

Office of Personnel Management
Retirement and Insurance Group



1920



1954



1959



1986

Benefits Administration Letter

Number: 96-702

Date: January 22, 1996

SUBJECT **Pay and Benefits for Employees Affected by
the Lapse in Appropriations**

The purpose of this BAL is to transmit copies of two memoranda for directors of personnel that provided guidance on pay and benefits for employees affected by the lapse in appropriations.

A handwritten signature in black ink that reads "Mary Sugar". The signature is written in a cursive, flowing style.

Mary M. Sugar, Chief

Attachments

January 6, 1996

MEMORANDUM FOR DIRECTORS OF PERSONNEL (CPM 96-1)

**FROM: ALLAN D. HEUERMAN
ASSOCIATE DIRECTOR
FOR HUMAN RESOURCES SYSTEMS**

**SUBJECT: Pay and Benefits for Employees Affected by
the Lapse in Appropriations**

Congress has passed and the President has signed legislation authorizing the immediate return to duty in a pay status of all Federal civilian employees who have been affected by the lapse in appropriations that began on December 16, 1995. In addition, the legislation provides compensation for both excepted and furloughed employees retroactively from December 16, 1995, until the date of enactment (January 6, 1996).

The following guidance has been prepared by the Office of Personnel Management in consultation with the Office of Management and Budget. It is intended to assist affected agencies in administering pay and benefits for affected employees. As used below, the term "excepted employees" refers to employees who are excepted from a furlough because they are performing functions related to national security, protection of life or property, or the orderly suspension of agency operations.

1. Pay

All employees returning to work are deemed by this legislation to be "excepted employees" and are deemed to have returned to work at "the first regularly scheduled opportunity after December 15, 1995"--i.e., at the beginning of the next regularly scheduled tour of duty for each individual employee. From that time until January 6, 1996, all affected employees will be compensated as though they had performed work for the agency during all periods of regularly scheduled duty. Therefore--

- Employees are entitled to receive their rate of basic pay for all periods of time during which they would have been in a pay status but for the lapse in appropriations;
- In the case of a within-grade increase that was delayed because of time in a non-pay status for which the employee will now be compensated, the

within-grade increase must be made effective on the date it was originally due (assuming all statutory and regulatory requirements for within-grade advancement have been satisfied);

- Employees who were 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 on a regular basis are 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 must be paid as if the employee actually continued to work; and
- All periods of time from December 16, 1995, until January 6, 1996, during which employees would, but for the lapse in appropriations, have been in a pay status (including regularly scheduled overtime hours and periods of standby duty) must be considered “hours of work” for pay administration purposes under the Fair Labor Standards Act.

2. Excused Absences and Leave

- Except as provided below, absences from December 16, 1995, until January 6, 1996, must be recorded as excused absences and may not be charged to any form of paid leave (i.e., annual leave, sick leave, or other paid leave), compensatory time off, or credit hours under a flexible work schedule.
- In the case of employees who were on approved leave without pay (LWOP) during the lapse in appropriations, absences from December 16, 1995, until January 6, 1996, must continue to be charged to LWOP for the duration of the period of approved LWOP.
- Employees who were on approved paid leave (or compensatory time off or credit hours) on the first workday after December 15, 1995, should be charged only for the approximate period of time from the beginning of each individual employee’s normal workday until the time other similarly situated employees departed from work after receiving furlough notices. The remaining period of time in the employee’s regularly scheduled tour of duty must be recorded as an excused absence.
- All employees affected by the lapse in appropriations that began on

December 16, 1995, must now be deemed to have been in a pay status from December 16, 1995, until January 6, 1996, and agencies must therefore recredit any sick or annual leave that may have been deducted from an employee's leave account because the employee was considered at the time to be in a non-pay status.

3. Restoration of Forfeited Annual Leave

- Excess annual leave (i.e., “use or lose” leave) that is not used before the beginning of the new leave year (January 7, 1996, for most employees) will be forfeited. However, forfeited annual leave that was scheduled in advance (before the deadline specified in OPM regulations) must be restored if there is an “exigency of the public business.” OPM’s regulations delegate to the head of each agency the authority to determine that an “exigency of the public business” existed.
- OPM advises agencies to restore forfeited annual leave in a separate leave account to each affected employee who performed work on a day during the period from December 16, 1995, until January 6, 1996, on which annual leave had been scheduled in advance for that employee in accordance with OPM regulations. This guidance is based on the conclusion that the “exigency of the public business” in this case is the requirement to report for work in order to perform activities that were excepted at the time under the terms of the Antideficiency Act.
- Annual leave restored because leave was forfeited as a result of the lapse in appropriations that began on December 16, 1995, must be scheduled and used not later than the end of the leave year ending 2 years after the date fixed by the agency head (or his or her designee) as the termination date of the exigency of the public business that resulted in forfeiture of the annual leave. Because the exigency in this case ended before the beginning of leave year 1996, affected employees will have until the end of leave year 1997 to schedule and use their restored annual leave.

4. Leave for Employees Who Return to Work

- The legislation authorizing return to work provides that all excepted employees will be covered by the normal leave policies as if no lapse in appropriations had occurred. Therefore, beginning on January 6, 1996, absences from duty must be charged to the appropriate category of paid or unpaid leave.

5. Holidays

- Except as provided below, all employees affected by the lapse in appropriations will receive their regular holiday pay for the Christmas Day and New Year's Day holidays (and, if applicable, holiday premium pay for work performed by or scheduled for an employee during his or her normal hours of duty on one or both of these holidays, plus overtime pay for work in excess of the normal hours of duty on the holiday).
- As indicated in paragraph 2., above, employees who were on approved leave without pay (LWOP) at any time from December 16, 1995, until January 6, 1996, must continue to be charged LWOP for the duration of the period of approved LWOP. Therefore, if such an employee was on LWOP on both the last workday before the Christmas Day or New Year's Day holiday and the first workday after the holiday, he or she will not be paid for the holiday. (This policy is consistent with the normal rules governing entitlement to pay for a holiday when an employee is on LWOP. See 56 Comp. Gen. 393 (1977).)

6. Alternative Work Schedules (AWS)

- Each agency should have a policy specifying when flexible work schedules must be established and when they may be changed. Normally, such schedules are established in advance of the pay period involved. Under such a policy, an AWS nonworkday cannot be changed after the pay period begins.

7. Retirement Deductions and Actions

- *Retirement deductions under the Civil Service Retirement System or the Federal Employees Retirement System must be deducted from the employee's retroactive basic pay for the period from December 16, 1995, until January 6, 1996. The employing agency must also contribute to the Retirement Fund its corresponding share for the retroactive payment. The total retirement deductions and agency contributions for each employee should equal the amount that would have been withheld and contributed had the employee not been affected by the lapse in appropriations. These amounts should be remitted to OPM using the normal procedures for retroactive adjustments.*
- *The period of retroactive pay is fully creditable for retirement purposes and is not considered LWOP.*

- *Agencies should process retirement actions effective during the period from December 16, 1995, until January 6, 1996, as follows--*

For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, agencies should make the retirement effective as of the date requested (probably December 31, 1995, or January 1-3, 1996). The retirement request may be informal (such as a letter requesting retirement) and can be either mailed or personally submitted to the agency (even if put under the door). Any additional required paperwork, such as the formal retirement application form, may be completed after the date of enactment. No time periods after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the agency.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General has issued guidance permitting retroactive personnel actions (including retirements) only under limited enumerated circumstances--i.e., "where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee of a right granted by statute or regulation." (See 58 Comp. Gen. 51, at 53 (1978).) It will be up to the employing agency to determine in each case whether the Comptroller General's criteria have been met.

- *If any retirement application has been delayed because of the lapse in appropriations, it should be quickly processed and submitted to OPM so that OPM will be able to begin annuity payments as soon as possible.*

8. Thrift Savings Plan

- *Agencies with questions concerning the Thrift Savings Plan should contact the Federal Retirement Thrift Investment Board at (202) 942-1450.*

9. Health Benefits

- *Some agencies were unable to process the open season enrollments because the personnel and payroll staffs were furloughed. The enrollments and enrollment changes that the employing offices received during the open season period are effective on the first day of the first pay period beginning on or after January 1, 1996, regardless of whether*

they were processed.

- *Some employees may be eligible to enroll or change enrollment because of an event that occurred during the period from December 16, 1995, until January 6, 1996. In cases where the effective date would normally be the first day of the first pay period following the day the employing office receives the enrollment form, agencies should be flexible about approving earlier effective dates (as if the employee had submitted the enrollment form immediately following the event).*
- *Health benefits deductions and contributions for each enrolled employee should equal the amount that would have been deducted and contributed had the employee not been affected by the lapse in appropriations. These amounts should be remitted to OPM using the normal procedures for retroactive adjustments.*

10. Life Insurance

- *Because all affected employees will be paid for the period from December 16, 1995, until January 6, 1996, life insurance deductions and contributions for each enrolled employee should equal the amount that would have been deducted and contributed had the employee not been affected by the lapse in appropriations. These amounts should be remitted to OPM using the normal procedures for retroactive adjustments.*

11. Unemployment Insurance

- Employees who are paid retroactively for the period from December 16, 1995, until January 6, 1996, and who received unemployment insurance (UI) benefits for that period of unemployment will be required to repay the UI benefits they received. The procedures for repayment of UI overpayments to furloughed employees will be coordinated between the employing agency, the affected employee, and the applicable State Employment Security agency.

12. Documentation of Personnel Actions

- Agencies should not process SF 50's to document a furlough resulting from the lapse in appropriations that began on December 16, 1995, and SF 50's that were processed must be canceled using Nature of Action Code "001." Do not record the furlough with any document designated for long-term filing in the Official Personnel Folder.

- Agencies need not provide a furlough notice to an employee who did not receive a notice from December 16, 1995, until January 6, 1996.

13. OPM Contacts

- Questions on pay and leave entitlements may be directed to the Office of Compensation Policy on (202) 606-2858.
- Questions on health benefits, life insurance, and retirement should be directed to the Insurance Officer or Retirement Counselor of your agency. Retirement Counselors may contact the Agency Advisory Services Division on (202) 606-0788. Insurance officers may contact the Office of Insurance Programs, Insurance Policy and Information Division, on (202) 606-0191.
- Questions on furlough procedures may be directed to the Office of Labor Relations and Workforce Performance on (202) 606-2920.
- Questions on the documentation of personnel actions may be directed to the Office of Workforce Information on (202) 606-4415.

January 17, 1996

MEMORANDUM FOR DIRECTORS OF PERSONNEL (CPM-96-2)

**FROM: ALLAN D. HEUERMAN
ASSOCIATE DIRECTOR
FOR HUMAN RESOURCES SYSTEMS**

**SUBJECT: Restoration of Forfeited Annual Leave to
Employees
Affected by the Recent Lapse in Appropriations**

On Saturday, January 6, 1996, the Office of Personnel Management, in consultation with the Office of Management and Budget, issued instructions to directors of personnel on pay and benefits for employees affected by the lapse in appropriations that began on December 16, 1995. In an effort to provide timely advice and assistance to Federal agencies in anticipation of a return to duty by Monday, January 8 (and the need to process payrolls for the previous pay period), this guidance was issued within about 12 hours after the President signed legislation providing retroactive compensation for all Federal civilian employees who were affected by the lapse in appropriations.

One of the issues addressed in our January 6, 1996, memorandum was the restoration of forfeited annual leave. We advised agencies that they should--

restore forfeited annual leave . . . to each affected employee who performed work on a day during the period from December 16, 1995, until January 6, 1996, on which annual leave had been scheduled in advance for that employee in accordance with OPM regulations. [Emphasis added.]

Many agency personnel officials have contacted OPM and OMB during the 2 working days since the issuance of these instructions to express concerns about the implications of this policy. In particular, concerns have been expressed about the disparate impact of this policy on employees who were prevented from using their previously scheduled annual leave because of the lapse in appropriations, but who, unlike those "excepted" employees who performed work during that period, would not be eligible for

restoration of annual leave under the policy announced by OPM. Some pointed out that a number of furloughed employees may have sustained financial loss or disruptions in their plans because of uncertainties about when or whether they would be paid for (or called back to work during) the furlough period.

Therefore, upon further consideration and discussion with the President's Management Council, we have determined that the guidance stated above should be amended as follows:

Agencies should restore forfeited annual leave in a separate leave account to each affected employee who was not permitted, because of the lapse in appropriations, to use annual leave that had been scheduled in advance for that employee in accordance with OPM regulations. OPM regulations require that such leave must have been scheduled before the beginning of the third pay period prior to the end of the leave year (November 26, 1995, for most employees). Any annual leave restored under this policy must be scheduled and used not later than the end of leave year 1997.

This guidance is based on the conclusion that the "exigency of the public business" in this case is the lapse in appropriations, which prevented the use of annual leave by all affected employees, whether they were considered at the time to be "excepted" or furloughed.

To ensure that all affected employees are treated in a similar fashion, it is expected that all agencies will follow the guidance stated above. Questions about this policy decision should be directed to OPM Director Jim King or OMB Deputy Director for Management John Koskinen.