement System and the Federal Employees Retirement System?**

A. Yes.

**100. 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



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be either mailed or personally submitted. Any additional required paper work, such as the formal retirement application form, may be completed when the furlough ends. 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 DON.

**101. 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.

**102. How can employees make updates or changes to my retirement benefits?**

A. OPM's Retirement Services is available to assist employees with their retirement benefits. As always, employees 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, employees should first use the online services site to make immediate updates and changes. Employees can also find general information at [OPM.gov/retire](https://www.opm.gov/retire).

**103. How can employees report the death of a family member during a Government shutdown?**

A. Refer to the OPM website Annuitant Death Index - RS Reporting ([opm.gov](https://www.opm.gov)) for information on reporting the death of a current retiree and applying for any benefits, or by calling OPM directly at (888) 767-6738. If the family member was a Federal employee at the time of death, survivors must contact the DON CBC.

## N. Retirement Services: Government Closure

**104. How does the shutdown impact recently retired federal employees?**

A. If the DON CBC submitted the employee's retirement application to OPM, employees will begin receiving interim annuity payments while OPM Retirement Specialists process the application. 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 the CBC still has the application employees will likely experience some delay, as OPM must wait on other agencies to submit all of the information needed to process the retirement.



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### **105. Will applications for disability benefits still be processed?**

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

### **106. Can employees 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.

## **O. Payments upon Separation from Federal Service**

### **107. How does a shutdown furlough impact a separating employee's lump-sum payment for their unused annual leave?**

A. Any payments incurred for an employee's lump-sum payment will be delayed until funds are available.

### **108. 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 Federal Government reemploys the individual.) 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 Federal Government reemploys the recipient during a pay period, they are entitled to 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 non-excepted 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.



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

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

A. The Department of Labor's Office of Workers' Compensation Programs, which administers the FECA, advises that, in the event of a Government shutdown, an employee who is incapacitated due to injury is to remain in COP status during the shutdown unless there is no 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 a Command 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.

#### 110. 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. An employee who is receiving FECA wage loss compensation payments will continue to receive payments during a furlough and will continue to be charged LWOP.

### Q. Orderly Shutdown Procedures

#### 111. When does an "orderly shutdown" begin?

A. After a lapse in appropriations, OMB will direct agencies to begin an orderly shutdown of non-excepted activities and operations. The DON Office of Civilian Human Resources, Policies and Program Department will notify command Directors of Civilian Human Resources.

#### 112. How long should an "orderly shutdown" take?

A. Ordinarily, furloughed employees should take no more than three or four hours to provide necessary notices and contact information, secure their files, complete time and attendance records, and otherwise prepare to preserve their work. Commands should use this time to provide written notices of the decision to furlough.

#### 113. In the event of a lapse on a Friday, when would employees who are funded by annual appropriations (furlough eligible) be expected to conduct orderly shutdown activities?

A. Employees should generally report to conduct necessary orderly shutdown activities (if any) on the next day on which the employee would have been scheduled to work. For example, if an employee's regular work schedule is Monday-Friday, the employee will generally conduct orderly shutdown activities



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on the Monday after the lapse occurs. As such, for an employee whose regular schedule includes Saturday and/or Sunday, the employee will perform necessary orderly shutdown activities on Saturday or Sunday, if the employee had been scheduled that day.

Commands should take into consideration an employee's previously scheduled leave, AWS day off, or holiday(s) that take place during the furlough period and generally allow the employee to complete orderly shutdown activities on the next workday on which the employee had been scheduled to return to work. For example, if an employee was scheduled to be on paid leave on the days right after the lapse commenced, the employee would report to perform orderly shutdown activities on the first workday after the planned period of leave- even though the leave was cancelled by the lapse.

### **114. How is a shutdown furlough documented?**

A. Unlike an administrative furlough, Commands 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 or command timekeepers will document the furlough in the command timekeeping system.

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

A. Provide employees a Form SF-8 (Notice to Federal Employee about Unemployment Insurance), a sample pre-filled SF-8, the DON Orderly Shutdown Checklist for Employees, and DON CEAP information to each furloughed employee.

### **116. Does a Senior Executive System (SES) employee have to sign the furlough letter or can non-SES individuals perform that function. Can it be delegated? Who provides the employee with their furlough notice?**

A. OPM, DoD, and DON policy all require a management official sign the furlough notice, but there is no requirement for the management official to be an SES. The management official that decided who is excepted and who is furloughed is generally the person who will sign the furlough notice. A common practice is to have the head of the activity/UIC sign the furlough notice, and the first level supervisor provides the furlough notice to the employee along with instructions for completing an orderly shutdown.

### **117. 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 effectuating



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the emergency furlough in person. 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.

### **118. May employees conduct orderly shutdown activities remotely? May a command provide an employee electronic notice of a furlough action?**

**A.** Orderly shutdown activities should be conducted remotely to the greatest extent practicable. Supervisors may permit non-expected employees who are scheduled to telework on their next scheduled work day to perform necessary shutdown activities from their telework locations, if an existing telework agreement is in place. Commands are encouraged to allow other employees to conduct necessary shutdown activities from a remote location, even without an existing telework agreement, if the nature of the employees' shutdown activities are de minimis (i.e., can be completed in approximately 15 minutes). Electronic furlough notices must be delivered electronically through DON email. However, some employees may be directed to report to work to receive their Notice of Furlough in person and complete the orderly shutdown of operations.

### **119. How may an employee be recalled during the furlough to perform excepted activities?**

**A.** There is no legal requirement to provide written notification amending the original notice of decision to furlough. Therefore, once a determination is made by the appropriate official that an employee should be recalled for all, or a portion of the remaining furlough period, the supervisor/manager can inform the employee by any reasonable method (e.g., telephonic or personal email). If it is later determined that a recalled employee's services are no longer necessary to engage in an excepted function, the supervisor/manager can inform the employee by any reasonable method (e.g., telephonic, oral, or personal email) and is not required to issue a new notice of decision to furlough, provided such determination is made during the time period indicated in the original notice of decision to furlough. Supervisors/managers should document changes in status from non-expected to excepted, or vice versa in order to provide source documentation to effect any resulting personnel actions. Such documentation may be by: memorandum for record, e-mail communications, spreadsheet, or similar means.

Commands 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.



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### **120. What are a Command's regulatory obligations in providing an appellant the Merit Systems Protection Board (MSPB) appeal information in the adverse action furlough decision notice?**

A. A Command 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 lacks Internet access, the Command 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.

### **121. 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, Commands 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 Command 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.

### **122. 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, the employee 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, they 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 and ordered to report to work during the shutdown, but fails to report, the employee would be considered AWOL during this time, and subject to any consequences that may follow from being AWOL.



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### **123. 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 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.

All notices must include a statement of applicable appeal and grievance rights. Commands must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice.

### **124. 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 Command needs only to set out the maximum time that may be involved, so employees have as much information as possible.

### **125. 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 gives a veteran employee the same procedural rights (5 U.S.C. §7513) as other covered employees. Employees should consult with their Human Resources office to determine whether they are covered by 5 U.S.C. §7513 and what procedures may apply to them.

### **126. If an employee decides to challenge a shutdown furlough, from what point would the time for appeal to the MSPB 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.



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**127. In addition to statutory and regulatory procedural requirements, what other forms of communication should DON commands consider when implementing a shutdown furlough?**

A. Considering the uncertain and changing circumstances surrounding a shutdown furlough, Commands 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, Commands can also consider using toll- free hotlines and emails to home email accounts.

**128. 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 adverse action procedures set forth at 5 CFR Part 752, Subpart D. 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.

When the shutdown furlough goes beyond 30 days, Commands should treat it as a second shutdown furlough and issue another adverse action or furlough notice. Second and subsequent shutdown furloughs lasting an additional 30 days or less (22 workdays) are also covered by OPM regulations under 5 CFR Part 752, Subpart D or 5 CFR Part 359, Subpart H, as applicable.

**129. What procedures and appeal rights are applicable for non-career, limited term, limited emergency employees in the SES, and reemployed annuitants holding career SES appointments?**

A. Non-career, 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 may be furloughed under Command designated procedures, which should include certain minimum features, (i.e., 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).

**130. 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). 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



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completes the probationary period, they are covered by relevant adverse action procedural and appeal rights.

### **131. 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. Commands 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.

For current Federal employees who transfer to a new agency from the DON during a shutdown furlough, Commands should consider delaying the EOD date. Such employees would remain on the rolls of the DON until the new transfer effective date can be re-determined by the DON Command and the new employing agency once the lapse in appropriations has ended.

### **132. Will the Merit Systems Protection Board (MSPB) be addressing furlough related appeals during the shutdown?**

A. Please consult the MSPB website (<https://www.mspb.gov/>) for additional information on the processing of appeals during lapse in appropriations.

### **133. If a Government shutdown occurs, how will furloughed employees be informed when it ends?**

A. Employees should follow their command procedures, including any applicable collective bargaining agreements, which may include monitoring OPM's website ([www.opm.gov](http://www.opm.gov)) and media outlets for notification that the President has signed a continuing resolution or appropriation.

### **134. 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.

## **R. Labor-Management Relations**

### **135. When a lapse in appropriations requires a shutdown furlough, what is a command'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 a shutdown furlough is necessary, Commands have a duty to notify their exclusive representatives and, upon request,



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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 command should inform the union what actions it will take and offer to continue bargaining on a post implementation basis.

### **136. 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. Commands should evaluate the circumstances of their situation to determine whether there is a duty to bargain on union proposals concerning furlough procedures.

### **137. What is the Command’s obligation in responding to a union request under 5 U.S.C. §7114 seeking the Command’s furlough plan and a list of excepted and non-excepted employees?**

A. A Command 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. A Command denying a request for information must assert and establish any countervailing anti-disclosure interests. A Command may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying “no.” With this in mind, Commands will have to evaluate the circumstances of their situation to determine whether they should provide the requested information.

### **138. Can union officials perform representational work on “official time” during a shutdown?**

A. 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



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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 (ADA) exceptions. If a Command official who is excepted has determined, for example, that an investigation or the initiation of a personnel action is necessary to protect life and property, and those actions must be undertaken prior to the enactment of appropriations, such an activities could also constitute exceptions under the ADA. 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 Command 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, Command officials should consult with Human Resources representatives and their Office of General Counsel attorney(s) to evaluate whether contemplated management actions are necessary during the shutdown and whether they will trigger statutory representation rights.

### **139. 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 DON operations, a particular facility, or portions of a facility, may be fully or partially operational.

If a facility were operational and accessible, a union official, who either is an exempt employee or is engaged in an excepted activity, would have access to the union office to engage in representational work in an official time capacity.

### **140. A union has proposed that management rotate the designation of “excepted from the furlough” among employees who are equally qualified. This creates an equitable distribution of the work by not requiring a specific individual or group of individuals to bear the burden of working the entire furlough. Is this negotiable?**

**A.** Yes. Management retains the right to assign work, to determine which duties and responsibilities must be performed during the furlough, and which employees are qualified to perform such duties and responsibilities. How these employees are selected from among those who are equally qualified, however, is subject to negotiation. While the excepted designation is not negotiable, once it has been determined which positions are excepted, the process of determining which employee(s) should be designated excepted, including a rotational schedule, is negotiable.



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### **141. If rotation of the excepted designation is negotiable, do the parties have to agree?**

A. No. The parties must deal in good faith with each other. They are not required to reach agreement. Where agreement cannot be reached, the services of a neutral third party may be used. If the parties have not reached agreement before the furlough, then management has no choice but to proceed by implementing its last offer. Management should, to the maximum extent possible, continue to negotiate with the union during implementation. If the parties reach impasse and the matter goes to the Federal Service Impasses Panel, management must be prepared to show that the requirement to rotate employees would impose an undue burden on the command.

## **S. Travel and Allowances**

### **142. What happens to employees scheduled for training or Temporary Duty Travel (TDY) 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.

*TDY travel and conference participation scheduled to begin after the shutdown occurs should be cancelled, except as noted below. Any TDY travel or conference participation that began prior to the shutdown should, except as noted below, be terminated (i.e., return to one's official duty station) as quickly as possible, but in an orderly fashion. This includes TDY travel and conference participation associated with professional military education training.*

All TDY travel and participation in conferences in direct support of worldwide military operations against al-Qaeda and to counter the Islamic State of Iraq and Syria and other terrorist groups threatening the national security of the United States, including TDY travel of reservists on active duty, may be undertaken or continue. Attendance at such conferences remains subject to applicable conference attendance policies. Other travel/conference participation directly related to safety of human life or the protection of property, including national security, as well as foreign relations (e.g., negotiating international agreements), may be undertaken or continued only if approved, in writing, by the appropriate approval authority listed below and only in the most limited circumstances. The approval authority (which may be delegated to appropriate senior officials) for any such TDY travel or conference participation is the:

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



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- Chairman of the Joint Chiefs for Staff for personnel assigned to the Joint Staff and the Combatant Commanders
- Combatant Commander for personnel assigned to that combatant command
- Principal Staff Assistant (PSA) for personnel assigned to that office and Heads of Defense agencies reporting to that PSA.

Notwithstanding the approval authority stated above, the Deputy Secretary of Defense must approve all TDY travel/conference participation by Presidentially

Appointed - Senate Confirmed (PAS) personnel and the Chairman of the Joint Chiefs of Staff.

### **143. Can excepted employees use their government travel cards to pay for travel during a shutdown furlough?**

A. Per the DoD Contingency Plan Guidance for Continuation of Essential Operations in the Absence of Available Appropriations dated August 2023, travel directly related to excepted activities is permissible with written approval from the appropriate level of leadership. Travel cards will remain operational to the extent accounts remain in good standing (no delinquent balance owed). In the event of a shutdown, Citi Bank will ensure accounts will not be age delinquent, be suspended, or cancelled. In addition, during a shutdown, finance charges will not be assessed; however, statements of account will continue to be generated.

### **144. If 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 and is notified by the Command to return, can the employee elect to delay the return? If the employee decides to delay the return, and as a result 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 "prompt return" travel expenses that the employee incurs are properly incurred obligations of the Command (as part of the DON's orderly- shutdown activities), and will be reimbursed by the Command after appropriations are enacted and are available for that purpose. If, however, an employee elects not to return promptly and, as a result incurs additional travel expenses, those additional travel expenses are not obligations of the Command, and will not be reimbursed. The Command will continue to incur the obligation for those travel costs that would have been incurred if the employee had returned promptly, and the Command will reimburse such "prompt return" travel costs after appropriations are enacted but the employee will be personally liable for the additional travel expenses incurred for delaying their return. Finally, in the case of those employees notified by their Command that to remain on travel, because the continuation of their travel is in direct support of an excepted Command activity, their travel expenses are properly-incurred obligations



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of the Command (as part of the Command carrying out an excepted activity), and the Command will reimburse the travel costs after appropriations are enacted and are available for that purpose.

### **145. How will permanent change of station (PCS) moves and allowances tied to PCS such as temporary quarter's subsistence expense be affected?**

A. PCS for civilian personnel will continue only to the extent expenses chargeable to a funded PCS order issued prior to the funds lapse.

Expenses for movement of civilian personnel chargeable to lapsed appropriations will be limited as follows:

- 1) Moves TO an excepted activity that cannot be delayed will continue.
  
- 2) Moves FROM an excepted activity will continue only to the extent the commander of the excepted activity determines it essential to mission (e.g., overburden of local infrastructure), or required to enhance support of excepted activities.

### **146. What about travel pay for those employees on renewal agreement travel, or student travel?**

A. With no appropriation, there is no money to pay renewal agreement travel, or student travel; however, reimbursement claims can be filed once the appropriations are in place.

### **147. How are my overseas allowances impacted during a furlough caused by a lapse of appropriations?**

A. The Department of State Standardized Regulations states that allowances continue during a lapse in appropriations. However, only exempt employees would be paid, as their positions have funding available. Furloughed employees and excepted employees will receive retroactive pay for allowances once the lapse in appropriations has ended. \* Updated March 2024

## **T. Priority Placement Program (PPP)**

### **148. Are furloughed employees eligible to register in the PPP?**

A. Employees are not eligible to register in the PPP on the basis of furlough alone unless the furlough period is six months or longer. However, if they are eligible based on some other qualifying event such as reduction-in-force, declination of transfer of function, completion of an overseas tour, etc., they may register in accordance with the timelines of that event.

### **149. What will happen to PPP registrations and requisitions submitted on the last business day when employees are furloughed due to a government shutdown?**

A. The Automated Stopper and Referral System will process those transactions,



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and they will take effect on the first business day after the shutdown furlough.

**150. What happens if a PPP registrant is selected before the furlough and has an established entrance on duty (EOD) date that now falls within the furlough period?**

A. The registering and gaining activities must re-negotiate the EOD date before the furlough begins, making every reasonable effort to avoid a service break for the registrant.

**151. If a registering activity is unable to reach a registrant to extend a job offer before the shutdown furlough begins, when does the job offer response time begin (i.e., two days for CONUS registrants and three days for OCONUS registrants)?**

A. As always, the response period does not begin until the registering activity establishes contact with the registrant and actually extends the job offer. Call the appropriate Civilian Assistance and Re-employment Program Coordinator for guidance in problem cases.

**152. Activities will be unable to retrieve matches for active requisitions during a shutdown furlough. Will the matches remain in the system until the furlough ends?**

A. Yes. Adjustments will be made for necessary actions to ensure the data is available at the end of the furlough period.

### U. Pathways Programs

**153. Can the DON extend the 120-day conversion period for a participant in the Pathways Internship program due to a lapse in appropriations?**

A. No, there are no provisions to appoint/convert interns beyond 120 days after completing academic and work requirements. However, OPM will consider requests from agencies for a variation that would allow the conversion to occur.

**154. If a recent graduate completed his/her requirements for conversion to the competitive service during the lapse, how should the command handle the conversion?**

A. If the command chooses to noncompetitively convert a recent graduate who otherwise meets all requirements, the conversion is effective on the date the service requirement is met. To the extent that the furlough period prevented a recent graduate from meeting a requirement in the DON's Recent Graduates Program, the DON will extend the program/appointment for up to 120 days.