

Addendum to OPM Guidance for Shutdown Furloughs
January 29, 2024

Guidance on Pay, Leave, Unemployment Compensation, Thrift Savings Plan, Retirement Services, Workers' Compensation, and Sample Furlough Decision Notices

Pay

In section D. (Pay) of the OPM [Guidance for Shutdown Furloughs](#), we are adding Question D.4a., amending Question D.6., and adding Questions D.7., D.8., D.9., D.10., and D.11. as follows:

4a. Are intermittent employees entitled to retroactive pay following a lapse in appropriations?

A. Intermittent employees—i.e., employees without a regularly scheduled tour of duty (see 5 CFR 340.401)—may be furloughed during a lapse in appropriations. Intermittent employees are covered by the definition of “furlough” in the adverse action regulations at 5 CFR 752.402. Under 31 U.S.C. 1341(c)(2), an employee who is furloughed as the result of a lapse in appropriations must be paid for furlough periods that occurred during the lapse. After the lapse ends, retroactive pay is provided at the employee’s “standard rate of pay.” (See Question D.4.)

If an agency furloughs an intermittent employee, the agency must provide retroactive pay at the employee’s standard rate of pay for the period of the lapse. This should be based on an estimate of the hours the intermittent employee would have worked had the lapse not occurred. Agencies should use their best judgment to determine the hours the intermittent employee would have worked. They may use the employee’s recent work history and/or any agency plans for the lapse period.

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

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

7. If an employee’s pay is insufficient to permit all deductions to be made because a lapse in appropriations occurs in the middle of a pay period and the employee receives a partial paycheck, will the amount of the deductions

taken from the employee's partial paycheck be the same as normal?

A. Some deductions that are based on the amount of an employee's gross pay (or basic pay) will be reduced in size. For example, deductions for the Federal Employees Retirement System (FERS) Basic Benefit are a percentage of basic pay paid to an employee. Other deductions, such as health insurance premiums, may be a fixed dollar amount and will not be affected. Consequently, the amount of money an employee normally sees in their paycheck will be different than what they might expect.

8. If an employee's pay is insufficient to permit deductions for health or other insurance premiums or deductions for flexible spending accounts because the employee receives a partial paycheck or no pay during a lapse in appropriations, will this affect the employee's enrollment or coverage in these benefit programs?

A. An employee's enrollment and coverage under such programs generally will not be affected if the employee is unable to make the required deductions for insurance and other benefits due to receiving a partial paycheck or no pay during a lapse of appropriations. The one exception is that if an employee is enrolled in a health care flexible spending account through FSAFEDS, they can't be reimbursed for eligible health care claims until they return to pay status and payroll deductions can be made. (See section H. Benefits for additional information on how missed insurance premiums and flexible spending account deductions will be paid after the lapse of appropriations ends.)

9. If an employee receives a partial paycheck during a lapse in appropriations, may the employee's agency or payroll provider defer deductions for allotments previously designated by the employee to be taken from retroactive pay when the lapse of appropriations ends in order to provide the employee with a larger partial paycheck?

A. Any changes in an allotment amount or cancellation of an allotment that was previously designated by an employee to be taken from their pay must be personally authorized by the employee under 5 CFR 550.312. Additionally, any changes to an allotment for dues to a labor organization must be taken under regulations prescribed by the Federal Labor Relations Authority (see 5 CFR 550.321) and any applicable collective bargaining agreements.

10. How will deductions for allotments be affected if an employee's pay is insufficient to permit such deductions because the employee receives a partial paycheck or no pay during a lapse in appropriations?

A. Employees should consult their agency or payroll provider for information on how missed allotment deductions will be handled. Employees may want to review their allotments to determine whether they need to make alternative arrangements (e.g., if using allotments to pay loans, alimony, etc.).

Any allotment for dues to a labor organization previously designated by an employee and which was deferred by the agency or payroll provider during the lapse in appropriations because the employee's pay was insufficient to cover the dues allotment deduction would be taken from retroactive pay when the lapse in appropriations ends.

11. How will deductions for court-ordered garnishments be affected if an employee's pay is insufficient to permit garnishment deductions because the employee receives a partial paycheck or no pay during a lapse in appropriations?

A. Employees should consult their agency or payroll provider for information on how missed garnishment deductions will be handled and may need to make alternative arrangements. If a payroll provider is unable to effectuate the garnishment, it should provide a notice to that effect to affected employees and indicate how the provider intends to handle the missed garnishments going forward. We should note that some payroll providers will need to confer with counsel about how much to collect at any given time in any make-up payments.

Leave

In section F. (Leave and Other Time Off), we are revising Questions F.6. and F.7. and adding Questions F.21., F.22., F.23., F.24., F.25., and F.26. as follows:

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

A. No. OPM 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). (See Question F.2.) Any LWOP that was previously scheduled to be used under FMLA during a period when there is a lapse in appropriations will remain as LWOP, but the LWOP will not be considered FMLA leave and will not count against the FMLA 12-week limit. If an employee had previously scheduled to substitute qualifying paid leave for unpaid FMLA leave during a period covered by a lapse, the paid leave must be canceled (see Questions F.1. and F.2.) 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). We anticipate that 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.

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

A. During the lapse in appropriations, affected employees who would otherwise be in pay status must be (1) furloughed or (2) at work performing excepted activities—unless an excepted employee elects to seek approval to use paid leave during the lapse under 31 U.S.C. 1341(c)(3). (See Question F.2.) Any previously scheduled paid leave (including paid leave substituted for FMLA LWOP) during the furlough period 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. (See Questions F.5. and F.6.) For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting paid leave for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.)

21. 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 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). (See Question F.2.) 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. (See Question F.14. regarding employees who had scheduled use of donated annual leave substituted for FMLA LWOP.) For any hours during the lapse in appropriations for which an employee was previously scheduled to be in FMLA LWOP status, the employee will remain in LWOP status, but will not be considered to be using FMLA leave. (See Questions F.5. and F.6.)

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 (see Questions F.1. and F.2.) 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). We anticipate that employees generally will not choose to use paid leave under 31 U.S.C. 1341(c)(3) since 31 U.S.C. 1341(c)(2) provides retroactive pay for furlough periods without charge to leave. Under either approach, any payment will be delayed until after the lapse ends. The 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.

22. 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). Neither the title 5 FMLA law or regulations provide for excluding furlough time or any other nonpay 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, nonpay status does not terminate the employment relationship. (See also Question J.1. for more information on the creditability of nonpay status periods for various

purposes.) We note that under U.S.C. 1341(c)(2) furlough periods are generally retroactively converted to pay status periods once the lapse has ended.

23. 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).

24. Will the 12-month period following the birth or placement of a child during which an employee may use paid parental leave in substitution of unpaid FMLA leave be extended due to the furlough?

A. The 12-month period following the birth or placement during which paid parental leave (PPL) may be used in substitution of unpaid FMLA leave is established by statute and regulations (see 5 U.S.C. 6382(a)(2) and 5 CFR 630.1703(b)(1)). PPL must be used during the 12-month period beginning on the date of birth or placement. There is no authority to extend this 12-month period.

PPL must be substituted for unpaid leave granted under the Family and Medical Leave Act (FMLA). FMLA unpaid leave is limited to 12 weeks in any 12-month period. The commencement of a 12-month FMLA period is triggered by the use of FMLA unpaid leave, and that period may or may not correspond to the 12-month period for using PPL (which commences based on the birth or placement of a child), since FMLA unpaid leave may be used for other purposes. A lapse-related furlough does not affect the running of the 12-month clock for a 12-month FMLA period.

For more information on how a lapse-related furlough affects administration of PPL, see Questions F.21., F.22., and F. 23.

25. Will the 12-month eligibility period during which disabled veteran leave may be used be extended due to the furlough?

A. The 12-month eligibility period for the use of disabled veteran leave (DVL) is established by statute and regulations (see 5 U.S.C. 6329(a), 5 CFR 630.1303, 630.1304(a) and 630.1308(a)). DVL must be used during this 12-month eligibility period. There is no authority to extend this 12-month period.

26. Will the advanced scheduling of annual leave requirement in 5 CFR 630.308(a)

for annual leave restoration purposes be waived/suspended in the event of a shutdown furlough?

A. No. In order for forfeited annual leave to be considered for restoration under 5 U.S.C. 6304(d)(1), it must have been scheduled in writing before the start of the third biweekly pay period prior to the end of the leave year, in accordance with 5 CFR 630.308(a). An agency may consider restoring annual leave that was forfeited due to an exigency of the public business or sickness of the employee **only** if the annual leave was scheduled in writing before the start of the **third biweekly pay period prior to the end of the leave year**. OPM maintains a listing of pertinent leave year dates on our website at: <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/factsheets/leave-year-beginning-and-ending-dates/>.

Employing agencies are responsible for determining whether an employee met the advance scheduling requirement, based on OPM regulations and agency policies and procedures. As allowed by those agency policies and procedures, the “in writing” requirement may be met in various ways, including electronic communications such as email, electronic calendar scheduling, or submissions to a time and attendance system. As provided in [CPM 2019-02](#) issued on January 9, 2019, OPM and the Office of Management and Budget determined that a lapse in appropriations qualifies as an exigency of the public business for purposes of annual leave restoration. Therefore, as long as the leave was properly scheduled in advance, agencies must restore any annual leave that was forfeited because of the lapse in appropriations—regardless of whether the affected employees were furloughed or excepted from the furlough.

Unemployment Compensation

In section I. (Employee Assistance), we are revising Question I.1. as follows:

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

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

[Benefits Finder | CareerOneStop](#)). States will require you to provide your Agency's Federal Identification Code when you file your application.

Thrift Savings Plan

In section I. (Employee Assistance), we are revising Question I.2. and adding Question I.2a. as follows:

2. Can I take a Thrift Savings Plan (TSP) loan while I'm 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 <https://www.tsp.gov/tsp-loans/> or read the TSP Loans booklet (<https://www.tsp.gov/publications/tspbk04.pdf?TSP-BK-04>) for more information about eligibility requirements.

2a. Where can agencies and employees find information on Thrift Savings Plan (TSP) accounts, loans, and loan payments during a lapse in appropriations?

A. Should there be a lapse in appropriations, TSP communications will be posted on the TSP website at www.tsp.gov/shutdown.

Retirement Services

In section M. (Retirement Services: Government Closure), we are revising Questions M.2., M.3., M.4., and M.6 as follows:

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

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

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

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

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

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

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

6. Can I submit a court order that awards a retirement benefit to OPM during a Government shutdown?

A. Yes. OPM employees will continue working to process court ordered retirement benefits.

Workers' Compensation

In section O. (Benefits under the Federal Employees' Compensation Act (FECA)), we are revising the Note to Section O. as follows:

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

Sample Furlough Decision Notices

We are revising the sample furlough decision notices to read as follows:

Sample Shutdown Furlough Decision Notice Due to a Lapse in Appropriations

[Ensure that an SF-8 is attached to this notice]

This notice would be used for a "shutdown" furlough, where the agency no longer has the necessary funds to operate and must curtail those activities not excepted by OMB standards. In such instances there is no advance written notice proposing the action (see 5 CFR 752.404(d) and 359.806(a)), although a written furlough decision notice should be given as soon as possible after the furlough starts.

NOTICE

In the absence of either a Fiscal Year (FY) [state year] appropriation, or a continuing resolution for [agency name], no further financial obligations may be incurred by [agency name], except for those related to the orderly suspension of [agency's name] operations or performance of excepted activities as defined in the Office of Management and Budget (OMB) memorandum for Heads of Executive Departments and Agencies dated November 17, 1981. Because your services are no longer needed for orderly suspension of operations and you are not engaged in one of the excepted functions, you are being placed in a furlough status effective [enter date]. This furlough, i.e., nonduty, nonpay status, is not expected to exceed 30 days. Therefore, this furlough notice expires on [enter date]. You should monitor public broadcasts and the Internet. When a continuing resolution or an FY [state year] appropriation for [agency name] is approved, you will be expected to return to work on your next regular duty day.

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. After the lapse ends, you will receive your "standard rate of pay" for the furlough period in accordance with 31 U.S.C. 1341(c) as soon as possible. (This means that employees who would have been in pay status but for the lapse in appropriations will receive their full regular pay for any furlough period.)

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar

positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

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

The process to exercise your appeal, grievance, and complaint rights are set forth below. Carefully read the explanations for how to exercise your options and the effects of an election as you may elect only **one** avenue for redress.

MSPB Appeal: If you have the right of appeal to MSPB and wish to appeal this action to MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice, whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. If you cannot access the internet, please notify [insert name and contact information] and a paper copy of MSPB's appeal form and regulations will be provided to you. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. You may wish to check MSPB's website for its operating status during this time. MSPB encourages employees to file electronically with MSPB's e-Appeal electronic filing system at <https://e-appeal.mspb.gov/>. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. MSPB requires that attorney representatives register as e-filers with MSPB and file all pleadings using MSPB's e-Appeal. If you submit an appeal to MSPB, the agency official to whom MSPB should send the Acknowledgment Order and copy of the appeal is [insert the official's name or title, physical mailing address, email address, telephone, and fax number].

Grievance Under Collective Bargaining Agreement: Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. An employee is deemed to have exercised an option when the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the negotiated grievance procedure, whichever event occurs first. Inquiries about pursuing the grievance process cannot alter the MSPB deadlines referenced above. However, the election of the negotiated grievance procedure will not prejudice the employee's right to request MSPB review of the final decision with

Sample Notice of Furlough During Holiday to Excepted Employee Due to a Lapse in Appropriations

[Ensure that an SF-8 is attached to this notice]

In the absence of either a Fiscal Year (FY) [state year] appropriation, or a continuing resolution for [agency name], no new financial obligations may be incurred by the Agency for functions funded through annual appropriations, except with respect to certain personnel who are otherwise authorized to continue to work.

As you are aware, as an employee who has been excepted from furlough and continued to work during the shutdown, you are required to work on those days you would normally be scheduled to work. The upcoming [state holiday] on [state date], is not a day you would normally be scheduled to work, and we are not requiring you to work on that day. Because of the operation of the shutdown furlough rules, we must place you in a furlough status for the [state holiday] holiday. As an excepted employee, you are expected to return to work on your next regularly scheduled workday following the [state holiday] holiday. For the vast majority of you, this means you would return to work on [state date].

If you have a work schedule that does not include [state date], as a workday, you will follow the normal holiday rules for an “in lieu of” holiday. All full-time employees, including those on flexible or compressed work schedules, are entitled to an “in lieu of” holiday when a holiday falls on a non-workday. For example, if you have a Monday through Friday alternative work schedule (AWS), and [state holiday] is your regularly scheduled AWS day off, you will do as you have generally done for previous holidays and take your “in lieu of” holiday the work day immediately preceding Monday. For example, if the holiday is Monday, [insert date], your “in lieu of” holiday would be Friday, [insert date]. You would be in furlough status on Friday instead of Monday in this example. You would return to work on Tuesday, [insert date], because your regular day off is on Monday, [insert date].

This can be a bit confusing, so if you do not fall in the category above of working a Monday through Friday schedule and/or are unclear of when your “in-lieu of” holiday is to occur, please consult with your supervisor. In the event your supervisor is unavailable, please call or email [state agency] Human Resources.

This action is being taken because of a sudden emergency requiring curtailment of the agency’s activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. After the lapse ends, you will receive your “standard rate of pay” for the furlough period in accordance with 31 U.S.C. 1341(c) as soon as possible. (This means that employees who would have been in pay status but for the lapse in appropriations will receive their full regular pay for any furlough period.)

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

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

The process to exercise your appeal, grievance, and complaint rights are set forth below. Carefully read the explanations for how to exercise your options and the effects of an election as you may elect only **one** avenue for redress.

MSPB Appeal: If you have the right of appeal to MSPB and wish to appeal this action to MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice, whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. If you cannot access the internet, please notify [insert name and contact information] and a paper copy of MSPB’s appeal form and regulations will be provided to you. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located

when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. You may wish to check MSPB's website for its operating status during this time. MSPB encourages employees to file electronically with MSPB's e-Appeal electronic filing system at <https://e-appeal.mspb.gov/>. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. MSPB requires that attorney representatives register as e-filers with MSPB and file all pleadings using MSPB's e-Appeal. If you submit an appeal to MSPB, the agency official to whom MSPB should send the Acknowledgment Order and copy of the appeal is [insert the official's name or title, physical mailing address, email address, telephone, and fax number].

Grievance Under Collective Bargaining Agreement: Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. An employee is deemed to have exercised an option when the employee timely files a notice of appeal under the applicable appellate procedures or timely files a grievance in writing in accordance with the provisions of the negotiated grievance procedure, whichever event occurs first. Inquiries about pursuing the grievance process cannot alter the MSPB deadlines referenced above. However, the election of the negotiated grievance procedure will not prejudice the employee's right to request MSPB review of the final decision with respect to allegations of discrimination as defined in 5 U.S.C. 2302(b)(1). To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

Discrimination Complaint: If you believe this action involves discrimination based on race, color, religion, sex, national origin, handicapping condition, or age, you have the right to file a complaint under the provisions of 29 C.F.R. Part 1614. To do so, you must contact an Equal Employment Opportunity (EEO) counselor within forty-five (45) calendar days of your receipt of this letter. For further information or assistance, you may contact [insert name, address, e-mail address, and phone number of agency's EEO contact]. Use of the pre-complaint process described in 5 C.F.R. § 1614.105 does not constitute an election, but the filing of a complaint does.

Office of Special Counsel Complaint: You may file a prohibited personnel action complaint to seek corrective action through the Office of Special Counsel in accordance with subchapters II and III of 5 U.S.C. chapter 12. However, your appeal rights to MSPB will be limited to protected whistleblower disclosures under 5 U.S.C. § 2302(b)(8) or retaliation for engaging in certain protected activities under 5 U.S.C. § 2302(b)(9). Visit <https://osc.gov/> for more information.

Attached is the SF-8, *Notice to Federal Employee about Unemployment Insurance*. Please be aware that you may be required to repay any unemployment insurance payments once an

appropriations bill is enacted and you receive pay for the period of the furlough. Additional information about unemployment insurance is available at <http://www.servicelocator.org/OWSLinks.asp>.

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

Deciding Official

Date

I acknowledge receipt of this decision.

Employee's signature

Date

Attachment: SF-8

Sample Notice of Furlough During Intermittent Absences and Holidays to Excepted Employee Due to a Lapse in Appropriations

[Ensure that an SF-8 is attached to this notice]

In the absence of either a Fiscal Year (FY) [state year] appropriation, or a continuing resolution for [agency name], no new financial obligations may be incurred by the Agency for functions funded through annual appropriations, except with respect to certain personnel who are otherwise authorized to continue to work.

As you are aware, as an employee who has been excepted from furlough and continued to work during the shutdown, you are required to work on those days you would normally be scheduled to work. Because of the operation of the shutdown furlough rules, however, we must place you in a furlough status for the following dates: [state applicable date(s)]. As an excepted employee, you are expected to return to work on your next regularly scheduled workday following [state date]. This means you would return to work on [state date].

This action is being taken because of a sudden emergency requiring curtailment of the agency's activities; therefore, no advance notification is possible. The customary 30-day advance notice period and opportunity to answer are suspended under the provisions of 5 CFR 752.404(d)(2). The 30 day-advance notice otherwise required by 5 CFR 359.806(a) for Senior Executive Service (SES) career appointees (other than reemployed annuitants) may be shortened or waived.

If employees are being retained in your competitive level or competitive area, they are required for orderly suspension of agency operations or they are performing one of the excepted activities defined in the OMB memorandum.

During the furlough period, you will be in a nonduty, nonpay status and you may not work at your workplace or other alternative worksite unless and until recalled. You will not be permitted to work as an unpaid volunteer. Any paid leave (annual, sick, court, etc.) approved for use during the furlough period is canceled. After the lapse ends, you will receive your "standard rate of pay" for the furlough period in accordance with 31 U.S.C. 1341(c) as soon as possible. (This means that employees who would have been in pay status but for the lapse in appropriations will receive their full regular pay for any furlough period.)

Employees who have completed a probationary or trial period or 1 year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the Merit Systems Protection Board (MSPB). Employees in the excepted service who have veterans preference may appeal to MSPB if they have completed 1 year of current continuous service in the same or similar

positions as the one they now hold. Employees in the excepted service who do not have veterans preference and who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service may appeal to MSPB if they have completed 2 years of current continuous service in the same or similar positions in an Executive agency under other than a temporary appointment limited to 2 years or less.

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

The process to exercise your appeal, grievance, and complaint rights are set forth below. Carefully read the explanations for how to exercise your options and the effects of an election as you may elect only **one** avenue for redress.

MSPB Appeal: If you have the right of appeal to MSPB and wish to appeal this action to MSPB, you must file the appeal within 30 calendar days after the effective date of your furlough, or 30 days after the date of your receipt of this decision notice, whichever is later. If you wish to file an appeal, you may obtain information about the appeals process and a copy of the appeals form from the MSPB website at <http://www.mspb.gov/appeals/appeals.htm>. If you cannot access the internet, please notify [insert name and contact information] and a paper copy of MSPB's appeal form and regulations will be provided to you. MSPB requires an appeal to be filed with the MSPB regional or field office serving the area where your duty station was located when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. You may wish to check MSPB's website for its operating status during this time. MSPB encourages employees to file electronically with MSPB's e-Appeal electronic filing system at <https://e-appeal.mspb.gov/>. Employees have a right to representation in this matter and may be represented by an attorney or other person of their choosing. MSPB requires that attorney representatives register as e-filers with MSPB and file all pleadings using MSPB's e-Appeal. If you submit an appeal to MSPB, the agency official to whom MSPB should send the Acknowledgment Order and copy of the appeal is [insert the official's name or title, physical mailing address, email address, telephone, and fax number].

Grievance Under Collective Bargaining Agreement: Bargaining unit employees may grieve this action in accordance with the applicable negotiated agreement [provide citation to negotiated agreement] or may appeal to MSPB in accordance with the procedures outlined above, but not both. An employee is deemed to have exercised an option when the employee timely files a notice of appeal under the applicable

appellate procedures or timely files a grievance in writing in accordance with the provisions of the negotiated grievance procedure, whichever event occurs first. Inquiries about pursuing the grievance process cannot alter the MSPB deadlines referenced above. However, the election of the negotiated grievance procedure will not prejudice the employee's right to request MSPB review of the final decision with respect to allegations of discrimination as defined in 5 U.S.C. 2302(b)(1). To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

Discrimination Complaint: If you believe this action involves discrimination based on race, color, religion, sex, national origin, handicapping condition, or age, you have the right to file a complaint under the provisions of 29 C.F.R. Part 1614. To do so, you must contact an Equal Employment Opportunity (EEO) counselor within forty-five (45) calendar days of your receipt of this letter. For further information or assistance, you may contact [insert name, address, e-mail address, and phone number of agency's EEO contact]. Use of the pre-complaint process described in 5 C.F.R. § 1614.105 does not constitute an election, but the filing of a complaint does.

Office of Special Counsel Complaint: You may file a prohibited personnel action complaint to seek corrective action through the Office of Special Counsel in accordance with subchapters II and III of 5 U.S.C. chapter 12. However, your appeal rights to MSPB will be limited to protected whistleblower disclosures under 5 U.S.C. § 2302(b)(8) or retaliation for engaging in certain protected activities under 5 U.S.C. § 2302(b)(9). Visit <https://osc.gov/> for more information.

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

Deciding Official

Date

I acknowledge receipt of this decision.

Employee's signature

Date

Attachment: SF-8