DEPARTMENT OF DEFENSE

DCPAS

Defense Civilian Personnel Advisory Service

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SHUTDOWN FURLOUGH

Questions and Answers
October 9, 2013

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1.0 REFERENCE

Office of Personnel Management (OPM) *Guidance and Information on Furloughs*

2.0 INTRODUCTION

These questions and answers augment those provided in the OPM's *Guidance and Information on Furloughs*, which can be found at: http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough. The questions and answers are specific to the issues raised by a shutdown furlough occurring when there is a lapse in annual appropriations and may not necessarily be the same for any future furloughs.

3.0 GENERAL ADMINISTRATION

1. What is a shutdown furlough?

A shutdown (also called an emergency) furlough is the placing of an employee in a temporary non-duty, non-pay status because there is a lapse in appropriations, upon expiration of a continuing resolution, or if a new continuing resolution or appropriation law is not enacted.

2. Under what authority is a furlough taken?

For most employees, furloughs are covered under adverse action procedures found in Subpart D of 5 Code of Federal Regulations (CFR) 752. Furloughs for Senior Executive Service members are covered in Subpart H of 5 CFR Part 359.

3. How is an employee notified of a furlough?

Ultimately, employees are notified of a furlough in writing by memorandum that is either personally hand-delivered to the employee, or if not available in person, is mailed by certified/return receipt to their home address of record. If required to mail a notice to an employee, the certified/return receipt mail option provides proof of mailing that is a legally acceptable means of delivery. During a shutdown furlough, there may not be enough time for a written notification. In these situations, reasonable notification (such as telephonic, oral, personal e-mail, etc.) is permissible, followed by written notice.

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

Yes. While an employee must ultimately receive a written notice of decision to furlough, it is not required that such written notice be given prior to effecting the emergency furlough.

5. How is an employee notified of the end of the furlough?

Employees should listen to public broadcasts and monitor the Office of Personnel Management (OPM) website (www.opm.gov) to keep abreast of the latest news regarding the budgetary status of the United States Government.

6. How is time on a shutdown furlough documented?

At the conclusion of a shutdown furlough, OPM will release specific guidance on how to prepare a Standard Form-50 (SF-50), "Notification of Personnel Action," for each individual subject to furlough.

7. What effect will a furlough have on the calculation of an employee's creditable service?

Time spent in a non-pay status (including furlough) is credited as follows:

- **Career tenure:** The first 30 calendar days of each non-pay period is creditable service. (5 CFR 315.201(b)(4)(ii)(A))
- **Probationary period:** An aggregate of 22 workdays in a non-pay status is creditable service. (5 CFR 315.802(c))
- **Qualification standards:** There is no requirement to extend qualifying periods by the amount of non-pay status. However, agencies may require such extensions in order to meet training requirements or ability to perform. (5 CFR 335.103(b)(3), OPM Qualification Standards, General Policies and Instructions, part E.3.(f))
- **Time-in-Grade:** Non-pay status is creditable service. (5 CFR 300.605(a))
- **Service Computation Date-LEAVE:** Up to six months in non-pay status is creditable. (5 U.S.C. 6303(a))
- **Service creditable for within-grade-increases:** The time in a non-pay status that is creditable is determined by the employee's current step (See 5 CFR 531.406(b) for GS & 532.417(c)(2) for FWS)

8. What effect does a furlough have on time limited appointments or promotions?

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

9. What happens to time limited appointments that expire during a furlough?

Furloughs do not extend the time limits for temporary (5 CFR 316.401(c)) and term (5 CFR 316.301(a)) appointments. An agency may extend the time limited appointment prior to the furlough, or the individual may be reappointed after the furlough in accordance with 5 CFR 316.401(c) or 5 CFR 316.302(b) (7).

10. May an employee volunteer to do his or her job on a non-pay basis during a furlough period?

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

4.0 LEAVE

1. If an employee who received a furlough notice had previously scheduled annual or sick leave on a furlough day, what happens to the scheduled leave?

Upon furlough, all scheduled leave is canceled (annual leave, sick leave, or other). Absences during the furlough may not be charged to leave.

2. May employees who were designated as excepted from a shutdown furlough be granted paid leave?

No. If an excepted employee is unavailable to be at work and perform the duties determined by the employing agency to be allowable activities the employee must be furloughed. An agency may subsequently terminate the furlough if the employee's services are still required for excepted activities following the absence.

3. If an employee is on approved leave without pay (LWOP), but affected by the furlough, would the employee be furloughed and LWOP terminated?

No. The status of employees in LWOP is not disturbed unless there is indication that the employee may return from the LWOP during the furlough.

4. How will employees on home leave be affected?

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

5. If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, do furlough days count towards the 12-week entitlement to FMLA leave?

No. Days associated with a furlough will not count against an employee's 12-week FMLA leave entitlement.

5.0 PAY

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

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.

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

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.

3. What about travel pay for those employees on renewal agreement travel, or student travel?

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.

4. Will employees in Temporary Duty (TDY) status during the furlough period be paid? How are employees in TDY status informed and advised in the event of a furlough?

If employees in a TDY status are determined to be excepted, they will be entitled to be paid when funds are appropriated. However, non-excepted employees will be in a furlough status and will not be paid. These employees will be reimbursed for travel and per diem after appropriations are approved. Non-excepted employees on TDY should be contacted as expeditiously as possible and advised to return home and remain there in a furlough status until further notice.

6.0 THE IMPACT OF THE "PAY OUR MILITARY ACT" ON PAY AND LEAVE

1. How does the Pay Our Military Act impact Department of Defense employees' pay and leave?

Pay and leave provisions for Department of Defense (DoD) civilian employees during the Fiscal Year 2014 shutdown furlough will vary by individual depending upon their status - those originally exempt or excepted, those recalled under the provisions of the Pay Our Military Act (POMA), and those remaining on furlough.

2. Will I receive my full paycheck for the pay period that included October 1-4?

Employees who were exempt from the shutdown furlough (e.g., Non-appropriated Fund employees) and those who were originally at work performing excepted activities during October 1-4, 2013 will receive their regular pay and allowances for the pay period that included those dates.

Employees furloughed on October 1, 2013, whether they were called back to duty on October 6th or not, will receive only a partial paycheck for the pay period that includes October 1-5. Those who were called back to work on October 6th will receive their regular pay and allowances for subsequent pay periods via the authority and appropriation in POMA.

3. Will I receive back pay for the time I spent in furlough status?

Until and unless Congress passes legislation to restore their pay and allowances for October 1-5, **AND** there is a 2014 appropriation for the Department, employees who spent time in a furlough status will not receive pay or allowances for the days upon which they were furloughed. These employees will be paid for the time they spent conducting orderly shutdown activities on October 1, but will not receive that pay until there is a 2014 appropriation for the Department by which they may be paid.

4. May I take paid annual leave or sick leave if I am recalled to duty under POMA?

Exempt and excepted employees and those employees recalled to full time duty under POMA may all use paid annual and sick leave. Employees who remain on furlough remain in a non-pay-non-duty status and may not.

Furloughed employees who are asked to return to duty under POMA for a brief period to perform excepted activities remain in a furlough status for any time not spent performing those activities and may not use paid leave.

5. I didn't receive any bi-weekly accrual of sick or annual leave. What happened?

Furlough (and any other non-paid time) affects leave accrual. Most employees already have taken six furlough days (48 hours); when they reach a total of 10 furlough days or 80 hours (on/about 4 October), they will lose the sick and annual leave they would have earned for the pay period. Once an employee reaches 80 hours of non-pay time during a calendar year, no leave is accrued during the pay period that threshold is reached. A new 80-hour threshold begins the following pay period, and employees will again lose leave in each pay period in which the employee reaches 80 hours in a non-pay status. If Congress restores pay to furloughed employees, any lost leave will also be restored.

6. Will I receive pay for Columbus Day?

Normal Federal holiday rules apply for Columbus Day and subsequent holidays for all employees who were either exempted or excepted from furlough or recalled under POMA. Such employees will be paid for the day even if they are not at work.

Employees who are in a non-pay-non-duty status for the day immediately before and after any Federal holiday are not paid for the holiday itself. If Congress restores pay to any furloughed employees, lost pay for any Federal holiday that fell within furlough period will also be restored.

7.0 MASS TRANSIT SUBSIDY

1. Will the furlough impact mass transit subsidy/benefits?

Furlough does not change the maximum monthly limit (currently $245) 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.

8.0 BENEFITS

8.1 Federal Employees Health Benefits (FEHB)

1. To what extent does a shutdown furlough affect Federal Employee Health Benefits (FEHB) coverage?

FEHB enrollment continues for no more than 365 days in a non-pay status. The employee contributions continue to accrue while employees are in a non-pay status. The premiums accumulate and are withheld from his or her pay upon returning to duty.

2. Will an employee continue to be covered under the FEHB program if the agency is unable to make its premium payments on time?

Yes, the employee's FEHB coverage will continue even if an agency does not make the premium payments on time.

8.2 Federal Employees Group Life Insurance (FEGLI)

1. To what extent does a shutdown furlough affect FEGLI coverage?

FEGLI coverage continues for 12 consecutive months while in a non-pay status without cost to the employee or the agency. The non-pay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months.

8.3 Thrift Savings Plan (TSP)

1. Will TSP investments be affected by a Government shutdown? What about disbursements?

Investment activity will continue. Share prices and account balances will continue to be updated each business day, and loans and withdrawals will continue to be disbursed.

2. What happens to my contributions?

Because you are not paid during a furlough, your TSP contributions will stop, and, if you are a Federal Employee Retirement System employee, you will not receive agency contributions during this time.

3. Can I take a TSP loan while I'm furloughed?

No. The TSP has adopted an administrative rule that provides that TSP participants must be in a pay status in order to take a TSP loan. 5 C.F.R. 1655.2(b). The TSP adopted this rule because it generally requires TSP participants to agree to repay their loans through payroll deduction. 5 C.F.R. 1655.12(b). The first payment is due on or before the 60th day following the loan issue date. 5 C.F.R. 1655.14(c). However, by law, a TSP participant may take a TSP loan any time before entering furlough or non-pay status. 5 U.S.C. 8433(g)(1).

4. What impact does the furlough have on an employee's loan payments?

If you have an outstanding loan and you are furloughed, your loan payments will stop because they are deducted from your pay. Loans are not considered in default until the participant has missed more than 2½ payments. If you miss a loan payment (or two) as a result of the furlough, you always have the option to make direct payments to the TSP using the Loan Payment Coupon available in the Forms & Publications section on the TSP Web site. Otherwise, your loan term will be extended or, if you have requested the maximum loan term, you may have a balloon payment at the end of the loan term. If you miss more than 2½ payments, TSP will notify you by mail that you must mail in a personal check for the "cure" amount to get your loan back on track.

5. Are agencies required to send in a Form TSP-41 notifying the TSP when employees have been furloughed?

No.

6. Can the Government take money from the TSP to resolve the financial situation?

No, the money in the TSP is held in trust for its participants. Neither Congress nor the Administration can take money from an employee's TSP account.

7. To what extent does non-pay status affect Thrift Savings Plan (TSP) coverage?

Deductions will cease for periods of non-pay status where there are insufficient funds to cover the Thrift Savings Plan (TSP) premium(s). Employees cannot contribute to their TSP accounts while on furlough, unless they are furloughed for less than a pay period. Employees should refer to the TSP Fact Sheet, Effect of Non-pay Status on TSP Participation. The fact sheet can be found at http://www.tsp.gov/forms/oc95-4w.pdf.

8.4 Flexible Spending Account (FSAFEDS)

1. To what extent does a shutdown furlough affect Flexible Spending Account (FSAFEDS) coverage?

Health Care Expenses: Deductions will cease for periods of non-pay status where there are insufficient funds to cover the Flexible Spending Account (FSA) premium(s). Eligible health claims incurred during non-pay status will not be reimbursed until the employee returns to a pay status and allotments are successfully restarted. The remaining amounts are recalculated over the remaining pay periods to match the participant's election amount.

Dependent Care Expenses: Eligible dependent care expenses incurred during non-pay status may be reimbursed up to the balance 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. When the employee returns to a pay status, allotments will be recalculated based on the number of pay dates remaining in the Benefit Period.

8.5 Long Term Care (LTC)

1. To what extent does a shutdown furlough affect LTC coverage?

Payroll deductions cease when the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for employees to continue LTC coverage, the employee must make payments while in a non-pay status. If Long Term Care Partners does not receive payment for three consecutive pay periods, they will begin to direct bill the enrollee. The enrollee should pay premiums directly billed to him or her on a timely basis to ensure continuation of coverage. Visit the LTC Web site, https://www.ltcfeds.com/documents for more information.

8.6 Federal Employees Dental and Vision Insurance Plan (FEDVIP)

1. To what extent does a shutdown furlough affect FEDVIP coverage?

FEDVIP payroll deductions cease when an employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). In order for FEDVIP coverage to continue, employees must make payments while in a non-pay status. If premiums are not paid, coverage will be terminated at the end of the pay period in which premiums were last paid.

To avoid termination of FEDVIP benefits, an employee can be moved to a Direct Bill payment plan, by request. With this option, an employee would receive a statement by postal delivery and the invoice must be paid by check. Employees are required to pay all Direct Bills IN FULL to avoid the cancellation of their coverage/plan. If a full payment is not received by the due date, the coverage will be cancelled.

Employees can mail direct bill premiums to:

BENEFEDS
P.O. Box 797
Greenland, NH 03840-0797

Visit the FEDVIP web site https://www.benefeds.com for more information.

8.7 Retirement

1. To what extent will a furlough affect my retirement annuity benefits?

Retirement coverage continues for up to six months for periods of non-pay status per calendar year.

8.8 Unemployment Compensation

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

Federal agencies are required to make a SF-8 available to employees once they have been in a non-duty status for seven or more consecutive days.

2. What address should the HR Office provide on the SF-8, Notice to Federal Employee about Unemployment Insurance? What is the Federal Identification Code (FIC)?

The address on the SF-8 should be the address for the Civilian Personnel Office (CPO) or Human Resource Office. The FIC is 421 for DOD Agencies, 422 for the Department of the Army, 423 for the Department of the Navy and 424 for the Department of the Air Force.

3. Are furloughed employees stationed overseas eligible to file for Unemployment Compensation (UC) benefits?

Overseas employees are not eligible to file for UC benefits unless they return to the United States (U.S.). Their UC claim would then be based on their state of residence.

4. Could an overseas employee file a retroactive claim when they return to the U.S. at the end of their tour of duty in two years?

No. None of the State Employment Security Agencies (SESA) would backdate a claim two years. If an UC claim was filed at that time, the claim would be effective when it was filed and not retroactive to the time of the furlough.

5. Can employees excepted from the furlough file an UC claim, since they are not getting paid?

No. Excepted employees cannot file an UC claim, since they are not unemployed. In addition, in order to receive UC benefits, you must be able and available to accept work. Excepted employees would not meet this requirement since they are already working.

6. Is the UC claim based on the state where the employee lives, or where they work?

UC claims are based on the state in which the work was performed (this does not include overseas employees).

7. Are employees who are lower than a Grade 9, Step 5, excepted from paying back UC benefits if they are later paid for the furlough period?

Overpayment requirements apply to all employees, regardless of their grade or salary. The decision on whether or not employees would have to pay back UC benefits would be decided by each State Employment Security Agency based on their UC law.

8. Is information available as to what the states require before processing a claim for unemployment because of a furlough?

Yes. The list below gives Web sites or instructions for each state when filing an initial claim for unemployment; different procedures often apply when filing claims for additional benefits. You should also note that Kentucky has a Web site – at http://www.oet.ky.gov/des/ui/staterefguide.asp - that lists state web sites, plus telephone numbers, for about 40 states.

Alabama – http://dir.alabama.gov/uc

Alaska – http://labor.state.ak.us/esd_unemployment_insurance/home.htm

Arizona – https://www.azdes.gov/landing.aspx?id=4211

Arkansas - http://www.arkansas.gov/esd/UI/index.htm

California – https://eapply4ui.edd.ca.gov/

Colorado – http://www.coworkforce.com/uib/

Connecticut – http://www.ctdol.state.ct.us/progsupt/unemplt/M1A/LogInIntro.htm

Delaware – http://ui.delawareworks.com

District of Columbia – https://does.dcnetworks.org/InitialClaims/

Florida – http://www.floridajobs.org/job-seekers-community-services/reemployment-assistance-center/file-a-claim

Georgia - http://www.dol.state.ga.us/

Hawaii – http://hawaii.gov/labor/ui

Idaho – http://labor.idaho.gov/dnn/Default.aspx?alias=labor.idaho.gov/dnn/idl

Illinois – http://www.ides.state.il.us/individual/certify/default.asp

Indiana – http://www.in.gov/dwd/

Iowa – http://www.iowaworkforce.org/ui/file1.htm#1

Kansas – www.getkansasbenefits.gov

Kentucky – http://www.kewes.ky.gov/

Louisiana – https://laors.laworks.net/laclaims/Web site/

Maine – https://gateway.maine.gov/DOL/mics/BasePage.aspx

Maryland – electronic filing not permitted if employee worked for the Federal Government in the past 18 months. File by phone at 410-949-0022 in the Baltimore area, or 1-800-827-4839 outside the Baltimore area. Information is at http://www.dllr.state.md.us/employment/unemployment.shtml

Massachusetts – initial claim by phone or in person only. File by phone at 1-877-626-6800 from Massachusetts, 617-626-6800 outside Massachusetts. Information is at http://www.mass.gov/?pageID=dlwdconstituent&L=2&L0=Home&L1=Claimants&sid=Edwd

Michigan – http://www.michigan.gov/uia/0,1607,7-118--77962--,00.html

Minnesota – http://www.uimn.org/

Mississippi http://mdes.ms.gov/unemployment-claims/, form must then be brought in person to a Mississippi Job Center

Missouri – http://www.labor.mo.gov/DES/Claims/

Montana – https://app.mt.gov/ui4u/index

Nebraska – https://uibenefits.nwd.ne.gov/BPSWeb/jsp/BPSClaimantWelcome.jsp

Nevada – http://www.ui.nvdetr.org/UI_Agreement.html

New Hampshire – http://www.nh.gov/nhes/

New Jersey – http://lwd.dol.state.nj.us/labor/ui/ui_index.html

New Mexico – http://www.dws.state.nm.us/

New York – https://ui.labor.state.ny.us/UBC/home.do?FF_LOCALE=1

North Carolina – https://www.ncesc.com/individual/webInitialClaims/applyBegin.asp

North Dakota – https://secure.apps.state.nd.us/jsnd/uiiaclaims/login.htm

Ohio – http://unemployment.ohio.gov/

Oklahoma – https://unemployment.state.ok.us/instructions.asp?x=n

Oregon – http://findit.emp.state.or.us/ocs

Pennsylvania – https://www.paclaims.state.pa.us/UCEN/

Puerto Rico - http://www.trabajo.pr.gov/

Rhode Island – https://uiclaims.state.ri.us/RI-ICS/Intro/index.aspx?AC=yes

South Carolina – http://dew.sc.gov/

South Dakota – http://dlr.sd.gov/ui/default.aspx

Tennessee – http://www.state.tn.us/labor-wfd/esdiv.html

Texas – http://www.twc.state.tx.us/ui/uiclaim.html

Utah – https://jobs.utah.gov/ui/ContinuedClaims/UIAccountHome.aspx

Vermont – file by phone only, by calling 1-877-214-3330. Information is at http://www.labor.vermont.gov/Unemployed/tabid/109/Default.aspx

Virginia – http://www.vec.virginia.gov/vecportal/seeker/jslogin.cfm

Virgin Islands – file in person only; contact information is listed at http://www.vidol.gov/OP/Contact.htm

Washington – http://www.esd.wa.gov/uibenefits/index.php

West Virginia – http://www.wvuc.org/

Wisconsin – https://ucclaim-wi.org/InternetInitialClaims/InfoBasicRequirements.asp

Wyoming - https://doe.state.wy.us/InetClaims/

8.9 Injury Compensation

1. If an employee was in receipt of Federal Employees' Compensation Act (FECA) wage-loss compensation and was then furloughed, what effect would the furlough have on his/her compensation?

None. FECA wage-loss compensation is not considered wages and, therefore, is not affected by a lack of funding at the employing agency.

2. If an employee sustains a traumatic injury at work and begins to receive continuation of pay (COP) what happens to the COP when he is furloughed?

When employees are furloughed due to a lapse in appropriations, there is no legal authority to pay COP or any similar payment. However, lapsed appropriations do not abrogate the employee's entitlement to COP in any way. Therefore, although COP disbursements may be suspended during a furlough caused by lapsed appropriations, retroactive payment is mandatory once funding has been appropriated. Once the furlough begins, COP is placed in abeyance pending the resumption of funding. When funding is available any remaining COP entitlement must be paid on a retroactive basis. The Department of Labor recognizes that they cannot force an agency to make payments of salary to furloughed employees when the agency has no funds to legally do so. If Congress does not decide to pay furloughed employees for the days off, COP would still have to be paid retroactively under 5 U.S.C. 8118.

9.0 PRIORITY PLACEMENT PROGRAM (PPP)

1. Are furloughed employees eligible to register in the PPP?

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 (RIF), declination of transfer of function, completion of an overseas tour, etc., they may register in accordance with the timelines of that event.

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

The Automated Stopper and Referral System (ASARS) will process those transactions, and they will take effect on the first business day after the shutdown furlough.

3. 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?

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.

4. 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)?

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.

5. 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?

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

10.0 EMPLOYEE RELATIONS

1. What information should my Agency provide in a furlough notice?

The notice must specify the reason for the furlough and state that in accordance with 5 CFR 752.404 and 5 CFR 359.806 (a), as a result of a lapse in appropriations the usual 30 calendar days advance notice and opportunity to reply are not possible due to the emergency requiring curtailment of agency operations. The notice must include a statement of applicable appeal and grievance rights to include:

- A written decision by the agency with the specific reasons for its action at the earliest time practicable;
- The right to appeal the agency's action to the Merit Systems Protection Board (MSPB);
- The right to file a complaint with the Office of Special Counsel (OSC) if the employee believes the furlough action is taken as reprisal for whistleblowing;

- The right to file a complaint with the Equal Employment Opportunity Office and the Equal Employment Opportunity Commission (EEOC) if the employee believes furlough was effected in a discriminatory manner; and
- Where applicable, an affected bargaining unit employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to the Merit Systems Protection Board, but not both.

11.0 LABOR RELATIONS

1. Are employees who serve as union representatives on 100% official time subject to the furlough?

Yes. Unless employees who have been granted 100% official time to represent the union are otherwise excepted from the furlough, they must be furloughed and will have no entitlement to official time during the furlough period.

2. What is an agency's obligation to bargain when it becomes necessary to furlough employees?

The decision to furlough employees is a management right protected from collective bargaining by 5 U.S.C. 7106 (a) (2) (A). Further, during an emergency furlough, the agency may "take whatever actions may be necessary to carry out the agency mission during emergencies (5 U.S.C. 7106(a) (2) (D)). However, the agency must provide an opportunity to bargain over the procedures for implementing its decision and appropriate arrangements for employees adversely affected by the furlough, unless the matter of furloughs is already ***"covered by"*** a collective bargaining agreement. Notwithstanding the above agency obligations, given the nature of an emergency furlough, there may be little to no advance notice possible with the absolute requirement to furlough employees. Consequently, a shortened period to complete bargaining or post implementation bargaining may be required.

3. A union has proposed that management rotate the designation of "excepted from the furlough" among employees who are equally qualified. This minimizes the impact on all employees, especially if Congress does not provide pay for those furloughed. Is this negotiable?

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 that 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.

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

No. The parties must deal in good faith with each other, either in partnership or through collective bargaining. They are not required in either approach 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 agency.

12.0 TRAINING AND DEVELOPMENT

1. May an employee attend scheduled training on a furlough day?

No. An employee cannot attend any training that falls on a furlough day. Also, an employee cannot work on any training assignments on a furlough day. Employees should consult with the training provider to make other arrangements (e.g., make-up sessions or rescheduling the course).

2. What are employees who are in a long-term developmental assignment or activity allowed to do on furlough day(s)?

Employees cannot attend any developmental activities on a furlough day or work on any developmental assignments on a furlough day. In general, developmental program managers are aware of the furlough and will, to the extent possible, synchronize furlough days with affected Components so as to mitigate the furlough's impact on participants. Employees should consult with their developmental program manager for more information.

13.0 SECURITY CLEARANCE

1. If the furlough impacts my ability to meet my financial obligations (e.g., mortgage or rent payments), will it impact my eligibility for continued suitability for Federal employment, access to classified information, or to hold a sensitive position?

A furlough is a circumstance beyond your control. The Federal Adjudicative Guidelines specify that the adjudicative process is the careful weighing of a number of variables known as the "whole person concept." Mitigating factors include whether the conditions that resulted in the concern were largely beyond the person's control and whether or not the individual acted responsibly under the circumstances. As a proactive measure, you may wish to contact your local Employee Assistance Program (EAP) to see if financial planning is available.