

U.S. MERIT SYSTEMS PROTECTION BOARD

SHUTDOWN PLAN

CONTINGENCY PLAN FOR PERIODS

OF

LAPSED APPROPRIATIONS

INTRODUCTION

COVERAGE

Pursuant to Office of Management and Budget (OMB) Circular No. A-11 (2016), this plan and its exhibits apply to the orderly shutdown of all Merit Systems Protection Board (MSPB) functions and activities in the event of a lapse in appropriations for normal agency operations. The plan does not address other unexpected contingencies.

DEFINITIONS (For Purposes of this Plan)

- “Excepted Employees” – employees who are funded through annual appropriations who are nonetheless excepted from the furlough because they are performing work that, by law, may continue to be performed during a lapse in appropriations. Excepted employees may include employees who are performing emergency work involving the safety of human life or the protection of property or performing certain other types of excepted work.
- “Exhaustion of Funds” – the point at which all available MSPB monies have been obligated.
- “Lapse in Appropriations” – the date on which the MSPB has no new funding authority due to lack of action by Congress, generally at the beginning of a fiscal year.
- “Shutdown Activities” – those activities necessary to limit operations to excepted functions.

PART I

SIGNIFICANT FUNCTIONS TO BE CONTINUED/CEASED

- A. The Attorney General’s decision of January 16, 1981 and subsequent OMB memoranda provide that only excepted functions are to be continued during any appropriations hiatus. Excepted functions are defined as those necessary to prevent a compromise to the safety of human life or the protection of property. In addition to engaging in these excepted functions during an appropriation hiatus, agencies may engage in activities necessary to “clos[e] down operations funded by accounts that have not received appropriations.” OMB Memorandum M-91-02 (October 5, 1992).
- B. The MSPB does not perform excepted functions as defined above – that is, those that protect life or property. Accordingly, MSPB will be required to shut down in the event of an appropriations hiatus. The following actions will be required to effect such a shut down:

- a. To the extent legally permissible, reallocate all available funds to forestall the fund interruption date as long as possible.
- b. Limit operations to minimum services required to preserve and secure MSPB property once spending authority ceases, or all funds are exhausted.
- c. Provide support services necessary to continue these minimum required services.
- d. Process necessary personnel actions and records.
- e. Conduct shutdown activities when all available funds are exhausted.

C. With the exception of employees whose activities are funded by accounts not affected by an appropriation hiatus, the MSPB will maintain only sufficient support staff (clerical/administrative) to facilitate shutdown and to support minimum required services.

PART II

ESTIMATE OF TIME NEEDED TO COMPLETE SHUTDOWN ACTIVITIES

A. INTRODUCTION

Actions are required prior to, during, and immediately following an exhaustion of all available MSPB funds. These actions and the time frames in which they are to be performed are set forth below. The date indicated in the checklist represents:

- 1. Work days prior to no funds (NF – number of work days)
- 2. Date of no funds (NF), and
- 3. Work days following no funds (NF + number of work days).

B. TIMETABLE AND ACTIONS

DATES

ACTIONS

| | |
|---------------|---|
| Date of lapse | The Director of the Office of Financial Administrative Management (FAM) determines the amount of funds remaining and the number of days the agency can possibly operate before a shutdown will be required. The Director of FAM notifies the Chairman or Executive Director (ED) of the availability of funds on a daily basis. |
|---------------|---|

- NF-10 The Director of FAM notifies the Chairman or ED and the General Counsel (Congressional Affairs Liaison) of potential reallocation of funds to forestall the fund interruption date.
- The General Counsel (Congressional Affairs Liaison) notifies the appropriate Congressional Committees of potential reallocation of funds.
- The ED issues notice to all employees (Exhibit 1) informing them of possible lapse in funding.
- NF-8 The ED informs offices of their targeted office strength to perform excepted activities when all funds are exhausted using the criteria established in Part I.
- NF-7 Office Directors and Regional Directors/Chief Administrative Judges (CAJs) submit to the ED in writing the connection between the function to be performed to maintain adequate support staff (clerical/administrative) to facilitate orderly agency shutdown and to support excepted activities.
- Office Directors and Regional Directors/CAJs prepare lists of employees to be excepted and furloughed by name, social security number, grade, job title and office. For those employees being excepted from the furlough, identify the excepted function that each employee will perform. These lists are to be developed using the criteria established in Part I and guidance from the ED.
- NF-4 Office Directors and Regional Directors/CAJs review and revise as necessary lists of employees to be furloughed. *(This may not be necessary if the Chairman or ED decides which employees are furloughed and which are excepted.)*
- Office Directors and Regional Directors/CAJs transmit list of employees to be furloughed to the ED. *(This may not be necessary if the Chairman or ED decides which employees are excepted.)*
- Office Directors and Regional Directors/CAJs identify those contracts that should be kept in place or entered into.
- NF-2 The ED approves lists of employees to be furloughed and submits it to the Human Resources Director (FAM/HR) for processing.

The Budget Officer (FAM/BO) prepares notice of agency funding (Exhibit 2) and submits to ED for signature.

NF-1 The ED issues notice (Exhibit 2) to all employees informing them of the exhaustion of all available funds and the possibility that employees will have to be furloughed.

NF-0 Office Directors and Regional Directors/CAJs inform excepted employees to continue activities that are deemed excepted. Excepted employees upon reporting for work are instructed to perform only those functions associated with the orderly suspension of agency activities, e.g.,

1. Notify outside parties of agency status, including all courts in which the MSPB has pending litigation.
2. Cancel meetings, etc.
3. Secure all files.
4. Document status of individual cases and projects.
5. Date stamp and secure all mail received but do not process further.
6. Answer telephones, but only to inform callers of our status and not to respond to new business matters unless it is of an emergency nature.

Office Directors and Regional Directors/CAJs notify employees who will not be furloughed so they can perform excepted activities.

The ED authorizes FAM/HR to issue furlough notices to employees not being retained to perform excepted functions in accordance with agency policies. (Exhibit 3)

Office Directors and Regional Directors/CAJs require employees in a travel status to return to duty station unless travel is for purposes of shutdown activities.

The Office of Regional Operations (ORO), the Office of the Clerk of the Board (OCB), and the Office of Appeals Counsel (OAC) terminate appeal, outreach and MAP proceedings. OPE terminates studies and surveys.

Office Directors and Regional Directors/CAJs inform employees to check news reports for the status of the shutdown.

Office Directors and Regional Directors/CAJs excuse personnel receiving furlough notices.

Director of FAM informs all offices that no obligations can be incurred without his/her or FAM/BO's prior approval.

NF+1

The ED authorizes the Director of FAM to furlough any additional employees who have completed shutdown activities.

The ED consults with the OMB and the Office of Personnel Management (OPM), if required, regarding shut-down activities.

Office Directors and Regional Directors/CAJs or designees take whatever administrative actions are necessary to ensure protection and security of MSPB property and personnel.

NF +2 - 28

Continue minimum required activities.

NF + 29

The ED authorizes FAM/HR, if necessary, to issue second furlough notices according to MSPB policies and appropriate regulations. (Exhibit 4)

Director FAM issues termination notices to MSPB contractors and termination notices for contracts with vendors/contractors.

Continue minimum required activities.

NF + 30

Continue minimum required activities.

PART III

STATEMENT OF TOTAL NUMBER OF AGENCY EMPLOYEES AFFECTED

Approximately 220 agency employees are expected to be on-board before implementation of this plan. MSPB personnel will be divided into two categories: (1) employees in non-pay, non-work (or furlough) status and (2) those in a delayed-pay work status performing excepted functions. Employees in the non-pay, non-work category will be furloughed at the time that the agency is required by law to maintain only minimum excepted functions. Employees in the delayed-pay work category will be retained to carry on those minimum excepted activities. MSPB employees engaged in shutdown activities are required to report for work to perform shutdown activities, as necessary.

The MSPB has no employees that fall within the following categories:

1. Their compensation is financed by a resource other than annual appropriations;
2. They are necessary to perform activities expressly authorized by law;
3. They are necessary to perform activities necessarily implied by law;
4. They are necessary to the discharge of the President's constitutional duties and powers; and,
5. They are necessary to protect life and property.

PART IV

RESPONSIBILITIES AND AUTHORITIES OF EACH COMPONENT WITHIN THE MSPB

The Office of the Chairman or Designee (Chairman):

- a. Ensures execution of the Shutdown Plan.
- b. Determines the excepted functions of the agency.
- c. Submits the list of excepted functions to OMB for transmittal to Congress, if necessary.

Executive Director (ED):

- a. Assists the Chairman in determining the agency's excepted functions.
- b. Assists the Chairman with ensuring the implementation of the Shutdown Plan.
- c. Informs offices of targeted office strength to perform excepted functions.
- d. Approves the list of employees to be furloughed and those to be excepted from the furlough when all available funds are exhausted.
- e. Issues notice of general information on agency funding to all employees. (See Exhibit 1)
- f. Signs notice to all employees indicating that all available funds have been exhausted. (See Exhibit 2)
- g. Reviews and adjusts, if necessary, the lists of employees to be excepted or furloughed when all available funds are exhausted and transmits lists to the Director of FAM so that he/she may take appropriate steps to notify such employees of any change in their status.
- h. Authorizes FAM/HR to prepare and to provide furlough notices to be issued to furloughed employees and, where applicable, to any employees initially retained for excepted functions when their services are no longer needed.
- i. Authorizes the Director of FAM to prepare and issue notices of extended furloughs, if shutdown exceeds 30 days.
- j. Authorizes the Director of FAM to notify OMB, OPM, the Department of the Treasury (Treasury), the United States Department of Agriculture-National Finance Center (NFC), the United States Department of Agriculture-Animal and Plant Health Inspection Services (APHIS), and the General Services Administration (GSA), if operations have to be permanently suspended.

The Office of the General Counsel (OGC):

- a. Assists the Chairman in determining the agency's excepted functions.

- b. Provides the Chairman and MSPB staff with legal advice pertaining to shutdown activities or matters stemming from such activities prior to and during a shutdown.
- c. Drafts legal responses relating to issues arising from an exhaustion of funds.
- d. Defends or provides legal assistance to the Department of Justice to defend the MSPB in judicial proceedings arising from a lapse in appropriations or an exhaustion of funds.
- e. Ensures the Congressional Liaison Officer coordinates with the appropriate Congressional committees to reallocate available funds as necessary at the earliest indication of lapses in appropriations in collaboration with the Director of Financial and Administrative Management (FAM) or his/her designee.
- f. Consults with the employees' Professional Association regarding shutdown actions that may impact bargaining unit employees.
- g. Identifies all pending litigation and notifies courts that the MSPB will be unable to participate in those cases during the duration of the shutdown.

The Office of Financial and Administrative Management (FAM):

- a. Determines the amount of funds available to operate at the earliest indication of funding difficulty.
- b. Advises the ED of the availability of funds on a daily basis.
- c. Reallocates, to the extent permitted, all available funds in order to forestall the fund-interruption date as long as possible prior to initiation of orderly shutdown activities.
- d. Determines time period that the agency can operate before all available funds are exhausted.
- e. Notifies the ED when all available funds have been exhausted.
- f. Ensures personnel payrolls for periods prior to fund interruption are processed.
- g. Establishes records of deferred payment for personnel retained during shutdown.
- h. Takes necessary action to adjust allotments as appropriate during periods of lapsed appropriations.
- i. Ensures that no contractual or other financial obligations are entered into after a lapse in appropriations other than those deemed necessary to the shutdown.
- j. Ensures that funds are not disbursed.
- k. Provides notice of agency funding (see Exhibit 2), revised as necessary, to the ED for signature.
- l. Reviews lists of employees to be excepted and those to be furloughed to assure that each employee's name appears on either the excepted list or furlough list.
- m. Upon authorization of the ED, reviews and ensures issuance of furlough notices to all affected employees and any employee initially retained for excepted functions whose status subsequently changes. (See Exhibit 3).

- n. Directs the processing of personnel records in connection with the issuance of furlough notices.
- o. Issues “stop work” orders to MSPB contractors for contracts other than those deemed essential when all funds are expended. (See Exhibit 7)
- p. Issues termination notices to MSPB contractors for contracts other than those deemed essential when shutdown exceeds 30 days. (See Exhibit 8)
- q. Issues or directs, upon authorization of the ED, extended furlough notices to appropriate personnel when shutdown exceeds 30 days. (See Exhibit 4).
- r. Identifies to the ED, the FAM/BO, and the Contracting Officer those contracts that should be kept in place or entered into to provide support services (e.g., telecommunications, email, and blackberry services).
- s. Ensures the inventory and transfer of all personal and real property to GSA (See Exhibit 6) if agency operations have to be permanently suspended.
- t. Advises employees to monitor public news media (radio, television, and newspapers) as well as appropriate Federal Agencies’ internet sites for information on the status of funding approval and/or notice that funding has been approved and their obligation to report for work at the beginning of their next regular tour of duty day after such notification (See Exhibits 3 and 4).
- u. Takes, in its discretion, additional actions using available resources (e.g., email, agency emergency information telephone number, MSPB website) to notify employees of funding approval and their obligation to return to duty at the beginning of their next regular tour of duty day.
- v. Notifies contractors of the availability of funds and cancels “Stop Work Orders” for Agency contractors as soon as practicable.

The Office of the Clerk of the Board (OCB):

- a. Disseminates information to the media to announce status of the agency.
- b. Notifies appellants of the status of their appeals during the agency shutdown and provides appellants with information regarding any actions they should take.
- c. Ensures the transfer of agency records to the National Archives and Records Administration (NARA) (see Exhibit 5) if agency operations have to be permanently suspended.
- d. Notifies Administrative Law Judges and Administrative Judges to “stop work” on pending cases and suspend related activities.

The Office of Regional Operations (ORO) & Regional Directors:

- a. Secures/closes offices.
- b. Secures records.

- c. Submits final purchase card statement.
- d. Cancels hearings and court reporters.
- e. Contacts appellants regarding closure.

The Office of Information Resources Management (IRM):

- a. Ensures computer operations/shutdown and reactivation of idle systems in time for day 1 activities without any data loss or interruption.
- b. Maintains email and telephone systems for notice to employees.

EXHIBIT 1

TO: All MSPB Employees

SUBJECT: General Information on Agency Funding

Due to the absence of Congressional action on funding legislation, the Merit Systems Protection Board (MSPB) may be required to implement measures to achieve an orderly shutdown of agency activities, including furloughing all those employees whose services are not excepted from furlough to help accomplish the shutdown or to protect the safety of human life or property.

Pursuant to direction from OMB, and consistent with guidance from the Attorney General, the MSPB has developed the MSPB Shutdown Plan which provides for an orderly shutdown of the MSPB in the event all available funds are exhausted. This Plan provides for the conduct of only that business necessary for the orderly though temporary termination of agency activities, and the protection of life and property.

We do not anticipate a permanent lack of funding. However, we feel this notice is necessary for your general information should a short funding hiatus occur. In the event all available funds are exhausted, supervisors will refer to the MSPB Shutdown Plan for specific guidance.

The following paragraphs summarize actions that could occur, and your rights relating to these actions, if there is a period where all available funds are exhausted. MSPB personnel will be divided into two categories: (1) employees in non-pay, non-work (or furlough) status and (2) those in a deferred-pay work status performing excepted functions. Employees in the non-pay, non-work category will be furloughed at the time the agency is required by law to maintain only minimum excepted functions. The latter group will be retained to carry on those minimum excepted activities that are necessary to conduct agency shutdown activities. In the event all available MSPB funds are exhausted, employees in each of the two categories will be identified.

1. Pay

- a. Employees who are retained after all MSPB funds are exhausted will be paid for those hours worked when funds are appropriated. However, no monies can be disbursed during the period when all MSPB funds are exhausted and additional funds have not been appropriated. Therefore, MSPB employees performing excepted duties will be working for delayed pay.

- b. Employees who are furloughed will receive no pay because no work was performed. (Exception - If Congress takes action to provide retroactive pay during the period covered by the furlough employees may be paid).
- c. Employees will be paid for the period worked prior to the beginning of shutdown activities.

2. Furloughs

a. 30 days or less

- i. Employees who are furloughed for 30 days or less will be furloughed in accordance with 5 C.F.R. 359, Subpart H and 5 C.F.R 752, Subpart C, the Time and Attendance Manual, and the collective bargaining agreement.
- ii. Employees in the competitive service who are not serving a probationary or trial period under an initial appointment, or have completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less may, if furloughed for 30 days or less, appeal the agency's action under the provision of 5 C.F.R. 1201.13.
- iii. Veterans' preference eligible employees in the excepted service who have completed 1 year of current continuous service in the same or similar position may appeal the agency's action under the provision of 5 C.F.R. 1201.13, or under the provisions of the agency collective bargaining agreement's grievance procedures, but not both.
- iv. Non-preference eligible employees in the excepted service who are not serving a probationary or trial period under an initial appointment pending conversion to the competitive service, or who have completed 2 years of current continuous service in the same or similar positions under other than a temporary appointment limited to 2 years or less, may appeal, under the provision of 5 C.F.R. 1201.13, or challenge under the provisions of the agency collective bargaining agreement's grievance procedures, but not both.
- v. Career SES appointees (except reemployed annuitants) who believe the requirements of 5 C.F.R. 359, subpart H have not been correctly applied may also appeal under the provisions of 5 C.F.R. 1201.13.

b. Greater than 30 days

- i. If furloughs exceed 30 days, employees in furlough status will have those furloughs continue in accordance with OPM reduction-in-force provisions and the MSPB reduction-in-force procedures.
- ii. Furloughed employees may appeal application of OPM and MSPB regulations under the provisions of 5 C.F.R. 1201.13.

c. Service Computation

A furlough does not constitute a break in service. The employee is in non-pay, non-work status for those days/hours. However, an extended furlough may affect the calculation of creditable service for certain purposes. Employees need to consult and obtain guidance from HR regarding specific situations. See OPM's Guidance for Shutdown Furloughs, dated September 2015.

3. Annual or Sick Leave Status

a. Annual

- i. Annual leave may not be granted during an exhaustion of funds. As a result, managers may not grant annual leave to employees who would otherwise be furloughed because of exhaustion of all available funds.
- ii. All approved paid leave during a furlough will be canceled because the necessity to furlough supersedes leave rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the Government that is not authorized by the Act. Therefore, all paid leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

b. Sick

- i. Managers may not grant sick leave to an employee on furlough because of an exhaustion of all available funds.
- ii. All sick leave during a furlough will be canceled because the necessity to furlough supersedes leave rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid sick leave

creates a debt to the Government that is not authorized by the Act. Therefore, all paid sick leave during a furlough must be canceled and employees must be either (1) at work performing excepted activities or (2) furloughed.

4. Annual and Sick Leave Accrual

- a. Persons in a delayed pay status will be credited annual and/or sick leave retroactively on a pro rata basis.
- b. An employee may not accrue annual or sick leave during any pay period in which the employee is in a furlough status for the entire pay period.

5. Benefits

a. Retirement

- i. Retirement coverage continues for all employees (furloughed or excepted) providing the agency is still in existence. Length of service creditable toward retirement is granted if the furlough period does not exceed an aggregate of six months in one calendar year.

b. Life Insurance

Regular or optional life insurance coverage continues up to 12 months for all employees (furloughed or retained) without cost to the employee.

c. Health Insurance

Enrollment for employees who are furloughed continues for no more than 365 days. The Government contribution continues while employees are in a non-pay, non-work status. The Government also is responsible for advancing from salary the employee share as well. The employee can choose between paying the agency directly on a current basis or having the premiums accumulated and withheld from his or her pay upon returning to duty. See OPM's Guidance for Shutdown Furloughs, dated September 2015.

d. Retroactive Payment of Benefits

If funds are appropriated retroactively, total employee contributions for health and life insurance benefits will be withheld from retroactive pay of employees in a deferred pay status.

[NAME]

Executive Director

EXHIBIT 2

To: All MSPB Employees

SUBJECT: Agency Funding

As of today, the MSPB has obligated all funds available to continue normal staff operations. The Antideficiency Act prohibits the agency from incurring obligations in the absence of appropriations except for activities related to shutting down the agency and those services deemed essential to the safety of human life and property. Therefore, the MSPB is required to cease operations except for activities related to the orderly suspension of agency business, and as required by statutory authority, to protect the safety of human life and property.

Activities associated with the orderly termination of agency business should normally be limited to:

- Notifying outside parties of agency status.
- Cancelling meetings, hearings, mediations, outreach activities, etc.
- Securing all agency files and records.
- Documenting status of individual cases and projects.
- Date stamping and securing all mail received without further processing.
- Answering telephones, only to inform the caller of our status and not to respond to new business matters unless of an emergency nature.

By direction of the Chairman, all employees are to report to work tomorrow. It is hoped that obligation authority will clear the Congress at this time. If it does not, employees other than those excepted will be furloughed. We will keep you advised as the situation changes and more information becomes available.

[NAME]

Executive Director

EXHIBIT 3

TO: Employee's Name

FROM: Director of Human Resources

SUBJECT: NOTICE OF FURLOUGH NOT TO EXCEED 30 DAYS

The memorandum of (date from Exhibit 2), subject, "Agency Funding," notified you of the imminent exhaustion of available funds and the potential need to furlough employees. In order to comply with the requirements of the Antideficiency Act, the Merit Systems Protection Board (MSPB) must limit its activities to those related to the orderly suspension of agency operations and those involved in the safety of human life, the protection of property, or other excepted activities.

In the absence of either an FY (enter year) appropriation, or a continuing resolution for the MSPB, no further financial obligations may be incurred by the MSPB, except for those related to the orderly suspension of MSPB 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 and time). This furlough, i.e., non-pay, non-work status, is not expected to exceed 30 days. Therefore, this furlough expires on (enter date). You should monitor public news media and appropriate Federal Agencies' internet sites for information on the status of funding approval. When a continuing resolution or an FY (enter year) appropriation for the MSPB has been 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 C.F.R. 752.404(d)(2), and under 5 C.F.R. 359.806(a) for SES career appointees.

In the unlikely event that this furlough exceeds 30 days, you will be issued another furlough notice in accordance with MSPB policies and advised of the applicable appeal rights.

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

During the furlough period, you will be in non-pay, non-work status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer, but must remain away from your work place unless and until recalled. Thus, you will not be permitted to do any agency-related work, either at your work place or at home. Any paid leave (annual, sick, court, etc.) approved

for use during the furlough period is cancelled.

Employees who have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment may appeal this action to the MSPB. Employees in the excepted service who have veterans preference may appeal to the MSPB if they have completed one year of current continuous service in the same or similar position 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 the MSPB if they have completed two years of current continuous service in the same or similar position in an Executive agency under other than a temporary appointment limited to two years or less. Career SES appointees (except reemployed annuitants) who believe the requirements of 5 C.F.R. Part 359, Subpart H, or the agency's procedures have not been correctly applied may also appeal to the MSPB. Career SES appointees may inspect the regulations and records pertinent to this action.

You have the right to contest this action as follows:

1. Bargaining unit employees may grieve this action in accordance with the Article 14 of the Collective Bargaining Agreement (CBA). In accordance with Article 14 §§ 14.17(B)(1) and 14.17(C), the grievance must be submitted in writing to your immediate supervisor within twenty (20) days. To obtain additional information on filing a grievance under the CBA's negotiated grievance procedures, contact your MSPB Professional Association representative.
2. If you have the right of appeal to MSPB and wish to file an appeal you will be able to use e-Appeal, which is located on the official MSPB website. Your MSPB appeal must be filed within 30 calendar days after the effective date of your furlough, or 30 calendar days after receipt of this Notice, whichever is later. Failure to submit your appeal within this time frame may cause the MSPB to dismiss your appeal as untimely, unless you can show a good reason for the delay. MSPB employee furlough appeals will be heard by an administrative law judge. See <http://www.mspb.gov/appeals/appeals.htm> and <https://e-appeal.mspb.gov/>.
3. If you believe this action may have been motivated, at least in part, by discrimination based upon race, color, sex, religion, national origin, age, disability, or because of your participation in the EEO process, you may include this allegation when appealing to the MSPB. Alternatively, you may initiate a discrimination complaint by seeking pre-complaint counseling from the MSPB's Office Equal Employment Opportunity (OEEO) within 45 days of the effective date of this action. You can reach the OEEO at (202) 254-4405.
4. If you believe this action is being taken against you because of reprisal for making a protected disclosure or engaging in protected activity as covered by the Whistleblower Protection Enhancement Act (WPEA), you may elect to pursue a remedy through one of the following remedial processes:

(a) An appeal to the MSPB under 5 U.S.C. §7701;

(b) A grievance filed under Article 14 of the CBA; or

(c) A complaint seeking corrective action with the Office of Special Counsel (OSC) and subsequent Individual Right of Action (IRA) appeal with the MSPB under 5 U.S.C. §1211-22. See 5 U.S.C. 7121 (g); www.osc.gov.

If you choose to file under option 4(c) above, your IRA appeal to the MSPB will be limited to whether this action was taken in retaliation for making protected whistleblower disclosures or engaging in protected activity as covered by the WPEA. Filing a complaint pursuant to option 4 (c) will not preclude a timely complaint with the OEEEO pursuant to paragraph 3 above.

Filing a discrimination complaint with the OEEEO or seeking corrective action with the OSC does not extend the time limit for filing an appeal with the MSPB.

You may not initiate an appeal of this decision in more than one forum, except as noted above. Your election of one of these avenues of review will be considered final on the date any complaint or appeal is filed.

In an MSPB appeal, EEO complaint, or OSC complaint, you are entitled to represent yourself, or to be represented by an attorney or another representative of your choice. Employees rights to representation in a union grievance are set forth in Article 14 § 14.5 of the CBA.

Attached is a SF-8, Notice to Federal Employee about Unemployment Insurance. Additional information about unemployment insurance is available at <http://www.servicelocator.org/OWSLinks.asp>.

This action is in no way a reflection on your performance or conduct. Your contribution to the MSPB is appreciated, and the necessity for this action is sincerely regretted.

Director of Human Resources

Date

I acknowledge receipt of this
decision

Employee's Signature Date

Date

Attachment: SF-8

EXHIBIT 4

TO: Employee's Name
FROM: Director of Human Resources
SUBJECT: NOTICE OF FURLOUGH EXCEEDING 30 DAYS

The MSPB has now been without funds for 30 days. As indicated in your previous notice of furlough, your furlough, effective (month, day, year), will continue in accordance with Office of Personnel Management and Merit System Protection Board (MSPB) reduction-in-force procedures.

If you believe this action to be improper, you may appeal to the MSPB under the provisions of 5 C.F.R. 1201.13 within 30 calendar days after the effective date of this furlough, or 30 calendar days after receipt of this notice, whichever is later.

You should monitor public news media and appropriate Federal Agencies' internet sites for information on the status of funding approval. When a continuing resolution or an FY (enter year) appropriation for the MSPB has been approved, you will be expected to return to work on your next regular duty day.

We regret the inconvenience and hardship created by this funding hiatus.

Director of Human Resources Date

I acknowledge receipt of this
decision

Employee's Signature Date

EXHIBIT 5

Records Management

In the event of a Government-wide shutdown, there are a few security requirements staff should be aware of in relation to MSPB records:

1. Do not take records home to work on during the shutdown. If you took records home to work on before the shutdown, make sure your supervisor has a list of the records you have, e.g., a list of case files in your possession.
2. If you brought a laptop or any other device that can be used to access and read MSPB records home before the shutdown started, make sure you keep track of it and keep it secure so that someone who is not employed by the Federal government cannot use it and access Federal records.

A key purpose of Federal recordkeeping requirements is to prevent unauthorized access and to ensure accountability. Generally, records are supposed to be used and stored only in conditions that are adequate to prevent unauthorized access. Documentation of the removal of records from storage, office, or work areas should be kept for adequate control and to help ensure that removed records are returned in a timely way.

Security safeguards for Federal records in automated systems and computer storage are intended to prevent careless, accidental, or unintentional disclosure, modification, or destruction. Employees should ensure that they minimize the risk that skilled or knowledgeable persons could improperly obtain access to, modify, or destroy records.

The safeguarding of Federal records falls under the following statutes and regulations, among others:

1. 44 U.S.C. Chapter 31 – Records Management by Federal Agencies (Federal Records Act) - *Provides for safeguards to prevent the unlawful removal or destruction of Federal records. Records are not to be removed from Federal custody without authorization and accountability.*
2. 36 C.F.R. Chapter 12, Subchapter B – Records Management - *States that agencies must provide for controls over the use of records and promote the maintenance and security of records. Records need to be protected in a safe and secure environment and they may only be removed if employees obtain permission. Only records needed for current operations, such as open case files, may be maintained at the employee's desk or telework station.*

3. 5 U.S.C. 552a – The Privacy Act of 1974 - *Requires “appropriate administrative, technical, and physical safeguards to ensure the security and confidentiality of records and to protect against any anticipated threats or hazards to their security or integrity . . .”*

EXHIBIT 6

Real and Personal Property

Specific Guidelines for the disposition of Real and Personal Property in conjunction with an orderly termination of activities due to funding interruptions.

The real and personal property of agencies whose functions are being terminated or in the process of liquidation are subject to the procedures contained in 41 C.F.R. Chapter 101.

Upon notification that the agency's appropriation or a continuing resolution has not been approved, the headquarters office responsible for property management (FAM) will notify the GSA Federal Property Resources Services (FPRS). Officials of FPRS will be available to consult with agency officials concerning the orderly disposition of property.

Under these circumstances the agency is responsible for the following activities. Relative reference materials and forms are listed at the end of this attachment.

1. Conduct an inventory of real and personal property or review the existing inventory to determine if it is up to date.
2. Take action to prepare a Report of Excess Personal Property, Standard Form 120, in accordance with 41 C.F.R. Chapter 101 for all personal property anticipated to be reported excess if the appropriation or a continuing resolution is not enacted.
3. Take action to prepare a Report of Excess Real Property, Standard Form 118, or on other appropriate forms, in accordance with 41 C.F.R. Chapter 101 for all real property anticipated to be reported excess if the appropriation or a continuing resolution is not enacted.
4. Reports will be submitted to the GSA regional office serving the area where the property is located.
5. As part of their termination activities, agencies shall retain custody of all excess personal property until disposition action is directed by GSA. Agencies should also retain custody of all excess real property and shall perform essential physical care, handling, protection and maintenance and repairs until disposition action is directed by GSA.

EXHIBIT 7

(Date)

ABC Company

Gentlemen:

SUBJECT: STOP WORK ORDER FOR CONTRACT NO. _____.

In accordance with clause _____, STOP WORK ORDER, of the General Provisions of subject contract, you are hereby required to stop all of the work called for in the subject contract for a period of ninety (90) days after your date of receipt of this Stop Work Order.

Sincerely,