

**DEFENSE LOGISTICS AGENCY
ADMINISTRATIVE RECORD
FY 2013 FURLOUGH APPEALS**

Note: These core materials do not constitute all of the materials relied upon to support the FY 2013 administrative furlough action. Agency representatives may supplement this file as necessary by submitting additional documents within individual appeals.

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**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

DECLARATION OF ROBERT F. HALE

Personal Background

I, Robert F. Hale, having personal knowledge of the facts contained in this declaration and being competent to testify to them, hereby state as follows:

1. I currently serve as the Under Secretary of Defense (Comptroller)/Chief Financial Officer in the United States Department of Defense (“DoD” or “the Department”). I have held this position since February 2009 following my nomination by President Barack Obama, confirmation by the United States Senate, and appointment by President Obama.

2. Prior to my appointment, I served as the Executive Director of the American Society of Military Comptrollers (ASMC), the professional association of Defense financial managers. As Executive Director, I led the ASMC’s certification program (the Certified Defense Financial Manager program), and oversaw other training programs, the society’s professional journal, and the ASMC’s National Professional Development Institute, an annual conference attracting more than 3,500 participants. Prior to my ASMC tenure, from 1994 to 2001, I served in the Pentagon as the Assistant Secretary of the Air Force (Financial Management and Comptroller), where I was responsible for annual budgets in excess of \$70 billion, efforts to streamline Air Force financial management, and compliance with the Chief Financial Officers Act. In addition, from 1982 to 1994, I headed the National Security Division at the Congressional Budget Office, developing quantitative analyses of major defense budget issues and testifying frequently before congressional committees. During my career, I was also a senior fellow and head of the acquisition and grants management group at LMI, a consulting firm

specializing in service to the Federal government. I also spent 3 years as an active duty officer in the U.S. Navy and served as a staff analyst and study director at the Center for Naval Analysis.

3. I graduated with honors from Stanford University with a Bachelor of Science (B.S.) in mathematics and statistics. I also hold a Master's degree in operations research from Stanford and a Master of Business Administration (MBA) degree from the George Washington University. I am a Certified Defense Financial Manager (CDFM). I am a fellow of the National Academy of Public Administration and a past member of the Defense Business Board, a high-level Pentagon advisory panel. In addition, I am the recipient of the Department of Defense Exceptional Public Service Award, the Air Force Distinguished Service Award, and the National Defense Medal.

4. In my current position as Under Secretary of Defense (Comptroller), I am the principal advisor to Secretary of Defense Hagel on all budgetary and fiscal matters, including the development and execution of DoD's annual budget of more than \$500 billion, which pays for day-to-day and wartime requirements. As Chief Financial Officer, I also oversee the Department's financial policy, financial management systems, and business modernization efforts. I served in the same capacity for former Secretaries of Defense Panetta and Gates.

Overview of Sequestration and Its Impact on the Department of Defense

5. As the Department's Comptroller, I have advised both Secretary Hagel and former Secretary Panetta regarding the Department's reduced funding levels and the impact of sequestration on the Department's budget and the various options, including furloughs, for addressing such impact. I advised that an administrative furlough was a management tool that would result in a predictable, recurring amount of money being available for use by the

Department to contribute to addressing the negative fiscal impacts of sequestration, operating for a full-year under a continuing resolution, and increasing war requirements.

6. By way of background, the Budget Control Act (BCA) of 2011, which was enacted in August 2011, provided for a projected \$1.2 trillion in automatic spending cuts, if Congress failed to enact deficit reduction legislation by adopting the recommendations of the Joint Select Committee on Deficit Reduction by January 15, 2012. The cuts were to be evenly divided: (1) over a 9-year period beginning in 2013 and ending in 2021, and (2) between defense spending and discretionary domestic spending. Known as sequestration (or sequester), the above process of automatic spending cuts was intended as a means of encouraging compromise on deficit reduction efforts. When no such compromise was reached, however, the mandatory budget cuts (including \$109 billion in total cuts for fiscal year 2013) were scheduled to go into effect on January 2, 2013. Passage of the American Taxpayer Relief Act on January 2, 2013, delayed the mandatory budget cuts until March 1, 2013.

7. As of February 2013, the Department anticipated, absent another postponement or a compromise, that by the end of the following month, its share of the sequester for fiscal year 2013 would result in an approximate \$42 billion reduction in the Department's total discretionary budgetary topline (later recalculated by the Office of Management and Budget at \$37 billion) with virtually every budget account in the Department's budget – including wartime funding but excluding military personnel accounts – cut by as much as 9 percent.

8. In addition to sequestration, the Department anticipated further budgetary constraints if the funding levels for the remainder of fiscal year 2013 were to stay in effect at the then-current funding levels allowed by the continuing resolution (CR). A CR is an appropriations act that funds specified Federal agencies or the entire Federal government until a

specified date or for the remainder of the fiscal year when agreement cannot be reached on one or more of the regular appropriation acts. Typically it proportionally allocates budget authority into accounts based on amounts appropriated in the prior year appropriations acts. Thus, the lack of a regular DoD appropriations act for fiscal year 2013 created, among other things, the additional constraint of having money in the wrong appropriation accounts. Specifically, under the then-existing CR, the Department had too many dollars in the investment accounts and too few dollars in the operation and maintenance (O&M) accounts.

9. Finally, by February 2013 the Department faced costs of wartime operations in excess of those that were estimated two years earlier when budgets were prepared. At that point we estimated that we could be short as much as \$10 billion in wartime operating costs.

10. These various factors – sequestration, misallocation of funds under the CR, unexpectedly high wartime costs – all affected the DoD budget, especially the Operation and Maintenance (O&M) portion of the budget, which funds the costs for many of our civilian employees. Taken together, these factors left us facing shortfalls of \$40 billion or roughly 20 percent of O&M funding for active forces.

Initial Considerations Regarding the Furlough of Department of Defense Civilian Employees

11. In response to sequestration and other shortfalls, the DoD determined that if it had to operate under reduced funding levels for an extended period of time, it would have to consider furloughs and other actions to ensure it could execute its core mission and to bring its expenditures down to appropriated levels. As an initial overriding objective, the Department had to protect the warfighter. This objective meant, however, that there would be larger and more disproportionate cuts in the Military Departments' O&M accounts supporting the base budget for

the active forces and from which most civilian positions are funded. The need to protect warfighter funds added to the Department's O&M problems.

12. As of late February 2013, the Department had already begun taking many near-term actions in an attempt to slow spending and avoid more draconian cuts at a later time. Such actions included severe cutbacks in travel and training conferences; civilian hiring freezes; layoffs of more than 7,500 temporary and term employees; sharp cutbacks in facilities maintenance (by as much as 90 percent in the remainder of the year); cutbacks in base operations; reduction of the number of aircraft carriers, embarked air wings, and accompanying defensive and support ships deployed to the Persian Gulf; reductions in the scope of and period of performance of contracts; and delay of contracting actions until the next fiscal year. However, the Department recognized at that time that if sequestration and the CR were to last throughout fiscal year 2013, many more far-reaching changes would be required, including cutbacks and delays in virtually every investment program in the Department (some 2,500 of them) and the furlough of civilian personnel.

13. As a result, on February 20, 2013, Secretary of Defense Panetta notified DoD civilian employees and the Congress about the potential for such furloughs for up to 22 days (176 hours). As I noted that same day in a DoD Press Briefing on "Civilian Furlough Planning Efforts," although the Department would strongly prefer not to impose furloughs, the Department believed that it had no choice but to do so absent further action by Congress, given the severe budget constraints outlined above. As I then stated,

We're more than 20 percent short in O&M, with 7 months to go, much higher in some of the services, particularly the Army. Civilian personnel make up a substantial part of DoD O&M funding. We can't do reductions in force, especially at this point in the year. They'd cost us money in this year because of unused leave and severance pay, so furloughs are really the only way we have to quickly cut civilian personnel funding.

14. During the planning for possible furloughs, the Secretary determined that, as a matter of policy, there would be only limited exceptions to any furloughs that were imposed. Exceptions would include civilians directly involved in support of wartime operations, those needed for protection of life and property, and those involved in a few programs of particularly high priority (especially programs directly and significantly affecting military readiness). Remaining furloughs would be implemented in a fair and even manner across the breadth of the Department (including the Military Departments). We estimated that furloughs of 22 days would reduce DoD expenditures by \$4 to \$5 billion.

15. On March 21, 2013, Congress passed H.R. 933, the “Consolidated and Further Continuing Appropriations Act, 2013,” (hereafter referred to as “the Act”) which, in part, provided fiscal year 2013 full-year appropriations through September 30, 2013, for various Federal agencies, including the Department of Defense, and which modified some aspects of sequestration. Although it retained the overall sequestration spending cuts and their across-the-board nature, and did not provide sufficient funding to cover the OCO shortfalls, it aligned funding closer to the fiscal year 2013 budget request for DoD and provided limited transfer authority to the Department, which is an authority to move money from one account (*e.g.*, Procurement) to another (*e.g.*, O&M) in order to provide some flexibility during budget execution. In anticipation of the President’s signing Public Law No. 113-6, on March 21, 2013, the Department delayed issuance of furlough notices to allow the Department to analyze carefully the impact of the Act on the Department’s resources. After March 26, 2013, when President Obama signed H.R. 933 into law as Public Law No. 113-6, the Department no longer operated under the CR terms and conditions. This corrected approximately \$11 billion of the

shortfall in the Military Departments' base O&M accounts that resulted from operating under the CR at the fiscal year 2012 funding levels and authorized a total of \$7.5 billion in general and special transfer authority under sections 8005 and 9002, respectively.

16. However, even after enactment of this appropriations legislation, the Department still faced an O&M shortfall in excess of \$30 billion. In efforts to minimize the adverse effects of the sequester, and of the overall O&M shortfall, the Department pursued various courses of action. In addition to the short-term actions mentioned above, the Department imposed far-reaching cutbacks in training and maintenance. In April the Air Force began shutting down all flying at 12 combat-coded fighter and bomber squadrons and curtailed exercises, acts that seriously reduced military readiness. By April the Army had already cancelled seven combat training center rotations – culminating training events that are necessary to ready units for deployment – and five brigade-level exercises. The Department of the Navy also cut back steaming days and flying hours across the Navy and Marine Corps. The military services also cut back funding for weapons maintenance. In addition, the Department of the Navy delayed deployment of the USS TRUMAN carrier strike group to the Persian Gulf, curtailed the sailing of the USNS COMFORT to the United States Southern command area of responsibility, and cancelled four other ship deployments.

17. By late April these various actions had reduced the estimated O&M shortfall to about \$11 billion, mostly in our wartime budget and mostly in the Army. Faced with a limited number of options to close this gap, and with uncertainty about the Department's ability to identify and gain Congressional acceptance of further budget cuts, on May 14 the Secretary announced his intention to impose furloughs on civilian personnel rather than making even larger cuts in training and maintenance that would have further eroded military readiness. Overall, the

furloughs impacted approximately 650,000 (or about 85%) of the Department's approximately 767,000 civilian employees paid directly by DoD funds. Rather than the 22 days estimated earlier, the Secretary reviewed budget projections and decided that furloughs could be limited to a maximum of 11 days (88 hours). We estimated that furloughs of 11 days would save DoD about \$2 billion, avoiding substantial further cuts in training and maintenance. The Department began the required "impact and implementation" bargaining with unions and began the process of issuing required notifications to employees and furloughs began during the week of July 8.

Inclusion of Working Capital Fund Employees

18. On June 21, 2013, a bipartisan group of 31 Members of Congress sent a letter to the Secretary of Defense expressing "concern about the determination that civilian workers at entities funded through Defense Working Capital funds are subject to furlough." Specifically, the members inquired as to the legality of furloughing civilians in these funds in light of section 129 of title 10 of the United States Code.

19. On July 5, 2013, acting based on the Advice of the DoD Office of General Counsel, I responded on behalf of Secretary Hagel. In my letter, which is attached hereto as Attachment 1, I noted that the short-term furlough directed by the Department of Defense does not contradict any of the various prohibitions which are set forth in section 129. As I further explained, to the contrary,

Section 129 directs the Department to manage our civilian workforce based on workload and on the "funds made available to the department for such fiscal year." The \$37 billion reduction levied on the Department by sequestration is a major cause of these furloughs, and therefore our actions satisfy the requirements of section 129. Indeed, section 129 directs the Department to manage our civilian workforce based on workload and funding.

As for your cost concerns, furloughs of all DoD civilians will save about \$2 billion in fiscal year 2013, including more than \$500 million associated with

reduced personnel costs in working capital fund activities. These working capital fund personnel savings provide us the flexibility to adjust maintenance funding downward to meet higher-priority needs. The Air Force, for example, currently expects to reduce funded orders in their working capital funds by about \$700 million to meet higher-priority needs while the Army expects to reduce orders by \$500 million.

See Attachment 1.

20. Having imposed furloughs, the Department undertook extensive efforts to identify budget changes that would close the remaining gap and, if possible, reduce cutbacks in training and impose fewer furlough days. In mid-May the Department prepared and submitted two Omnibus reprogramming requests that sought permission from the congressional defense committees to move funds totaling about \$9.6 billion from lower priority budget lines to higher priority budget lines. When the congressional committees did not approve all of the Omnibus reprogramming requests, the Department submitted two additional reprogramming actions on July 22, 2013, that included about \$1 billion of replacement sources for those sources that one or more of the committees had denied or deferred. These reprogrammings moved furlough savings and funds for lower-priority activities to areas of highest budgetary need. The law limits the amount of funds that can be transferred annually under reprogrammings, and these two reprogramming actions used almost all of DoD's transfer authority for FY 2013. Second, pursuant to existing authorities, the Department transferred responsibilities for some specific programs and missions from one Department of Defense component to another and used other available means to reallocate the financial burden for supporting the warfighter. For example, on July 15, 2013, pursuant to section 165(c) of title 10 of the United States Code, the Deputy Secretary of Defense assigned to the Secretary of the Navy the responsibility for providing up to \$450 million for support to U.S. Forces in Afghanistan that previously had been the responsibility of the Army under the Logistics Civil Augmentation Program (LOGCAP). The

Navy ultimately provided \$310 million for the support to U.S. Forces in Afghanistan using the Army's LOGCAP contract. On July 15, 2013, pursuant to section 2571(b) of title 10 of the United States Code, the Deputy Secretary also directed the Director for the Defense Logistics Agency to reduce the standard prices for jet and ground fuel procured under the authority of section 2208 of title 10 of the United States Code and provided to DoD customers in connection with military operations conducted in Afghanistan, retroactive to March 1, 2013 (to coincide with the President's sequestration order). This effectively tapped funds available to the Defense Logistics Agency to support the warfighting costs that would otherwise have been borne by the military departments.

The Furlough Outcome

21. Since Congress approved most of the Department's large reprogramming requests that were submitted in mid-May and late-July, giving the Department flexibility to move funds across accounts, together with the facts that the Military Departments were aggressive in identifying ways to hold down costs, and that the Department was able to transfer some responsibilities for funding specific programs and missions using existing authorities, the Department was successful in shifting savings (including furlough savings) to meet its highest priority needs. As a result, the Department was able to close the remaining budgetary gap and abide by legally binding spending caps. DoD was also able to accomplish two high-priority goals: a reduction in furlough days, and modest improvements in training and readiness. Specifically, DoD was able to reduce furloughs from a maximum of 11 days to 6 days (48 hours) for most DoD civilian employees.

I certify under penalty of perjury that the foregoing is true and correct.

Dated: September 16, 2013

Handwritten signature of Robert F. Hale in cursive script.

Robert F. Hale



COMPTROLLER

UNDER SECRETARY OF DEFENSE
 1100 DEFENSE PENTAGON
 WASHINGTON, DC 20301-1100

JUL - 5 2013

The Honorable Derek Kilmer
 U.S. House of Representatives
 Washington, DC 20515

Dear Congressman Kilmer:

Thank you for your letter of June 21, 2013 concerning the furlough of working capital fund civilians of the Department of Defense (DoD). Secretary of Defense Hagel asked me to respond on his behalf. I can say in summary that in FY 2013 DoD faced a budget cut of \$37 billion caused by sequestration, in addition to shortfalls in wartime funding. The Department does not want to furlough any of its valued civilian employees but must do so to help meet these budgetary shortfalls. Furloughs of civilians at working capital fund activities are legal and result in personnel cost savings.

Secretary Hagel regrets having to furlough any DoD civilian employees, whether they serve in the Department's working capital fund activities or elsewhere. Unfortunately, in FY 2013 DoD faces a large shortfall in our operating budgets both because of sequestration and a lack of funds to meet all our wartime operating requirements. The Department has taken many steps to close this shortfall including sharp cuts in facilities maintenance, hiring freezes, and layoffs of temporary and term employees. DoD has asked Congress to let us "reprogram" or move money from our investment accounts into operating accounts to help pay DoD's wartime bills, though our Congressional Committees have not yet approved a significant part of that request. The Department has also cut back sharply on training and maintenance, actions that have led to serious damage to our readiness. Finally, and reluctantly, DoD has imposed furloughs for up to 11 days on most of its civilian employees.

You requested the Department's views on the legality of furloughing civilians in working capital fund activities, in particular with respect to section 129 of title 10, United States Code. The Department believes short-term furloughs of working capital fund civilians -- who are indirectly funded Government employees -- are permissible under that statute. Indirectly funded Government employees may not be subjected to constraints or limitations based on the number of such personnel who may be employed on the last day of a fiscal year, and may not be managed on the basis of man years, end strength, full-time equivalent positions, or maximum number of employees. They also may not be controlled under any policy of a Military Department Secretary with respect to civilian manpower resources. A short-term furlough directed by the Secretary of Defense does not contradict these prohibitions. Further, Section 129 directs the Department to manage our civilian workforce based on workload and on the "funds made available to the department for such fiscal year". The \$37 billion reduction levied on the Department by sequestration is a major cause of these furloughs, and therefore our actions satisfy the requirements of section 129. Indeed, section 129 directs the Department to manage our civilian workforce based on workload and funding.

As for your cost concerns, furloughs for all DoD civilians will save about \$2 billion in FY 2013, including more than \$500 million associated with reduced personnel costs in working capital fund activities. These working capital fund personnel savings provide us the flexibility to adjust maintenance funding downward to meet higher-priority needs. The Air Force, for example, currently expects to reduce funded orders in their working capital funds by about \$700 million to meet higher-priority needs while the Army expects to reduce orders by \$500 million. Because Congress has not yet approved about \$2.5 billion of our reprogramming request as of the date of this letter, it is unfortunately possible that these maintenance cutbacks may have to be increased.

The Secretary and the Department appreciate and share your concerns for the efficiency of our operations, the welfare of our civilian employees, and the impact of furloughs on our defense communities. The Department is also seriously concerned with the adverse effects on readiness caused by cutbacks in training and maintenance. The best way for Congress to address all these concerns is to pass a balanced deficit reduction plan that the President can sign and then repeal sequestration.

An identical letter is being provided to the other signatories to your letter.

Sincerely,

A handwritten signature in cursive script that reads "Robert F. Hale".

Robert F. Hale



SECRETARY OF DEFENSE
1000 DEFENSE PENTAGON
WASHINGTON, DC 20301-1000

AUG 6 2013

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
CHAIRMAN OF THE JOINT CHIEFS OF STAFF
UNDER SECRETARIES OF DEFENSE
DEPUTY CHIEF MANAGEMENT OFFICER
COMMANDERS OF THE COMBATANT COMMANDS
ASSISTANT SECRETARIES OF DEFENSE
GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
DIRECTOR, OPERATIONAL TEST AND EVALUATION
DIRECTOR, COST ASSESSMENT AND PROGRAM EVALUATION
DEPARTMENT OF DEFENSE CHIEF INFORMATION OFFICER
ASSISTANTS TO THE SECRETARIES OF DEFENSE
DIRECTOR, ADMINISTRATION AND MANAGEMENT
DIRECTOR, NET ASSESSMENT
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Reducing Furlough Days

I am pleased to announce that, due to a combination of Congressional approvals and Departmental budget management efforts, I am directing that furloughs for most DoD civilians be reduced from 11 days (88 hours) to six days (48 hours).

When I announced furloughs on May 14, I promised that we would try to reduce the number of days. In early May we faced a residual shortfall in our operating budget of \$11 billion. Furloughs of 11 days, which would have saved \$2 billion, were one of the limited number of options we identified to close this gap. Since then, Congress has approved most of a large reprogramming request that we submitted in mid-May, giving us flexibility to move funds across accounts. The military services have been aggressive in identifying ways to hold down costs, and we have been successful in shifting savings (including furlough savings) to meet our highest priority needs.

As a result, we are able to accomplish two goals: a reduction in furlough days, and modest improvements in training and readiness. However, even with these improvements, this is a military whose readiness remains seriously degraded as we head toward the budgetary uncertainties of FY 2014.

Assuming that the majority of employees were furloughed one day per week beginning the week of July 8, this reduction in the number of furlough days will mean that most employees will have achieved six days (48 hours) of furloughs by August 17. However, all civilian employees, unless exempted from furloughs or governed by special rules, must complete six days (48 hours) of furloughs. If they have not accomplished this by August 17, they must do so in a timely manner and before the end of this fiscal year.



OSD009263-13

One specific exception to be implemented immediately is the cancellation of all furloughs for Department of Defense Education Activity (DoDEA) instructional and support staff on 10-month contracts. These personnel were already subject to only five days of furloughs in order to ensure a creditable year of schooling for our students; now the teaching year will not be reduced at all. Newly hired civilian employees whose furlough period began after the week of July 8 must complete an equivalent of two furlough days per full pay period between the starting date for their furloughs and August 17. All other special circumstances will be adjudicated by the Under Secretary of Defense (Personnel and Readiness) and the Under Secretary of Defense (Comptroller).

I want to thank our civilian workforce for their patience and continued dedication to our mission during these extraordinarily tough times and for their continued service and devotion to our Department and our country. Our civilian personnel are essential to ensuring our Department and our military can provide for the nation's defense. I regret the difficulties they and their families had to face during this furlough period. Thank you.

*Charles
L. Beck*

UNITED STATES OFFICE OF PERSONNEL MANAGEMENT



Guidance for Administrative Furloughs

June 10, 2013

a New Day for Federal Service

Overview

The U.S. Office of Personnel Management (OPM) has prepared human resources guidance for agencies and employees on administrative furloughs. An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or other budget situation other than a lapse in appropriations.

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NOTE: Certain Qs and As in this document, “Guidance for Administrative Furloughs,” assume coverage under provisions of law or regulation specified in the given Q and A. To the extent that a particular employee is not covered by those specified provisions, the guidance in the Q and A may not be applicable.

A. General

1. What is a furlough?

A. A furlough is the placing of an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

2. What is an administrative furlough and why are administrative furloughs necessary?

A. An administrative furlough is a planned event by an agency which is designed to absorb reductions necessitated by downsizing, reduced funding, lack of work, or any other budget situation other than a lapse in appropriations. This type of furlough is typically a non-emergency furlough in that the agency has sufficient time to reduce spending and give adequate notice to employees of its specific furlough plan and how many furlough days will be required. An example of when such a furlough may be necessary is when, as a result of Congressional budget decisions, an agency is required to absorb additional reductions over the course of a fiscal year.

3. What human resources guidance applies for furloughs that are caused by a lapse of appropriations (i.e., shutdown furloughs)?

A. In the event that funds are not available through an appropriations law or continuing resolution, a “shutdown” furlough occurs. A shutdown furlough is necessary when an agency no longer has the necessary funds to operate and must shut down those activities which are not excepted pursuant to the Antideficiency Act. For additional information on shutdown furloughs, see OPM’s Guidance for Shutdown Furloughs at <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough>.

4. What does it mean to be in furlough status?

A. Furlough status means that, because of a furlough (as described in Question A.1.), the employee is placed in a nonpay, nonduty status for designated hours *within* the employee’s tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Furlough hours are a type of leave of absence without pay. Employees are in furlough status only during designated furlough hours, not for entire calendar days. Furlough status may be designated as the employee’s full daily tour of duty or part of that tour of duty. For example, an employee may be furloughed for half of an 8-hour daily tour of duty, or 4 hours. An employee who is in furlough status during a daily tour of duty may be ordered to perform work outside that tour, and such work would be subject to normal compensation requirements. (See also Questions D.4. and D.5.)

5. Does placement in furlough status cause a full-time employee to be converted to part-time or a part-time employee to be converted to a reduced part-time work schedule?

A. No. Placement in furlough status or any other kind of temporary nonpay, nonduty status does not affect the nature of an employee's official work schedule as full-time or part-time. For a full-time employee who is furloughed during a 40-hour basic workweek, the employee continues to have a full-time 40-hour basic workweek. For a part-time employee who is furloughed, the part-time tour of duty established for leave usage purposes also remains the same.

B. Covered Employees

1. Which employees may be affected by an administrative furlough?

A. Agencies are responsible for identifying the employees affected by administrative furloughs based on budget conditions, funding sources, mission priorities (including the need to perform emergency work involving the safety of human life or protection of property), and other mission-related factors. See also Procedures and Labor Management Relations Implications.

2. How will employees be notified whether they are affected by an administrative furlough?

A. Each agency will determine the method and timing of notifying employees of whether they are affected by an administrative furlough. See also Procedures and Labor Management Relations Implications.

3. Are political appointees (such as Executive Schedule officials, noncareer members of the Senior Executive Service (SES), and Schedule C appointees) subject to administrative furlough?

A. All political appointees who are covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are subject to administrative furlough. For example, Schedule C appointees in the General Schedule or Senior Level (SL) pay systems and noncareer SES members are all covered by the leave system and subject to administrative furlough. However, regular procedural requirements may not apply. (See Q&As M.5., M.6., N.12., and N.13.) Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. (See Q&A B.4. for more information on why certain Presidential appointees are not subject to furlough.)

4. Why are leave-exempt Presidential appointees not subject to furlough?

A. Individuals appointed by the President, with or without Senate confirmation, who are not covered by the leave system in 5 U.S.C. chapter 63, or an equivalent formal leave system, are not subject to furlough. An exemption from the chapter 63 leave system may be based on 5 U.S.C. 6301(2)(x) or (xi). (See also OPM regulations at 5 CFR 630.211.) These leave-exempt Presidential appointees are not subject to furloughs because they are considered to be entitled to the pay of their offices solely by virtue of their status as an officer, rather than by virtue of the hours they work.

A leave-exempt Presidential appointee cannot be placed on nonduty status. Thus, the appointee's pay cannot be reduced based on placement in nonduty status, including via the mechanism of a furlough. As explained above, a leave-exempt Presidential appointee is entitled to the established pay of the position based on the holding of the office, not on the hours of duty.

Presidential appointees who are covered by the chapter 63 leave system are not considered to be entitled to pay based solely on their status as officers; thus, these individuals are subject to furlough in the same manner as other Federal employees. (See 5 U.S.C. 5508.) Any Presidential appointee who is a member of the Senior Executive Service (SES) or in a senior level (SL/ST) position paid under 5 U.S.C. 5376 may not be exempted from the chapter 63 leave system. All SES and SL/ST employees are subject to furlough on the same basis as other employees. (The furlough of career SES members is subject to the procedures in 5 CFR 359, subpart H, and the furlough of SL/ST employees is subject to the procedures in 5 CFR 752, subpart D, or 5 CFR part 351, as applicable.)

While employees may be subject to furlough, the applicable due process procedures depend on the type of employee in question. For example, all Presidential appointees are excluded from the adverse action procedures in 5 U.S.C. chapter 75, based on 5 U.S.C. 7511(b)(1) and (3). In addition, Presidential appointees subject to Senate confirmation are excluded from reduction in force procedures, based on 5 CFR 351.202(b). If a Presidential appointee is subject to furlough but not subject to adverse action or reduction in force procedures, the agency should follow any administrative procedures required by any applicable internal personnel policies.

Note: A former career Senior Executive Service (SES) appointee who receives a Presidential appointment that would normally convey an exemption from the leave system may be eligible to elect to retain SES leave benefits under 5 U.S.C. 3392(c). If SES leave benefits are so elected, such a Presidential appointee would be subject to furlough under 5 CFR part 359, subpart H.

5. Are furloughed detailees returned to their home agencies following any furlough?

A. Detailed employees remain officially assigned to their permanent positions during the detail. During a furlough, each agency will determine the status of their employees on detail within the agency or to another agency.

6. Do all detailees follow the furlough policies and procedures of their home agencies if the detail continues?

A. Yes, because all detailees remain officially employed by the agencies from which they are detailed. If furlough is required, the home agency will determine if and how the detailed employee is affected. The home agency and the receiving agency should discuss how a detailee will be affected if a furlough is not required in the home agency but is required in the receiving agency.

7. I have a detailee from another agency working in my unit. Who can I contact to discuss any flexibility the home agency may be willing to exercise regarding scheduling of any required furlough days?

A. Generally, the point of contact would be the human resources office of the employee's home agency. If the point of contact within that office is unknown, OPM suggests contacting the employee's supervisor at the home agency to determine who to contact about potential flexibility in scheduling required furlough days.

8. Can an employee request to be furloughed as a way of reducing the hours of furlough required of other employees?

A. An employee cannot request to be furloughed. A furlough is an agency adverse action that places an employee in a temporary nonduty, nonpay status because of lack of work or funds, or other nondisciplinary reasons.

An employee may voluntarily request leave without pay which also places an employee in a nonpay, nonduty status. However, approval of leave without pay does not provide any due process rights (unlike a furlough action), and approval is subject to your organization's policies, procedures, and any collective bargaining agreement provisions. An employee should discuss with their human resources office any personnel implications of additional time in a nonpay, nonduty status. An agency should not pressure employees to request leave without pay. Such requests should be made on a purely voluntary basis.

While the granting of leave without pay to a significant number of employees may produce savings that could potentially affect the extent to which an agency needs to use furloughs to achieve the savings required by sequestration, employees should be aware that there is no guarantee that volunteering for unpaid leave will have a significant enough effect on an agency's operations to affect the agency's need to furlough employees. Moreover, there are many other factors that may potentially affect an agency's budget, and therefore affect the extent to which an agency needs to use furloughs to achieve cost savings.

Note 1: Leave-exempt Presidential appointees may not take leave without pay, as explained in Question B.4.

Note 2: This matter, like others involving the impact and implementation of furloughs, may be subject to collective bargaining for union-represented employees.

C. Working During Furlough

1. May an employee volunteer to do his or her job on a nonpay basis during any hours or days designated as furlough time off?

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

2. What happens to employees scheduled for training during an administrative furlough?

A. Since agencies typically have sufficient time to give employees adequate notice and to plan for administrative furloughs, furlough time off may be scheduled so as not to conflict with scheduled training. In the event that scheduled training occurs during a furlough period, affected employees must be placed in a furlough status and ordered not to attend the scheduled training.

3. May employees take other jobs during a period designated as furlough time off?

A. While on furlough time off, an individual remains an employee of the Federal Government. Therefore, executive branch-wide standards of ethical conduct and rules regarding outside employment continue to apply when an individual is furloughed (specifically, the executive branch-wide standards of ethical conduct at 5 CFR part 2635). In addition, there are specific statutes that prohibit certain outside activities, and agency-specific supplemental rules that require prior approval of, and sometimes prohibit, outside employment. Therefore, before engaging in outside employment, an employee should review these regulations and then consult his or her agency ethics official to learn if there are any agency-specific supplemental rules governing the employee. (Also, see the Office of Government Ethics' March 13, 2013, legal advisory entitled, "[A reminder that ethics laws and regulations continue to apply to Federal Government employees during furlough periods.](#)")

4. May an employee work during a period designated as furlough time off to earn credit hours under a flexible work schedule?

A. No. An employee may not work to earn credit hours during hours and/or days designated as furlough time off.

5. May an employee work during a period designated as furlough time off to accumulate religious compensatory time off hours for religious observances?

A. No. An employee may not work during a period designated as furlough time off, even to accrue religious compensatory time.

6. What is the effect of an agency ordering an employee to work during scheduled furlough hours?

A. If an agency official orders an employee to work during scheduled furlough hours (e.g., to respond to an emergency), the assignment of work cancels the employee's furlough status for the duration of the ordered work, and such work would be subject to normal compensation requirements.

D. Pay

1. When an employee's pay is insufficient to permit all deductions to be made because furlough time off occurs in the middle of a pay period and the employee receives a partial paycheck, what is the order of withholding precedence?

A. Agencies will follow the guidance at <http://www.chcoc.gov/transmittals/TransmittalDetails.aspx?TransmittalID=1477> to determine the order of precedence for applying deductions from the pay of its civilian employees when gross pay is insufficient to cover all authorized deductions.

2. May agencies deny or delay within-grade or step increases for General Schedule and Federal Wage System employees during a furlough?

A. It depends on the length of the furlough. Within-grade and step increases for General Schedule (GS) and Federal Wage System employees are awarded on the basis of length of service and individual performance. Such increases may not be denied or delayed solely because of lack of funds. However, extended periods of nonpay status (e.g., because of a furlough for lack of funds) may affect the timing of such increases. For example, a GS employee in steps 1, 2, or 3 of the grade who is furloughed an aggregate of more than 2 workweeks during the waiting period would have his or her within-grade increase delayed by at least a full pay period. (See 5 CFR 531.406(b).)

3. What issues arise with the furloughing of employees who would otherwise reach the biweekly cap on premium pay?

A. Under 5 U.S.C. 5547, premium pay may not normally be paid to the extent the payment would cause the sum of the employee's basic pay plus premium pay received in a biweekly pay period to exceed the higher of (1) the biweekly rate for level V of the Executive Schedule (EX-V) or (2) the biweekly rate of basic pay for GS-15, step 10 (including any applicable locality payment or special rate supplement). (Note: In all locality pay areas within the

United States, the applicable GS-15, step 10, rate is higher than the EX-V rate.) Certain employees regularly receive a recurring type of premium pay that causes them to reach the premium pay cap each biweekly pay period. For example, certain employees regularly receive law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty premium pay, or regularly scheduled firefighter overtime pay.

The biweekly premium pay cap limits premium pay based on the aggregate sum of basic pay plus premium pay in a biweekly pay period. Thus, if a furlough causes basic pay to be reduced, it may result in an increased payment of premium pay that had been limited by the premium pay cap.

If an employee is furloughed, he/she will not receive basic pay or premium pay during the furlough period. If the furlough is for a full pay period, then the employee will not receive any pay for the pay period and the biweekly premium pay cap is not an issue.

However, there are issues if an employee who normally reaches the premium pay cap is furloughed for part of a pay period. The employee's total basic pay will be reduced and, as a result, the *uncapped* amount of premium pay for the pay period will be reduced. ("Uncapped" refers to the amount of premium pay that would be payable if the biweekly premium pay cap did not apply.) If the employee was reaching the premium pay cap in a normal pay period and receiving less than the full amount of premium pay available under the given premium pay provision, the reduction of basic pay could allow otherwise blocked premium pay to become payable—even if the uncapped amount of premium pay is reduced. In fact, the employee could receive the same capped total pay while working less hours. In this case, a furlough would not save money and would actually reduce productivity.

For example, consider a GS-15, step 10, criminal investigator in Washington, DC. Criminal investigators are entitled to LEAP equal to 25% of the investigator's basic pay, subject to the biweekly premium pay cap, which can reduce or eliminate the LEAP payment. Normally, a GS-15, step 10, investigator would receive 0% LEAP since his/her adjusted rate of basic pay is already at the cap.

- Assume the investigator is entitled to a GS-15, step 10, locality rate of \$155,500 (EX-IV locality rate cap). The hourly rate is \$74.51 and the biweekly rate is \$5,960.80. Let's say this investigator is furloughed for 2 workdays. The investigator's basic pay would be reduced to \$4,768.64 (80-16=64 hours, 64 hours x \$74.51 = \$4,768.64).
- Uncapped LEAP for 80 hours of basic pay = 25% x \$5,960.80 = \$1,490.20
- Uncapped LEAP for 64 hours of basic pay = 25% x \$4,768.64 = \$1,192.16.
- Basic pay + uncapped LEAP = \$4,768.64 + \$1,192.16 = \$5,960.80, which equals the premium pay cap. So, the investigator receives the full 25% LEAP.
- In this example, the investigator's hours were reduced by 16 hours out of 80 (20%), leaving basic pay at 80% of the normal amount. 25% LEAP x 80% of normal basic pay =

20% of normal basic pay for an 80-hour biweekly pay period (which would have applied but for the furlough). Thus, the LEAP replaced the lost basic pay exactly.

- Uncapped LEAP decreased from \$1,490.20 to \$1,192.16.
 - Capped LEAP increased from \$0 to \$1,192.16.
 - Basic pay decreased from \$5,960.80 to \$4,768.64, a reduction of \$1,192.16.
 - Capped LEAP increase = Basic pay decrease.
- In this scenario, no budget savings would be realized by furloughing the investigator. The investigator would receive the same amount of pay while working fewer hours, resulting in a loss in productivity.

An agency is not required to furlough an employee when the workings of the premium pay cap prevent budget savings or provide limited savings relative to the loss in productivity. As a general rule, an agency may selectively furlough employees, but an explanation must be provided to employees in the advanced written proposal notice regarding the agency's justification as to why the administrative furlough is being implemented. The notice should contain an explanation of other employees who may not have been furloughed in that particular employee's same competitive level. (See 5 CFR 752.404(b)(2).)

For example, see the language below from Sample Notice 1—Furlough Proposal Due to Planned Reduction in Agency Expenditures (5 CFR Part 752):

If other employees in your competitive level (i.e. generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency or, (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, you must include them in this listing.]*

Based on the above, in deciding which employees should be subject to an administrative furlough, an agency should take into account the effects of the premium pay cap and should address in the furlough notice the exclusion of any employees who are affected by the premium pay cap.

4. May Federal agencies require employees who are placed on administrative furlough for all or part of their basic workweek to work hours outside the basic workweek?

A. Yes. An agency may assign work during hours outside the employee's basic workweek, subject to any applicable agency policies or collective bargaining agreements.

Employees are only in furlough status for designated furlough hours. Furlough status means the employee is placed in nonpay, nonduty status for certain hours within the employee's tour of duty established for leave usage purposes (i.e., the tour of duty for which absences require the charging of leave). Thus, for full-time employees with a 40-hour basic workweek, furlough hours must be within the 40-hour basic workweek. For part-time employees, furlough hours must be within the employee's part-time basic workweek based on the part-time tour of duty established for leave usage purposes. For employees on an uncommon tour of duty established under 5 CFR 630.210, furlough hours must be within the uncommon tour of duty. (See Question L.3.)

Note: During a [shutdown furlough](#) in response to a lapse in appropriations, an agency may not allow an employee (unless the employee is excepted or exempt from furlough) to perform work outside his or her basic workweek because it would create a budgetary obligation before an appropriation is made, which is barred by the Antideficiency Act (31 U.S.C. 1341 et seq.).

5. How are employees compensated when they are required to work hours outside a basic workweek in which they have been furloughed?

A. Employees who are required to work hours outside of a basic workweek during which they have been furloughed are compensated with their rate of basic pay if overtime thresholds have not been met, and/or with overtime pay or compensatory time off in lieu of overtime pay, as appropriate, once the thresholds have been met. Normally applicable overtime rules apply. Most employees are subject to a 40-hour weekly overtime threshold and an 8-hour daily overtime threshold. Leave without pay hours (such as furlough hours) do not count as hours of work in applying overtime thresholds.

As provided by 5 CFR 550.112(d)(1), an employee's hours of work outside of his or her basic workweek, but occurring in the same administrative workweek as furlough hours, must be substituted for furlough hours in pay computations, as long as the hours of work outside the basic workweek do not qualify for an overtime rate on the basis of exceeding 40 hours in a workweek. (Note: For hours that qualify for an overtime rate on the basis of exceeding 8 hours of work in a day, this substitution rule does not apply.) Those substituted hours are paid for at the rate applicable to hours in the employee's basic workweek. After all furlough hours during the employee's basic workweek are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 40 hours in a workweek.

Similarly, as provided by 5 CFR 550.112(d)(2), an employee's hours of work outside of his or daily tour of duty, but in the same workday as furlough hours, must be substituted for such furlough hours in pay computations. Those hours are paid for at the rate applicable to the

employee's daily tour of duty. After all furlough hours during the employee's daily tour of duty are substituted for, any remaining hours of work are overtime hours on the basis of exceeding 8 hours in a workday (for employees subject to the 8-hour daily overtime threshold).

The substitution rule in 5 CFR 550.112(d) does not change an employee's basic workweek or daily tour of duty. The hours worked outside the employee's basic workweek or daily tour of duty are substituted for the purpose of pay computations. Under the rule, substituted hours are paid at the rate "applicable to" hours in the basic workweek or daily tour of duty, even though the hours were worked outside those periods. This rule simply recognizes that leave without pay hours (such as furlough hours) do not count toward weekly and daily overtime thresholds.

Examples

For purposes of these examples, an employee with a Monday–Friday, 8-hour per day work schedule is required to work overtime in a workweek during which he or she also has 1 day (8 hours) of designated furlough time off. (As described in Question L.1., agencies have discretion to implement an administrative furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures.)

- **Example A.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 hours on Saturday.

The 4 hours of work on Saturday are substituted for 4 of the furlough hours on Monday and paid at the rate applicable to the employee's basic workweek (i.e., basic rate), consistent with 5 CFR 550.112(d)(1). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours of work on Saturday.

- **Example B.** An employee is furloughed for 8 hours on Monday, works 8 hours per day on Tuesday–Friday, and is required to work 4 additional hours on Friday evening after completing his 8-hour daily tour of duty.

The additional 4 hours of work on Friday evening are beyond the 8-hour daily overtime pay threshold and the employee is entitled to an overtime rate for those hours based on 5 U.S.C. 5542(a). The substitution rule in 5 CFR 550.112(d)(1) bars paying an overtime rate for substitutable hours outside the basic workweek "on the basis of exceeding 40 hours in a workweek." However, the 40-hour overtime pay threshold is not the basis for paying an overtime rate for the 4 additional hours of work on Friday evening. Since the 8-hour overtime pay threshold is being used, those 4 hours are not substituted for the Monday furlough hours in pay computations; thus, an overtime rate applies. If appropriate, the employee may receive compensatory time off in lieu of overtime pay for the 4 additional Friday hours under the normal rules governing compensatory time off.

- **Example C.** An employee is furloughed for 8 hours on Monday and works 8 hours per day

on Tuesday–Friday. The employee is required to work 4 hours on Monday evening during hours outside of his daily tour of duty.

For purposes of pay computations, the 4 hours of work on Monday evening are substituted for 4 hours of furlough time off taken during the employee’s daily tour of duty on Monday and paid for at the rate applicable to the employee’s daily tour of duty (i.e., basic rate), consistent with 5 CFR 550.112(d)(2). The employee cannot receive overtime pay, or compensatory time off in lieu of overtime pay, for the 4 hours worked on Monday evening because the hours are not overtime hours.

Note 1: The above scenarios assume the employee’s administrative workweek and workdays are based on calendar days. The administrative workweek can be based on any 24-hour period. (See 5 CFR 610.102.) That would affect application of 5 CFR 550.112(d), which is based on the applicable “administrative workweek” and “workday.”

Note 2: For employees on flexible or compressed work schedules, the “basic work requirement” is generally equivalent to the “basic workweek.” However, no hour within the basic work requirement can be an overtime hour, even if those basic work requirement hours exceed 8 hours of work in a day or 40 hours of work in a week. For example, if an employee on a flexible or compressed work schedule has a 9-hour basic work requirement on a given day, only hours of work outside the 9-hour basic work requirement could be overtime hours. In other words, while hours of work (including any paid time off but excluding hours in nonpay status) within the basic work requirement count as hours of work in applying the 8-hour daily and 40-hour weekly overtime thresholds, only hours of work outside the basic work requirement may receive an overtime rate. Hours outside the daily or weekly basic work requirement are substituted, as appropriate, for furlough hours under the rules in 5 CFR 550.112(d). For example, if an employee is placed in furlough status during a 9-hour daily basic work requirement and works 4 hours outside the basic work requirement on that same day, those 4 hours would be substituted and paid at the rate for basic work requirement hours. An employee on a flexible work schedule may have the option to earn credit hours by working hours outside the basic work requirement. The rules governing credit hours remain applicable in the context of an administrative furlough. See Questions C.4., D.6., and E.1. for additional information on earning and using credit hours.

6. May an employee on a flexible work schedule earn credit hours by working during a week or on a day when the employee is furloughed?

A. During a week or on a day when an employee is furloughed during certain basic work requirement hours, the employee may earn credit hours by electing to work in excess of his or her basic work requirement, subject to all legal requirements and applicable agency policies or collective bargaining agreements. An employee may not earn credit hours by working during designated furlough hours within the employee’s basic work requirement. (See Question C.4.) Also, an employee may not use previously earned credit hours during furlough hours. (See Question E.1.)

The substitution rule in 5 CFR 550.112 may not be applied to credit hours—that is, the rule cannot be used to convert earned credit hours into paid hours that substitute for furlough hours in pay computations.

E. Leave and Other Time Off

1. May an employee take paid leave or other forms of paid time off (e.g., annual, sick, court, or military leave, leave for bone marrow or organ donor leave, credit hours earned, any compensatory time off earned, or time off awards) instead of taking administrative furlough time off?

A. No. During an administrative furlough, an employee may not substitute paid leave or other forms of paid time off for any hours or days designated as furlough time off.

2. Can agencies furlough employees who are on approved leave without pay (LWOP) during a time when administrative furloughs are being conducted for other employees?

A. Agencies have discretion in determining whether to furlough employees who are in LWOP status, since both furloughs and LWOP are periods of nonpay status. Employees may already be scheduled for LWOP for a variety of reasons and for various lengths of time on either a continuous or discontinuous basis. An employee's LWOP may or may not fully encompass the period during which administrative furloughs are being conducted for other employees in the same organization. For example, for one employee, a continuous 1-year period of leave without pay to accompany a military spouse overseas may encompass the entire period during which administrative furloughs are being conducted in an employee's organization, while another employee's continuous LWOP may end during that period. Other employees may be scheduled to take LWOP on a regular but discontinuous basis under the Family and Medical Leave Act. (See Question E.3.)

Agencies are responsible for determining (1) whether employees already scheduled for LWOP during a period when administrative furloughs are being conducted will be subject to furlough and (2) the hours of furlough required of such employees. If an agency decides to place an employee in furlough status during hours that were originally scheduled to be LWOP, all applicable procedural requirements must be met, including a furlough notice.

3. May an employee take LWOP under the Family and Medical Leave Act (FMLA) during a time when administrative furloughs are being conducted for other employees?

A. Yes. An employee may take LWOP under FMLA during a time when administrative furloughs are being conducted for other employees in the same organization, subject to the conditions in 5 U.S.C. 6382. (See Question E.2.) However, if an employee is placed in furlough status during hours that were previously scheduled to be LWOP under FMLA, those furlough hours will no longer be considered to be LWOP under FMLA. Furlough hours will not count toward the employee's 12-week FMLA leave entitlement. An employee may not later substitute paid leave for furlough hours.

As explained in Question E.2., agencies are responsible for determining the extent to which employees with scheduled LWOP (including LWOP under FMLA) are placed in furlough status. If employees are placed in furlough status instead of LWOP under FMLA, all applicable procedural requirements must be met, including a furlough notice.

4. Does a furlough affect the accrual of annual leave and sick leave?

A. If an employee is furloughed (i.e., placed in nonpay status) for part of a biweekly pay period, the employee's leave accrual will generally not be affected for that pay period.

However, the accumulation of nonpay status hours during a leave year can affect the accrual of annual leave and sick leave over a period of time. (See 5 CFR 630.208 and Notes 1 and 2 below.) For example, when a full-time employee with an 80-hour biweekly tour of duty accumulates a total of 80 hours of nonpay status from the beginning of the leave year (either in one pay period, or over the course of several pay periods), the employee will not earn annual and sick leave in the pay period in which that 80-hour accumulation is reached. If the employee again accumulates 80 hours of nonpay status, he or she will again not earn leave in the pay period in which that new 80-hour total is reached. At the end of the leave year, any accumulation of nonpay status hours of less than 80 hours is zeroed out so that the accumulation of nonpay status hours for the next leave year starts at zero.

For part-time employees, the rule blocking accrual of leave based on the accumulation of nonpay status hours (5 CFR 630.208) does not apply. Instead, leave accrual for part-time employees is prorated based on hours in a pay status in each pay period; thus, time in nonpay status reduces leave accrual in each pay period containing such time (5 CFR 630.303 and 5 U.S.C. 6307).

Also, please see OPM's fact sheet on the [Effect of Extended Leave Without Pay \(LWOP\) \(or Other Nonpay Status\) on Federal Benefits and Programs](#), which has a section entitled, "Accrual of annual and sick leave."

Note 1: The term "nonpay status" refers to period during which an employee is absent from his or her tour of duty established for leave usage purposes and receives no pay for such absence. Furlough is one type of nonpay status.

Note 2: The term "leave year" is defined as the period beginning on the first day of the first full biweekly pay period in a calendar year and ends on the day immediately before the first day of the first full biweekly pay period in the following calendar year. (For example, for employees on the standard biweekly payroll cycle, the 2013 leave year is January 13, 2013, through January 11, 2014.) (See fact sheet at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/leave-year-beginning-and-ending-dates/>.)

Note 3: For full-time employees with an uncommon tour of duty under 5 CFR 630.210, the accumulation limit used in applying 5 CFR 630.208 is the number of hours in the uncommon tour of duty for a biweekly pay period.

5. May an employee who takes furlough hours off be permitted to substitute annual leave retroactively for furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?

A. Generally no. However, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the employee may retroactively cancel excess furlough hours and substitute annual leave for those hours, as determined by the agency. (See B-219211, December 9, 1985.) For example, an agency's furlough plan requires each employee to take 176 furlough hours (22 days) between April and September. The agency requires the employee to take 8 furlough hours off each week in the month of April (for a total of 32 furlough hours (4 days)) and provides the employee with an option of when to take his/her remaining furlough hours off at a time of the employee's choosing, but no later than the end of September. If the employee takes all 176 furlough hours off (22 days) in April and the agency cancels the furlough on May 1 due to improved financial conditions, the employee would have taken 144 furlough hours more than what was needed (176 hours (22 days) - 32 hours (4 days)). Upon the determination to cancel the furlough, the agency must decide how to handle the 144 furlough hours (18 furlough days) off the employee has taken ahead of schedule in accordance with internal agency procedures and any applicable collective bargaining agreement. Any annual leave substituted for furlough hours would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

Note: This matter may be subject to collective bargaining for union-represented employees to the extent an agency has discretion to retroactively substitute annual leave for furlough hours taken.

6. May an employee who takes furlough hours off be granted excused absence to substitute retroactively for the furlough hours taken, if the agency finds sufficient funds to cover the hours the employee was in a furlough status?

A. Agencies have the discretionary authority to determine the situations in which an employee may be excused from duty without loss of pay or charge to leave in accordance with internal agency policy and any collective bargaining agreement. However, agencies are not required to provide excused absence unless specifically required by statute or Presidential directive. For example, if an employee has proactively taken more than the required number of furlough hours under an agency's phased furlough plan prior to the agency cancellation of the furlough, the agency is not required to provide excused absence for the excess furlough hours, as determined by the agency. (See B-219211, December 9, 1985.) If the agency decides to cancel certain furlough hours and substitute excused absence, the excused absence should be provided to all similarly situated employees. Any retroactive substitution of excused absence would be calculated at the same compensation rate the employee would have received had he or she used annual leave at that time.

Note: This matter, like others involving the impact and implementation of furloughs, may be

subject to collective bargaining for union-represented employees.

F. Holidays

1. May employees be administratively furloughed on a holiday?

A. Employees may be furloughed for periods of time that include holidays. However, an agency should select the furlough days off on programmatic and administrative grounds that are unrelated to the fact that the period includes a holiday. For example, an agency may not properly furlough employees for a 3-day period, the middle of which is a holiday, for the sole purpose of saving 3 days' pay while losing only 2 days of work. (See Comptroller General opinion B-224619, August 17, 1987.) Neither would it be proper to furlough an employee solely on a holiday. (See Comptroller General opinion B-222836, May 8, 1986.)

2. If employees have a designated administrative furlough day off on the last workday before a holiday *or* the first workday after a holiday (but not on both days), will they be paid for the holiday?

A. Yes. The general rule is that an employee is entitled to pay for a holiday so long as he or she is in a pay status on either the workday preceding a holiday or the workday following a holiday. The employee is paid for the holiday based on the presumption that, but for the holiday, the employee would have worked. (Note: A holiday should not be the first or last day of the period covered by a furlough.)

3. If employees have a designated administrative furlough day off on the last workday before a holiday *and* the first workday after a holiday, will they be paid for the holiday?

A. No. If a furlough includes both the last workday before the holiday and the first workday after the holiday, the employee is not entitled to pay for the holiday because there is no longer a presumption that, but for the holiday, the employee would have worked on that day. (See Comptroller General opinion B-224619, August 17, 1987.) Agencies that allow employees to choose their furlough days off should explain that the employee will not be paid for the holiday if the employee chooses to take a furlough day off both before and after the holiday.

G. Benefits

1. How does an administrative furlough impact the Federal Employees Health Benefits Program?

A. Please see Section S (Federal Employees Health Benefits Program).

2. Will an employee's Federal Flexible Spending Account Program (FSAFEDS) be impacted during an administrative furlough?

A. The employee's FSAFEDS coverage continues, and allotments made by the employee continue if the employee's salary in each pay period is sufficient to cover the deduction(s). If the employee's salary is insufficient to cover his or her allotment(s), then incurred eligible health care expenses will not be reimbursed until the allotments are successfully restarted (in which case the remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount). Incurred eligible dependent care expenses may be reimbursed up to whatever balance is in the employee's dependent care account, as long as the expenses incurred allow the employee (or employee's spouse if married) to work, look for work or attend school full-time. Once dependent care allotments are successfully restarted, remaining allotments would be recalculated over the remaining pay periods to match the employee's annual election amount.

3. How does an administrative furlough impact the Federal Employees' Group Life Insurance (FEGLI) Program?

A. Please see Section T (Federal Employees' Group Life Insurance Program).

4. Will an employee continue to be covered under the Federal Dental and Vision Insurance Program (FEDVIP) during an administrative furlough?

A. Yes. Just as with scheduled LWOP, if BENEFEDS is unable to take the necessary premium deduction from an employee's pay, BENEFEDS collects premium up to twice the biweekly amount from the next full pay period to make up for the missed premium deduction. If the furlough continues for more than two consecutive pay periods, BENEFEDS will mail a direct bill to the employee. The enrollee should pay premiums directly billed to him/her on a timely basis to ensure continuation of coverage.

5. Will an employee continue to be covered under the Federal Long Term Care Insurance Program (FLTCIP) during an administrative furlough?

A. Yes, eligible claims will continue to be paid. Coverage will terminate if premiums are not paid. If the contractor does not receive premium for two or fewer pay periods, they will adjust future premium deductions, increasing by no more than \$50 per pay period to recover the missed premiums. Three consecutive pay periods of no premium will result in the contractor billing the participant directly.

The employee also has the option to change to direct billing or to payment via electronic funds transfer (EFT). If premiums are not collected or a final bill is not paid within a 30 day grace period, FLTCP will send a termination letter. The employee has 35 days from the date of the letter to pay the premium; otherwise the employee will be disenrolled retroactively to the last pay period in which premium was paid.

6. How does a furlough affect retirement annuity benefits?

A. Generally, furloughs will not affect an annuity benefit under the Civil Service Retirement System (CSRS) or the Federal Employees' Retirement System (FERS).

The amount of a CSRS or FERS annuity paid by OPM is based primarily on the amount of creditable service an employee performs and the employee's high-3 average salary. Both CSRS and FERS allow service credit for up to 6 months of nonpay status in any calendar year. If a furlough period does not cause an employee to be in a nonpay status for more than 6 months in a calendar year, the furlough period will be included as creditable service in determining the employee's total creditable service used in the annuity computation. If the total amount of time an employee spends in a nonpay status in a calendar year exceeds 6 months, the amount of nonpay status in excess of 6 months in the calendar year will not be creditable for retirement purposes.

The high-3 average salary used to compute CSRS and FERS annuities is the largest annual rate resulting from averaging an employee's *rates of basic pay* in effect over any period of 3 consecutive years of creditable civilian service, with each *rate* weighted by the length of time it was in effect. If a period of nonpay status (such as a furlough) that is creditable for retirement occurs during the 3-year period used to compute the high-3 average salary, the loss of actual pay during that nonpay status period generally would have no effect on the high-3 computation. The basic pay rate in effect during that nonpay status period would be used in the high-3 average salary calculation. For example, if an employee whose annual rate of basic pay is \$85,000 is placed in a furlough status for two weeks and that 2-week period falls in the employee's average salary period, that 2-week furlough period will be credited in the high-3 average salary calculation using the \$85,000 annual rate of basic pay that was in effect during the furlough period. In this example, the loss of actual pay (or earnings) during that period is not material in the high-3 average salary calculation.

Basic pay for retirement includes locality pay and certain types of additional pay, such as law enforcement availability pay (LEAP), administratively uncontrollable overtime (AUO) pay, standby duty pay, firefighter pay (annualized salary), and market pay for physicians. These types of additional pay are included in the basic pay used to calculate the high-3 average salary during periods of creditable nonpay status as long as the authorization for the payments remains in effect.

Other additional types of basic pay, however, including night shift differential and environmental differential for wage grade employees, and certain overtime pay for customs officers are included in the average salary computation only when an employee has received that type of pay.

H. Employee Assistance

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

A. It is possible that furloughed employees may become eligible for unemployment compensation. The various State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. Agencies or employees should submit questions to the appropriate State (or the District of Columbia, Puerto Rico, or the Virgin Islands) office. The Department of Labor (DOL) website provides links to individual State offices at <http://www.servicelocator.org/OWSLinks.asp>.

For additional information on Unemployment Compensation for Federal Employees (UCFE), see DOL's UCFE webpage at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>, fact sheet at <http://www.dol.gov/sequestration/ucfe.pdf>, and frequently asked questions at <http://www.dol.gov/sequestration/ucfe-faqs.pdf>.

2. What resources are available if a Federal employee needs financial assistance during a furlough period?

A. Some agency employee assistance programs (EAPs) include financial consultation services. In addition, employees may want to contact their financial institution or credit union or learn about their options through the Thrift Savings Plan (<http://www.tsp.gov>). The Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at www.tsp.gov/PDF/formspubs/oc95-4.pdf, and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

3. Can I take a TSP loan while I'm furloughed? What is the effect of an administrative furlough on Thrift Savings Plan (TSP) contributions, investments, and loans?

A. Agencies and employees should refer to the TSP website (<http://www.tsp.gov>) or contact their agency representative for information. Specifically, the Federal Retirement Thrift Investment Board, which administers TSP, has posted guidance regarding the effect of nonpay status on TSP accounts at www.tsp.gov/PDF/formspubs/oc95-4.pdf, and specific guidance regarding the March 1, 2013 sequester at <https://www.tsp.gov/PDF/formspubs/oc13-7.pdf>, and can be reached at 1-877-968-3778 for additional information.

I. Service Credit for Various Purposes

1. Is being furloughed or on leave without pay (LWOP) considered a break in service?

A. No, both mean the employee is in a nonpay, nonduty status for those days/hours. However, an extended furlough or extended LWOP may affect the calculation of creditable service for certain purposes.

2. To what extent does nonpay status affect Federal employee benefits and programs?

A. The effects of a nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) on Federal employee benefits and programs vary based on current law and regulation. For additional information, see OPM's fact sheet on the "Effect of Extended Leave Without Pay (or Other Nonpay Status) on Federal Benefits and Programs" at <http://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/effect-of-extended-leave-without-pay-lwop-or-other-nonpay-status-on-federal-benefits-and-programs/>.

J. Federal Employees on Military Duty

1. Will employees continue to receive a reservist differential payment (5 U.S.C. 5538) if they are affected by an administrative furlough from their Federal civilian position while on active duty?

A. It depends. In computing a reservist differential, the employing agency must compare the employee's projected civilian basic pay to the allocated military pay and allowances for each civilian pay period. If an employee is affected by a furlough from his or her Federal position while on active duty, the employing agency must reduce the employee's projected civilian basic pay during any pay period in which furlough time off occurs. If the allocated military pay and allowances are greater than or equal to the projected civilian basic pay adjusted for furlough time off, no reservist differential is payable for that pay period. If the projected civilian basic pay (as reduced to account for furlough time off) is greater than the allocated military pay and allowances, the difference represents the unadjusted reservist differential.

2. Will there be an impact on an employee's General Schedule or Federal Wage System within-grade increases (WGI) waiting period if the employee is affected by an administrative furlough while in an Absent – Uniformed Service status?

A. No. A furlough has no impact on an employee's General Schedule or Federal Wage System WGI waiting period if the employee is affected by a furlough while in an Absent – Uniformed Service status (i.e., Nature of Action Code 473, which is used when the employee has restoration rights). An absence for the purpose of engaging in military service is creditable service in the computation of waiting periods for successive WGIs when an employee returns to a pay status through the exercise of a restoration right provided by law, Executive order, or regulation. (See 5 CFR 531.406(c)(1)(i) and 5 CFR 532.417(c)(4).)

K. Benefits under the Federal Employees' Compensation Act (FECA)**1. Are employees who are injured while on furlough or LWOP eligible to receive workers' compensation?**

A. No. Federal workers' compensation is paid to employees only if they are injured while performing their duties. Employees on furlough or LWOP are not in a duty status for this purpose. A Federal employee who is receiving workers' compensation payments under the FECA will continue to receive workers' compensation payments during a furlough and will continue to be charged LWOP.

2. How does an administrative furlough affect the compensation of an employee who is receiving FECA benefits and is under medical orders to work part-time?

A. When an employee is already out on total or partial wage loss benefits, FECA compensation continues at the usual rate. Claims for FECA compensation benefits submitted as a result of missing a partial day due to a furlough are not payable under the FECA.

3. How does an administrative furlough impact the compensation of an employee who is receiving FECA benefits and is required to work a modified light duty schedule?

A. FECA compensation benefits are not payable for work days lost as a result of administrative furlough.

4. How does a furlough affect Continuation of Pay (COP)?

A. If an employee sustains a traumatic injury and is receiving COP before furlough days have been scheduled, COP should continue. However, if an employee sustains a traumatic injury and has already been scheduled for one or more furlough days, then there would be no COP entitlement for any day that the employee was not scheduled to work due to an administrative furlough.

5. Are schedule awards or medical benefits affected by an administrative furlough?

A. No. Schedule award and medical benefits continue regardless.

Note to Section K: Any additional questions regarding Federal workers' compensation benefits should be directed to the Division of Federal Employees' Compensation, Office of Workers' Compensation Programs, U.S. Department of Labor. See <http://www.dol.gov/owcp/dfec>.

L. Scheduling Furlough Time Off

1. How should agencies schedule administrative furlough time off? Must all agencies follow the same procedures for furloughing employees?

A. An administrative furlough will impact each agency differently depending on the extent of the agency's budget reduction. Agencies have discretion to implement such a furlough to best absorb budget reductions over the course of the fiscal year and do not need to follow the same procedures. For example, an agency may furlough employees for 1 day a pay period for a finite period of time, designate a number of furlough hours, shut down the entire agency for a defined number of days, designate specific dates as furlough days off, or allow employees to select their own furlough time off, etc.

2. How should agencies schedule administrative furlough time off for employees on flexible or compressed work schedules under an alternative work schedule (AWS) program?

A. Because the definition of a workday will vary based on the type of work schedule and/or appointment, it is best for an agency to develop a policy that provides equity and consistency, subject to all legal requirements and applicable agency policies or collective bargaining agreements. For ease of administration and equity, agencies may schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, in the event that all full-time employees are furloughed for 40 hours, for some employees the actual number of furlough days could be more or less than 5 days, depending on their work schedules.

Many employees who are on flexible work schedules normally have a great deal of flexibility in the starting and stopping times within their basic work schedule. When furloughing employees with a flexible work schedule, agencies should identify specific hours during which the employee is in furlough status—e.g., 8:00 am–4:00 pm. Thus, if an employee is called into work (e.g., due to an emergency), it will be clear as to whether the hours of work occur during or outside scheduled furlough hours. Any work ordered during scheduled furlough hours cancels the furlough for those hours, and such work would be subject to normal compensation requirements. (See Question C.6. See also Questions D.4., D.5., and D.6 dealing with employees working outside basic workweek hours during a day or week in which they are placed in administrative furlough status.)

3. How should agencies schedule administrative furlough time off for employees who do not work a standard work schedule (e.g., part-time or uncommon tour of duty)?

A. Agencies must enact furloughs in a manner that reduces operation risks and minimizes impacts on agency core mission in service of the American people, but should strive to impact employees in an equitable manner regardless of work schedule. Furloughs of part-time or uncommon tour of duty employees must comply with the procedures of 5 CFR part 752 or part 351, as applicable, if the employees are otherwise covered.

In determining furloughs for part-time employees, agencies should consider whether or not to prorate furlough hours requirements based on the number of scheduled part-time work hours relative to a full-time work schedule of 80 hours in a biweekly pay period to achieve the same percentage pay reduction for both full-time and part-time employees. For example, a part-time work schedule of 64 hours per biweekly pay period would equate to $64/80$ of a full-time work schedule, or 80 percent. This percent could then be multiplied by the number of hours that a full-time employee is furloughed to derive the appropriate number of furlough hours for the part-time employee. Thus, if a full-time employee were required to be furloughed for 40 hours, a part-time employee with a 64-hour biweekly tour could be furloughed for 32 hours ($40 \times .80 = 32$).

In the case of employees with an uncommon tour of duty, such as firefighters and paramedics, agencies should consider the impact that a furlough has on regular pay (in percentage terms), rather than the impact on hours (in percentage terms). An uncommon tour of duty is a tour of duty in excess of 80 hours in a biweekly pay period that is established for the purpose of charging leave. Thus, it includes overtime hours for which an employee receives regular overtime pay or standby duty premium pay. (See definition of “uncommon tour of duty” in 5 CFR 630.201 and 630.210.) Generally, for employees on an uncommon tour of duty, furlough hours will reduce regular pay by a greater percentage than the percentage reduction in hours. In connection with the furlough of employees with an uncommon tour of duty, agencies should consider whether or not the number of furlough hours should be set in a manner that achieves the same percentage pay reduction experienced by full-time employees with an 80-hour biweekly tour of duty who are covered by the same furlough policy.

4. How should agencies schedule administrative furlough time off for employees who work on a seasonal or intermittent basis?

A. Whether either group is called for work during an administrative furlough is discretionary with agencies. Seasonal employees are recalled to duty at identified periods of the year in accordance with pre-established conditions. Intermittent employees are non-full-time employees without a regularly scheduled tour of duty.

M. Procedures—22 Workdays or Less

1. May an agency schedule administrative furlough days consecutively and discontinuously (e.g., one workday per week for 15 weeks)?

A. Yes. Nothing in law or regulation prohibits discontinuous furloughs, and they have been upheld by the Merit Systems Protection Board on appeal. Moreover, discontinuous furloughs can be advantageous to both employees and the agency by distributing the furlough days over time, thereby minimizing the financial impact on employees as well as lessening disruption of agency services to the public.

In *AFGE, Local 32 and OPM*, 22 FLRA 307 (1986), the Federal Labor Relations Authority held that a proposal giving the furloughed employee the right to determine whether his/her furlough was to be continuous or discontinuous is a negotiable 5 U.S.C. 7106(b)(3) “appropriate arrangement.”

For ease of administration and equity, agencies may also schedule furloughs for all employees (both alternative work schedule and regular tours of duty) in terms of hours. For example, all full-time employees would be furloughed for 40 hours, even though for some employees the actual number of furlough days could be more or less than 5 days.

2. How is an administrative furlough documented?

A. Agencies must prepare an SF-50, “Notification of Personnel Action,” for each employee subject to furlough (or a List Form of Notice may be prepared for a group of employees who are to be furloughed on the same day or days each pay period). Chapters 15 and 16 of [The Guide to Processing Personnel Actions](#) provide complete guidance on documenting a furlough.

3. If a discontinuous administrative furlough extends for more than 30 calendar days, is it a furlough covered by adverse action procedures in 5 CFR part 752, or is it covered by the reduction in force (RIF) procedures of 5 CFR part 351?

A. Based on the definition of “day” as “calendar day” (5 CFR 210.102 and 752.402), OPM has determined that 22 workdays equate to 30 calendar days for adverse action purposes for employees. Thus, a discontinuous furlough of 22 workdays or less would be covered by adverse action procedures, and one of more than 22 workdays would be covered by the RIF procedures of 5 CFR part 351. (If a holiday is included in a furlough of 22 *consecutive* workdays, the furlough might equate to more than 30 calendar days. For example, the month of November has two holidays: Veterans Day and Thanksgiving Day. Therefore, the number of calendar days will be extended beyond 30 by two days.)

4. What procedural rights would apply for an administrative furlough of 30 calendar days or less for employees covered under 5 CFR part 752?

A. For a short furlough of a covered employee, the law (5 U.S.C. 7513) gives a covered employee the following rights:

- At least 30 calendar days advance written notice by the agency stating the specific reasons for the proposed action. (Typically, the reasons for the action would involve a lack of work or funds.) The 30 calendar day period begins upon an employee’s *receipt* of the written notice. Therefore, agencies should plan accordingly to allow time for mailing the notice when hand-delivery is not possible. (See Sample Notice 1 for proposal to furlough and Sample Notice 2 for decision to furlough.)
- At least seven calendar days for the employee to answer orally and in writing to the

proposal notice and to furnish documentary evidence in support of his or her answer. (A summary of any oral answer must be made and maintained by the agency.)

- The right of the employee to be represented by an attorney or other representative.
- 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.

In addition, OPM's regulations (5 CFR 752.404) require that the agency inform the employee of the right to review the material it relied on to support the reasons for its action. The agency must designate an oral reply official who can either make or recommend a decision, and must issue its decision at or before the effective date of the action. The regulations (5 CFR 752.405) also provide that where applicable, the affected employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to the Merit Systems Protection Board, but not both.

Note: Under 5 CFR 752.404(b)(2), if the agency is furloughing some, but not all, employees in a competitive level, the notice of proposal must state the basis for selecting the particular employee as well as the reasons for the furlough. Agencies who anticipate furloughing some, but not all employees, should ensure the accuracy of established competitive levels in order to meet their obligations under this regulation. In general, the term competitive level refers to positions at the same grade level and classification series, the duties of which are interchangeable (see 5 CFR 351.403(a)). Where bargaining unit employees are concerned, additional procedural rights may be provided by their negotiated agreement.

Adverse action procedures in 5 CFR part 752, subpart F, covering Senior Executive Service (SES) career appointees and certain SES limited term or emergency employees do not apply to short furloughs because those procedures provide only for removal from the civil service or suspension for more than 14 days based upon misconduct, neglect of duty, malfeasance or failure to accept a directed reassignment or to accompany a position in a transfer of function.

4a. What supporting material must be made available for review by employees to support an administrative furlough action as required under 5 CFR 752.404?

A. Since decisions on whether to conduct an administrative furlough and the length of any furlough are based on each agency's unique circumstances, each agency would need to identify the appropriate documentation that supports its own particular reasons for any administrative furlough action. Because the reasons and methods to furlough may vary from agency to agency, (e.g. downsizing, reduced funding, lack of work, or any other budget situation) supporting documentation may also vary.

While it is the responsibility of each agency to make an independent determination of supporting documentation for any administrative furlough action due to sequestration, potential general documentation related to sequestration could include, but is not limited to:

- 1) Balanced Budget and Emergency Deficit Control Act of 1985
- 2) Budget Control Act of 2011 - <http://www.gpo.gov/fdsys/pkg/BILLS-112s365enr/pdf/BILLS-112s365enr.pdf>,
- 3) American Taxpayer Relief Act - <http://www.gpo.gov/fdsys/pkg/BILLS-112hr8enr/pdf/BILLS-112hr8enr.pdf>,
- 4) OMB Memorandum M-13-03, "Planning for Uncertainty with Respect to Fiscal Year 2013 Budgetary Resources," dated January 14, 2013 - <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-03.pdf>,
- 5) OMB Memorandum M-13-05, "Agency Responsibilities for Implementation of Potential Joint Committee Sequestration," dated February 27, 2013 - <http://www.whitehouse.gov/sites/default/files/omb/memoranda/2013/m-13-05.pdf>,
and
- 6) OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2013, dated March 1, 2013 - http://www.whitehouse.gov/sites/default/files/omb/assets/legislative_reports/fy13omb_jcsequestrationreport.pdf

4b. What procedural rights apply to employees who are veterans covered under 5 U.S.C. chapter 75 and 5 CFR part 752 for an administrative furlough of 30 calendar days or less?

A. For a short furlough of a covered veteran employee, the law (5 U.S.C. 7513) gives a covered veteran employee the same procedural rights as other covered employees as explained in Question M.4. Employees should consult with their agency human resources office to determine whether they are covered by 5 U.S.C. 7513 and what procedures may apply to them.

5. What procedures are applicable to members of the Senior Executive Service affected by an administrative furlough of 30 calendar days or less?

A. Under SES furlough regulations at 5 CFR part 359, subpart H, an agency need not use competitive procedures in selecting SES appointees to be furloughed for 30 calendar days or less, or for 22 workdays or less if the furlough does not cover consecutive days; however, the agency must provide career SES appointees (other than reemployed annuitants) a 30-day advance written notice of a furlough of any length. The written notice must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. This regulation does not require that appointees be afforded an

opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

6. What procedures and appeal rights are applicable for probationers, employees under temporary appointments in the competitive service, employees who are nonpreference eligible employees in the excepted service with less than 2 years of continuous service, Schedule C employees, and others not covered by 5 U.S.C. chapter 75 but also affected by an administrative furlough?

A. There are no mandatory procedures; however, agencies should ensure that all administrative procedures required by negotiated agreements or internal personnel policies are followed, subject to any exceptions to those procedures that would apply in the event of an administrative furlough.

6a. What if an agency initiates an administrative furlough for a probationer, but the individual satisfactorily completes their probationary period before furlough days are taken or completed?

A. Once a probationer satisfactorily completes the required probationary period and meets the definition of "employee" under 5 U.S.C. 7511, the employee is entitled to the same procedural rights as other covered employees as explained in Question M.4.

Before any furlough days are taken after the individual has become an "employee" under 5 U.S.C. 7511, the agency should provide: at least 30 calendar days advance written notice; at least 7 calendar days for the employee answer orally and in writing; the right of the employee to be represented by an attorney or other representative; a written decision; and the right of the employee to appeal the agency's action to the Merit System Protection Board. See Question M.4. for additional information on these procedural rights.

7. How do agencies implement an administrative furlough for administrative law judges?

A. 5 U.S.C. 7521 provides that adverse action furloughs of 30 calendar days or less may be taken against an administrative law judge "only for good cause established and determined by the Merit Systems Protection Board on the record after opportunity for hearing before the Board." The Merit Systems Protection Board has adopted procedures for implementing such an action, which are described in 5 CFR 1201.137-141.

8. How should the decision letter for an administrative furlough be framed if the agency

has not set a specific number of furlough days?

A. While it is desirable when possible to inform the affected employee of a specific number of furlough days in the decision letter, the agency needs only to set out the maximum time that may be involved, so employees have as much information as possible.

9. If an employee decides to challenge a discontinuous administrative furlough, from what point would the time for appeal to the Merit Systems Protection Board run?

A. Employees must file an appeal within 30 days after the effective date of their first furlough day, or 30 days after the date of their receipt of the decision notice, whichever is later.

10. May an agency provide an employee electronic notice of a furlough action?

A. Agencies that issue furlough notices should consult with their respective General Counsels to ensure each step of the process is consistent with regulatory and legal requirements. If an agency determines to electronically notify affected employees of a furlough action, OPM recommends that the agency include each employee's name, address, and/or e-mail address on both the proposal and decision notifications so that it is clear that an employee is receiving personal notification. Agencies should also consider including in the body of the electronic correspondence, the requirement that the employee provide an email acknowledgement of receipt. If an agency doesn't receive a requested acknowledgement of receipt of an e-mail notification, it should consider delivering a paper copy of the proposal and/or decision notifications to the employee at his or her home address by registered mail with a return receipt requested. Similarly, agencies must deliver hard copy furlough notices to those employees without agency email access.

Additionally, OPM recommends that agencies consider informing employees in advance of when and how the furlough notices will be issued and providing a contact person who can confirm whether or not an employee is subject to the furlough and answer questions.

Finally, agencies with bargaining unit employees are reminded that they must provide notice and opportunity to bargain over negotiable procedures and appropriate arrangements to any unions representing their employees.

11. What are an agency's regulatory obligations in providing an appellant the Merit Systems Protection Board (MSPB) appeal information in the adverse action furlough decision notice?

A. As summarized in the April 11, 2013, Federal Register (<http://www.gpo.gov/fdsys/pkg/FR-2013-04-11/pdf/2013-08503.pdf>) an agency must satisfy the obligation to provide a copy of the MSPB appeal form when issuing a decision notice. Providing this MSPB appeal hyperlink form electronically (<https://e-appeal.mspb.gov/>) will typically satisfy the requirement of ensuring that employees subject to a decision appealable to MSPB will have effective access to the MSPB regulations and appeal form. However, if

the employee informs the agency that he or she lacks Internet access, the agency is required to take steps to ensure that the employee has actual access to the MSPB's regulations and the appeal form, including providing the employee with a hard copy of these documents upon the employee's request. See Sample Notice 2 for sample decision notice language.

N. Procedures—More than 22 Workdays (Extended Furlough)

1. When is an agency required to use reduction in force (RIF) procedures to administratively furlough employees?

A. Agencies must follow RIF procedures for an extended furlough of more than 30 continuous calendar days, or of more than 22 discontinuous workdays (though, importantly, a furlough is a temporary placement in non-pay/non-duty status; it is not a permanent separation from service).

2. Is there a maximum period an employee may be administratively furloughed for an extended period?

A. Yes. An employee may be placed on an extended furlough only when the agency plans to recall the employee to his or her position within 1 year. Therefore, the furlough may not exceed 1 year.

3. If an agency needs to administratively furlough employees for more than 30 calendar days (or more than 22 workdays), must the complete 5 CFR part 351 procedures be followed?

A. Yes. The complete procedures in 5 CFR part 351 must be followed, including a minimum 60 days specific written notice of the furlough action. (Question 16 has additional information on notice requirements.) The only exception to the regular procedures involves assignment rights (i.e., "bump" and "retreat" rights; see question 4).

4. When does an employee who is reached for an extended furlough action during an administrative furlough have a right of assignment to another position?

A. An employee reached for release from the competitive level because of an extended furlough has assignment rights to other positions on the same basis as an employee reached for release as a result of other RIF actions (e.g., separation or downgrading).

Because of the requirement in 5 CFR 351.701(a) that assignment rights apply only to positions lasting at least 3 months, an employee reached for an extended continuous furlough does not have assignment rights to a position held by another employee who is not affected by the furlough unless the furlough extends for 90 or more consecutive days. Also, an employee reached for a discontinuous extended furlough action does not have assignment rights to another position.

The undue interruption standard could apply to an extended furlough over 90 consecutive days. (As defined in 5 CFR 351.203, “undue interruption” essentially means that a higher-standing employee who is otherwise qualified for the assignment may exercise the assignment right only if the employee is able to perform the work of the position of the lower-standing employee within 90 days of the assignment.) The agency must consider whether undue interruption would result from both (1) the displacement of a lower-standing employee from the competitive level affected by the furlough, and (2) the recall of both employees to their official positions at the end of the furlough period.

5. Are there any other situations in which agencies may restrict employees’ assignment rights in an administrative furlough situation?

A. An agency may make a temporary exception to order of release and assignment rights to keep the incumbent in his or her position for 90 days or less after the commencement of the furlough when needed to continue an activity without undue interruption. (For additional reasons that a temporary exception may be used, see 5 CFR 351.608(a).)

An agency may make a continuing exception to order of release and assignment rights to keep the incumbent in a position that no higher standing employee can take over within 90 days and without undue interruption to the activity. (See 5 CFR 351.607.)

6. Some employees within a competitive area are paid from appropriated funds. Some are paid from a variety of other funding sources, such as trust funds, working capital, user fees, etc. Are employees who are paid from these other sources exempt from an administrative furlough and the 5 CFR part 351 process?

A. Regardless of the source from which an employee is paid, each employee within a competitive area would be subject to displacement by higher standing employees within the same competitive area.

7. If a program, project, or activity (PPA) takes other actions to obviate or lessen the need for an extended administrative furlough, how will the employees in the PPA be affected by the process?

A. Even though their positions are not subject to furlough, the employees in the PPA would be subject to displacement by higher standing employees in other PPAs within the competitive area.

8. What action is taken if an employee refuses an offer of assignment during an administrative furlough?

A. The employee is furloughed from his or her position.

9. If an employee bumps or retreats to a different job as a result of an administrative furlough, is the employee temporarily assigned to that job?

A. No. The employee becomes the incumbent of that job even though the furlough anticipates the employee's eventual recall to his or her former job.

10. If circumstances change and the agency is unable to recall administratively furloughed employees at the point specified in their extended furlough notice, what additional action is required?

A. In this situation, the agency must issue those employees new notices of either an extended furlough or proposed RIF separation, as the situation requires. This new action must meet all the requirements in the 5 CFR part 351 regulations (for example, 60 days advance notice).

11. Do these requirements also apply if an agency finds that it can recall employees before they have reached the administrative furlough limits specified in their notice?

A. No.

12. Are employees who are appointed by the President with Senate confirmation (PAS), Schedule C employees, and members of the Senior Executive Service (SES) covered by extended furlough procedures of 5 CFR part 351 during an administrative furlough?

A. Extended furlough procedures of 5 CFR part 351 do not apply to an employee who is a member of the Senior Executive Service or to an employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of the Senate, except a postmaster. All Schedule C employees are covered by part 351 except those under appointments of 1 year or less who have less than 1 year of service.

13. What procedures are applicable to members of the Senior Executive Service (SES) affected by an administrative furlough of more than 30 calendar days, or more than 22 discontinuous workdays?

A. Career SES members (other than reemployed annuitants) are covered by separate furlough procedures in 5 CFR part 359, subpart H, which provide that an agency must use competitive procedures in selecting SES career appointees for furloughs of more than 30 calendar days, or for more than 22 workdays if the furlough does not cover consecutive calendar days. SES regulations at 5 CFR part 359, subpart F, do not apply, but agencies may use the same competitive procedures they have established for SES RIF. Any competitive procedures used must be made known to the SES members. These career appointees are entitled to a 30-day advance written notice of a furlough, which must tell the appointee the reason for the furlough; the expected duration of the furlough and the effective dates; the basis for selecting the appointee when some but not all SES appointees in a given organizational unit are being furloughed; the location where the appointee may inspect the regulations and records pertinent to the action; the reason, if the notice period is less than 30 calendar days; and the

appointee's appeal rights to the Merit Systems Protection Board. For a probationer, the notice should also explain the effect (if any) on the duration of the probationary period. However, the full notice period may be shortened, or waived, in the event of unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. (See, for example, <http://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/#url=Shutdown-Furlough> for information on shutdown furloughs.) This regulation does not require that appointees be afforded an opportunity to respond or that agencies issue a separate decision notice. A career appointee (other than a reemployed annuitant) who has been furloughed and believes 5 CFR part 359, subpart H, or the agency's procedures have not been correctly applied may appeal to the Merit Systems Protection Board under provisions of the Board's regulations.

SES noncareer, limited term and limited emergency appointees and reemployed annuitants holding career SES appointments are not covered by 5 CFR part 359, subpart H, and may be furloughed under agency designated procedures, which need not include a 30-day advance written notice, an opportunity to respond, or a separate decision notice.

14. What happens to temporary employees serving under appointments limited to 1 year or less in extended administrative furlough situations?

A. An agency may not retain a temporary employee in pay status to furlough a competing employee in the same competitive level. Temporary employees may be either separated or furloughed in such situations, but they are not entitled to the protections of adverse actions or 5 CFR part 351 procedures when this occurs. As a matter of good human resources management, however, the agency should try to give these employees as much advance written notice as possible.

Time spent in furlough status by temporary employees counts the same as time in a pay status toward their appointment's not-to-exceed date and the 2-year limit on their overall service specified in 5 CFR 316.401(c).

15. How do agencies administratively furlough administrative law judges for more than 30 calendar days (or more than 22 workdays)?

A. Administrative law judges are subject to the procedures in 5 CFR part 351. However, since judges are not given performance ratings, the provisions dealing with the effect of performance ratings on retention standing would not apply.

16. What notice must an agency provide an employee of an extended administrative furlough action?

A. An agency must give an employee covered by 5 CFR part 351 a minimum 60-day specific written notice before the effective date of any action, including furlough. The statutory basis for the notice requirements is found in 5 U.S.C. 3502(d). The notice requirements are further implemented through regulations published in 5 CFR part 351, subpart H.

The same notice requirements are applicable to both a continuous and a discontinuous furlough.

17. What option is available if an agency is unable to provide an employee with the minimum required notice of an extended administrative furlough?

A. When the action is caused by unforeseeable circumstance, an agency may request OPM to authorize a notice period of less than 60 days. However, the agency must still provide each employee with a minimum of 30 calendar days specific written notice of the action. (See 5 U.S.C. 3502(e) and 5 CFR 351.801(b).)

18. Section 351.806 of 5 CFR states that during the notice period when, “in an emergency the agency lacks work or funds for all or part of the notice period, it may place the employee . . . in a nonpay status without his or her consent.” If an agency is unable to give 60 calendar days notice in an emergency (or longer period if required by administrative or negotiated provisions), may an agency use 5 CFR 351.806 to place employees on administrative furlough before the notice period is satisfied?

A. Yes.

19. Is the agency required (or permitted) to register employees administratively furloughed under 5 CFR part 351 in the agency’s Reemployment Priority List, or is the employee eligible for priority consideration under placement programs such as Career Transition Assistance Program or the Interagency Career Transition Assistance Program?

A. No. All of these programs are available only to employees who are separated, not to employees who are furloughed.

20. During an administrative furlough, competitive service employees may appeal the action to the Merit Systems Protection Board (MSPB). What about excepted service employees?

A. Excepted service employees, as well as competitive service employees, who are covered by 5 CFR part 351 may appeal or grieve as follows: An employee covered by a negotiated grievance procedure that does not exclude 5 CFR part 351 actions must use the negotiated grievance procedure. See 5 U.S.C. § 7121, *et seq.* Otherwise, an employee may appeal to MSPB. See 5 CFR 351.202, 351.901, and 1201.3(c).

21. What if an agency plans for and gives notice of an administrative furlough of 22 workdays or less, but then determines that another furlough is necessary for different reasons? Must the agency use 5 CFR part 351 furlough procedures if it determines that an additional furlough is necessary when the additional furlough follows a 22 workday or less furlough?

A. If an agency's initial assessment resulted in a furlough of 22 workdays or less, OPM recommends that the agency complete that furlough and then issue new furlough notices under either 5 CFR part 752 or 5 CFR part 351, as appropriate depending on the length of the newly required furlough, in the event it determines that additional savings are necessary for different reasons.

O. Labor Management Relations Implications

1. When an agency is required to effect an administrative furlough, what is the agency's obligation to bargain?

A. The decisions whether to furlough employees and which activities to except from a furlough are management rights that are not subject to bargaining. See 5 U.S.C. 7106(a). However, when an agency determines that an administrative furlough is necessary, agencies have a duty to notify their exclusive representatives, if any, prior to initiating and implementing any furlough actions. Upon request, agencies must bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already covered by a collective bargaining agreement.

Agencies should be aware that their collective bargaining agreements may also contain provisions with respect to the time frame within which to provide the labor organization notice of a change in conditions of employment. It is advisable to check the agency's individual labor agreements for applicable notice provisions, and for agencies to comply with those provisions.

Agency contracts may also contain provisions regarding adverse actions and reductions in force (RIF) with which agencies must comply in giving notice to bargaining unit employees of pending furloughs. It is advisable to check the agency's individual labor agreements for applicable adverse action and reduction in force notice provisions, and to comply with those provisions.

However, in the event that agencies are required to absorb unexpected substantial budget cuts during a short-term continuing resolution or because of the limited time remaining in the fiscal year to absorb these unexpected budget cuts, then agencies might be required to furlough without delay because the cuts must be absorbed during the term of the continuing resolution or remainder of the fiscal year and cannot be deferred until later in the year or into a new budget year. In this event, OPM regulation 5 CFR 752.404(d)(2) states that written notice of furlough to individual employees and opportunity to be heard are not required because of unforeseeable circumstances. Unforeseeable circumstances could include

unexpected cuts by the Congress to an agency's budget late in the fiscal year. This regulation does not apply to the statutory requirement that agencies provide appropriate notice to labor organizations of changes in conditions of employment.

1a. Must agencies complete collective bargaining prior to issuing any furlough notices to bargaining unit employees?

A. To the extent required by law, agencies must satisfy applicable collective bargaining obligations prior to issuing any furlough notices to bargaining unit employees. Issuance of a furlough notice itself has been found to constitute a change in employees' conditions of employment, which means that unless the matter is already "covered by" a collective bargaining agreement, an agency must provide a union with advance notice of the proposed change (e.g. furlough notices being sent to employees) and an opportunity to bargain over any aspects of the change that are negotiable.

2. May an agency effect an administrative furlough for employees in a bargaining unit before negotiations are completed?

A. If the parties bargain to impasse and the union does not invoke the services of the Federal Service Impasses Panel in a timely manner, the agency may furlough employees without further delay provided the agency gives the union adequate notice of its intent to implement its last bargaining offer on a specific date. If the union invokes the services of the Federal Service Impasses Panel by that date, the agency may not furlough employees unless it can show it is necessary to do so without further delay.

Agencies required to absorb substantial budget cuts during a short term continuing resolution or because of the limited time remaining in the fiscal year to absorb those cuts might be required to furlough without further delay because the budget cuts must be absorbed during the term of the continuing resolution or the current fiscal year and cannot be deferred until later in the year or into a new budget year. However, in the case of cuts that can be absorbed over the course of the fiscal year, it would be difficult to demonstrate that the furloughs could not be delayed pending resolution of the bargaining impasses. If bargaining is not completed and the agency must furlough employees, the agency should continue to bargain and, if possible, implement any agreement retroactively. We caution agencies that this should be a last resort approach. All attempts should be made to complete the collective bargaining process first, if possible.

- 3. While no decision has been made to administratively furlough employees, our union has submitted a midterm bargaining request on furlough procedures regarding any possible future administrative furlough. Our collective bargaining agreement is silent on furlough procedures and the union is invoking its right to initiate mid-term bargaining on matters not covered by the agreement. Do we have an obligation to bargain when no decision has been made to furlough employees?**

A. Even though no decision has been made to furlough employees, it is possible you have a duty to bargain regarding the union initiated mid-term bargaining request, assuming the matter is not already covered by your collective bargaining agreement. The law requires an agency to bargain during the term of a collective bargaining agreement on negotiable union-initiated proposals concerning matters that are not expressly contained in, or otherwise covered by, the collective bargaining agreement, unless the union has waived its right to bargain about the subject matter involved. With this in mind, you will have to evaluate the circumstances of your situation to determine whether you have a duty to bargain on furlough procedures.

- 4. Along with a bargaining request on furloughs, our union has submitted an information request under 5 U.S.C. 7114 seeking information such as the agency administrative furlough plan and a list of employees expected to be furloughed, and whether or not the furloughs are planned to be continuous or discontinuous. Do we have to provide this information?**

A. It depends. An agency is required to provide data that is normally maintained, reasonably available, and necessary to perform the representational duties of a union. A union requesting information must establish a particularized need for the information by articulating, with specificity, why it needs the requested information, including the uses to which the union will put the information and the connection between those uses and the union's representational responsibilities under the statute. The union must establish that the requested information is required in order for the union to adequately represent its members. An agency denying a request for information must assert and establish any countervailing anti-disclosure interests. An agency may not satisfy its burden by making conclusory or bare assertions; its burden extends beyond simply saying "no." With this in mind, you will have to evaluate the circumstances of your situation to determine whether you should provide the requested information.

- 5. If a bargaining unit employee decides to challenge a discontinuous administrative furlough, what is the timeframe for the employee to file a grievance under the negotiated grievance procedure (NGP)?**

A. The time limits and other procedures applicable to bargaining unit employees are spelled out in applicable provisions of negotiated agreements.

6. May a manager or supervisor have a meeting with employees in a bargaining unit to discuss an administrative furlough without a union representative present?

A. The law grants a union the right to be represented at certain meetings between managers and one or more bargaining unit employees if the meeting concerns issues such as personnel policies or practices or other general conditions of employment. Under the law, this meeting is referred to as a “formal discussion.” With this in mind, you will have to evaluate the circumstances of your situation to determine whether the meeting constitutes a formal discussion. If you have determined the meeting is a formal discussion, advance notice of the meeting must be provided to the union. See 5 U.S.C. 7114(a)(2)(A).

P. Travel

1. Must agencies cover travel expenses during a furlough day, if an employee’s travel status requires his/her stay to include that furlough day?

A. Yes. Agencies must provide per diem or actual expenses to employees whose travel status requires a stay that includes a furlough day.

2. Can an employee be engaged in official travel during furlough hours?

A. No. By statutory definition in 5 U.S.C. 7511(a)(5), a furlough under 5 U.S.C. chapter 75 can apply only when an employee is “without **duties**.” Official travel is a duty within the meaning of the term “duties” in 5 U.S.C. 7511(a)(5). Thus, even if the official travel does not qualify as compensable hours of work, the scheduling of official travel would automatically cancel furlough status during affected hours—just as would the scheduling of work. (See Question A.4. regarding when employees are in furlough status—i.e., only during designated hours *within* the employee’s tour of duty established for leave usage purposes.)

Note: As used in Questions P.2.-P.6., “official travel” refers to actual time spent traveling on officially authorized Government business and does not include time spent between travel trips at a temporary location away from the employee’s official duty station.

3. If official travel cancels furlough status during affected hours, how are those travel hours treated?

A. For days other than holidays, official travel during previously designated furlough hours would be considered compensable hours of work, since those furlough hours would have been within the employee’s regularly scheduled administrative workweek. Any official travel within an employee’s regularly scheduled administrative workweek qualifies as compensable hours of work under 5 U.S.C. 5542(b)(2)(A).

Under certain conditions, an employee may be legitimately scheduled to be furloughed on a holiday (during holiday hours within the employee’s normal tour of duty). (See Section F.) In the case of holidays, official travel during previously designated furlough hours would be

compensated by either holiday premium pay or holiday time off pay. If the travel time qualifies as work under 5 U.S.C. 5542(b)(2)(B), the employee would be entitled to holiday premium pay for those travel hours under 5 U.S.C. 5546(b). If the travel time does not qualify as work under 5 U.S.C. 5542(b)(2)(B), the employee would be entitled to holiday time off pay for those travel hours.

4. Can official travel hours outside the employee’s basic workweek that are compensable hours of work be substituted and paid at a basic rate under the LWOP substitution rule?

A. Yes. Travel time outside the basic workweek that qualifies as work (i.e., meets one of conditions in 5 U.S.C. 5542(b)(2)(B)) is covered by the LWOP substitution rule in 5 CFR 550.112(d), just like any other period of work. (See Questions D.4. and D.5.)

5. Can official travel hours outside the employee’s basic workweek for which an employee earns compensatory time off for travel be substituted and paid at a basic rate under the LWOP substitution rule?

A. No. Hours that are credited under the compensatory time off for travel provision in 5 U.S.C. 5550b and 5 CFR part 550, subpart N, are hours that are not otherwise compensable under title 5. The LWOP substitution rule in 5 CFR 550.112(d) applies to a period of qualifying work—that is, service that would qualify as work for the purpose of applying overtime thresholds and would generate compensation.

6. Can an employee *earn* compensatory time off for travel for official travel time during furlough hours?

A. No. As explained in Question P.2., official travel would cancel the employee’s furlough status. As explained in Question P.3., official travel during previously designated furlough hours would be compensable under the normal pay rules. Since the official travel hours would already be compensable, the employee could not earn compensatory time off for travel for those hours. (Under 5 U.S.C. 5550b, an employee may earn compensatory time off for travel for a period of time only if that period of time is not otherwise compensable.)

7. Can an employee *use* compensatory time off for travel during furlough hours?

A. No. No paid time off may be used during furlough hours. Under 5 U.S.C. 7511(a)(5), the term “furlough” is defined as a period during which an employee is without duties and pay. Use of compensatory time off for travel results in pay and thus is inconsistent with furlough status. (See Question E.1.)

Q. Foreign Area Allowances, Differentials, and Danger Pay

1. Do administrative furloughs interrupt or reduce civilian Living Quarters Allowances (LQA) or a Post Cost of Living Allowances (COLA)?

A. An administrative furlough doesn't interrupt Post COLA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the Post COLA is interrupted for the duration of the furlough status. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2) LQA continues without interruption while the employee is in nonpay status not in excess of 30 consecutive calendar days at any one time. For periods in nonpay status longer than 30 consecutive calendar days, LQA payment shall be suspended as of the day the employee enters such status, and payment is not to be made for any part of such period. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2 and DSSR 132.2b(2))

2. Do administrative furloughs interrupt Danger Pay or Post Hardship Differentials for civilians stationed at a those posts? Do they impact differential eligibility for TDY employees at such posts?

A. Yes. Employees do not receive Danger Pay or Post Hardship Differential for any furlough days. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 052.2)

Furlough days do not count toward differential eligibility for TDY employees. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 052.2 and DSSR 541)

3. Do administrative furloughs interrupt Difficult-To-Staff Incentive Differentials (SND) for civilians stationed at a those posts?

A. No. Length of furlough does not affect SND eligibility. This benefit is based on continuing presence at post. (Source: http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 1020)

4. Do administrative furloughs interrupt evacuation payments/Subsistence Expense Allowances (SEAs) for civilians evacuated and working from safehavens?

A. An administrative furlough doesn't interrupt an SEA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the SEA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

5. I have transferred back to Washington, DC, from a foreign post and am using the subsistence expense portion of the Home Service Transfer Allowance. Do administrative furloughs interrupt my eligibility for reimbursement?

A. An administrative furlough doesn't interrupt an HSTA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the HSTA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

6. I am transferring from Washington, DC, to Pakistan. I've been authorized the pre-departure subsistence expense portion of the Foreign Transfer Allowance. Do administrative furloughs interrupt my eligibility for reimbursement?

A. An administrative furlough doesn't interrupt an FTA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the FTA are interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

7. I am stationed at a foreign post and my family is on Separate Maintenance Allowance (SMA) in the United States. Do administrative furloughs interrupt the SMA?

A. An administrative furlough doesn't interrupt an SMA if the nonpay status period, including periods outside the employee's regular tour of duty (e.g., weekends), does not exceed 14 consecutive calendar days. If an employee is in furlough status that results in a continuous nonpay status period that exceeds 14 consecutive calendar days, then the SMA is interrupted for the duration of the furlough status. (Source:

http://aoprals.state.gov/content.asp?content_id=231&menu_id=92, DSSR 051.2)

R. VERA/VSIP**1. Can agencies offer early retirements (VERAs) or separation incentives (VSIPs) to furloughed employees? Can VERA/VSIP be offered during sequestration? Can VERA/VSIP be offered in lieu of a furlough?**

A. Both Voluntary Early Retirement Authority (VERA) and Voluntary Separation Incentive Payments (VSIP) are programs to incentivize voluntary separations to avoid involuntary personnel actions associated with an agency's decision to restructure its workforce. Agencies with OPM-approved VERA and or VSIP may continue offering these options to covered employees during a furlough.

VERA and VSIP result in permanent separations from the agency workforce. (Please note that VSIP recipients may not be reemployed by the Federal Government within 5 years unless they repay the VSIP to the agency that paid it.) Furloughs are associated with temporary issues, such as lack of work or funds, with the intention that employees would return to their jobs after the furlough. The agency would decide which option to take based on its situation, e.g., the need to permanently reduce or restructure its workforce or to save funds by furloughing employees.

S. Federal Employees Health Benefits Program**1. If an employee is furloughed, does their FEHB coverage continue or terminate?**

A. The employee's FEHB coverage will continue if the employee's salary is sufficient to pay the premiums. If pay becomes insufficient to cover premiums, an employee that has FEHB coverage and participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) has several options available.

If the furlough results in pay for a regular pay period to be insufficient for the employee's employing office to withhold the employee's share of premium from that pay (after the agency applies all deductions in accordance with the required order of precedence, see Question D.1.), the employing office must notify the employee and give the employee an opportunity to elect to either continue or terminate FEHB coverage. If the employee does not respond to this notice within the time for response, the employing office will terminate the FEHB coverage. In some instances, an employee may cancel FEHB coverage. See Questions S.7., S.8., and S.9. for more information.

2. Can an employee terminate FEHB coverage because he/she thinks it's not affordable?

A. No, the employee's view of his/her ability to afford FEHB coverage is not a basis for terminating coverage. However, if the employee has insufficient pay to cover the employee share of the premium (as explained in Question S.1.), the employee may choose to terminate coverage.

3. How can an employee continue FEHB coverage if his or her pay is not enough to cover the premium?

A. If an employee elects to continue FEHB coverage, the employee may directly pay the employing office to keep premiums current, or the employee may incur a debt that the employing office will recover when the employee's pay becomes sufficient to cover the premium.

4. What happens if FEHB coverage terminates for insufficient pay during furlough?

A. If an employee elects to terminate FEHB coverage, or if the employee does not respond to the election notice, the coverage will end retroactive to the last day of the last pay period in which the premium was withheld from pay. The employee and any covered family members are entitled to a 31-day temporary extension of coverage which commences retroactively to the day after the coverage ended. The employee will also have the right to convert to an individual contract for health benefits.

5. If an employee's coverage terminates, can the employee re-enroll once pay returns to a level that covers the employee's share of the FEHB premium?

A. Yes. An employee may re-enroll in FEHB upon returning to sufficient pay status and does not have to wait for an open season to re-enroll. The employee must reenroll within 60 days of becoming eligible as a result of renewed sufficient pay. Otherwise, the employee will be required to wait for an open season or a Qualifying Life Event (QLE) that allows for enrollment outside of open season.

6. How will the employee's termination affect his or her 5-year participation for purposes of continuing FEHB after retirement?

A. For purposes of meeting the 5-year participation requirement, counting of the time the employee is covered under FEHB will *stop* when the employee's enrollment terminates and *resume* upon re-enrollment *provided* the employee reenrolls within 60 days of becoming eligible as a result of renewed sufficient pay. In other words, the employee does not start a new 5-year participation period in this circumstance. However, the period of time in which the employee is not covered due to insufficient pay will be considered a period of ineligibility for FEHB, and will not be held against the employee for purposes of meeting the 5-year continuous coverage requirement.

An employee who does not re-enroll within 60 days but postpones re-enrollment until the next open season must begin a new 5-year participation period for purposes of continuing FEHB coverage into retirement.

7. Can an employee who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) just cancel FEHB coverage if the employee is furloughed?

A. No. For employees participating in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis), an administrative furlough is not a Qualifying Life Event (QLE) that would allow a cancellation.

If the administrative furlough causes an employee's pay for a pay period to become insufficient for the employing office to withhold his or her share of the FEHB premium for that pay period, the employing office must give the employee an opportunity to elect to continue his or her FEHB and incur a debt or to terminate enrollment. The employing office will terminate FEHB coverage if no response is timely received. This termination, either by election or by default, is not a cancellation for FEHB purposes.

8. What options are available to an employee who does not participate in premium conversion (therefore, paying his or her share of FEHB premiums after taxes) and gets furloughed?

A. An employee who specifically waived premium conversion (therefore, paying their share of FEHB premiums after taxes), and whose pay for a pay period is insufficient to cover the employee's share of premium, will be offered the same choices available to an employee covered by Question S.7. However, unlike an employee who participates in premium conversion, he or she may cancel FEHB coverage at any time. He or she does not need a QLE.

9. If an employee cancels his or her FEHB enrollment, will the employee forfeit rights to a 31-day temporary extension, Temporary Continuation of Coverage and conversion to an individual policy, coverage while receiving workers' compensation, continuation into retirement, and coverage for survivors?

A. An employee who elects to cancel coverage should be made fully aware that if coverage is cancelled:

(1) the employee and all eligible family members do not get a 31-day temporary extension of coverage upon cancellation, and the employee may not reenroll in FEHB until he or she has another QLE that permits enrollment, or the next FEHB Open Season, even upon transfer to another Federal agency;

(2) if the employee separates from employment without reenrolling before separation, he or she will not be eligible to purchase temporary continuation of coverage (TCC) or an individual conversion policy;

(3) if the employee is injured and receives benefits from the Office of Workers' Compensation Programs (OWCP) during the time coverage is cancelled, the employee will

not have an FEHB enrollment to continue during the period of OWCP coverage;

(4) if the employee retires while coverage is cancelled, the employee will not have a FEHB enrollment to continue into retirement. Moreover, even if the employee while still employed reenrolls in FEHB on account of a QLE or at FEHB Open Season, the period of cancellation is considered a break in FEHB coverage that may preclude his or her ability to continue FEHB coverage into retirement;

(5) if an employee dies while coverage is cancelled, there will be no self and family enrollment for survivors to continue, even if they are eligible for a survivor annuity.

10. Can an employee make an enrollment change because the employee is under an administrative furlough?

A. No. An administrative furlough is not a QLE that would permit an employee to change his or her FEHB plan or option. An employee who participates in premium conversion (paying his or her share of FEHB premiums on a pre-tax basis) may not change to a self only enrollment.

Note that an employee who waived premium conversion (therefore, paying his or her share of FEHB premiums after taxes) may change to self only at any time. However, the employee should be aware that this will deprive his or her covered family members of FEHB coverage and the employee cannot change back to self and family until the employee has a QLE or the next FEHB Open Season. In the event of the employee's death, there will be no FEHB enrollment for surviving family members to continue, even if they are eligible for a survivor annuity.

11. Will full-time employees receive a lower, pro-rated Government share of FEHB premiums if their hours are reduced under an administrative furlough?

A. No. FEHB law (title 5, U.S. Code, section 8906(b)(3)) requires the Government contribution toward FEHB premiums to be prorated (thus a larger employee share) for *part-time career employees*, i.e. employees with a documented regularly scheduled workweek of 16-32 hours per week. An administrative furlough does not change an employee's *regular work schedule*, e.g., from full-time to part-time.

Thus, as long as a full-time employee does not change to *part-time career employment*, the employee remains entitled to a full Government contribution and the proration does not apply even if the number of hours per pay period is reduced during the furlough to within 16-32 hours per week.

12. Will part-time employees receive a lower prorated Government share of the FEHB premiums if their hours are reduced under an administrative furlough?

A. No. The Government contribution toward the FEHB premium for an employee working part-time is prorated based on the employee's *regular work schedule*. An employee's Notification of Personnel Action (SF 50) documents the employee's work schedule and number of part-time hours the employee is scheduled to work per pay period (blocks 32 and 33). This part-time schedule should be the part-time schedule established for leave usage purposes (i.e., the schedule from which leave is charged for absences). A furlough action will place the employee in a non-duty/non-pay status during an otherwise scheduled workday, but it does not change the employee's *regular work schedule*. Therefore, the Government's prorated share of FEHB premium will not decrease.

Note to Section S: Additional Sources of Information

A list of QLEs for the FEHB Program may be obtained at http://www.opm.gov/forms/pdf_fill/sf2809.pdf.

OPM's FEHB webpage on Leave Without Pay and Insufficient Pay Status may be found at <http://www.opm.gov/healthcare-insurance/healthcare/reference-materials/reference/leave-without-pay-status-and-insufficient-pay>.

T. Federal Employees' Group Life Insurance Program

1. Will an employee continue to be covered under the Federal Employees' Group Life Insurance (FEGLI) Program during an administrative furlough that results in a reduction of hours and pay during a pay period, if there is sufficient pay in the pay period to cover the employee's share of the FEGLI premium for that pay period?

A. If the furlough is for only part of a pay period and the pay for that pay period is sufficient to cover the full FEGLI premium, then the full FEGLI premium will be withheld and the employee will continue to be covered under FEGLI, even during the furlough period.

2. Will an employee continue to be covered under FEGLI during an administrative furlough that results in no pay at all for at least one pay period and less than 12 months?

A. The employee's FEGLI coverage continues while in a leave without pay (LWOP) status due to furlough for up to 12 months, without cost to the employee or to the agency. Neither the employee nor the agency incurs a debt during this period of furlough. This provision does not apply if the employee in LWOP status is receiving workers' compensation from OWCP.

3. Will an employee continue to be covered under FEGLI during an administrative furlough that results in no pay at all for more than 12 months?

A. Generally, Basic and Optional insurance of an insured employee who is in LWOP status stops on the date the employee completes 12 months in LWOP status. Your life insurance coverage terminates at the end of this 12-month period, with a 31-day extension of coverage and right to convert to an individual policy.

4. What happens if, due to an administrative furlough that results in a reduction of hours and pay during a pay period, an employee's regular pay for a pay period, after all other deductions, will not be enough to cover the employee's share of premium for all of the employee's FEGLI Options?

A. As a general matter, if an employing agency determines that an employee's regular pay for a pay period, after all other deductions, will not be enough to cover the employee's share of premium for all of the employee's FEGLI Options, the employing agency must notify the employee. The employing office must provide the employee with a choice to either terminate some or all FEGLI coverage, or to make premium payments directly.

If the employee elects to continue coverage and pay directly, the process is detailed in the FEGLI regulations at 5 CFR 870.405(c). See <http://www.opm.gov/healthcare-insurance/life-insurance/reference-materials/#url=Regulations>.

If the employee elects to terminate coverage, any amount available for life insurance withholdings must be applied first to Basic, with any remainder applied to Optional insurance (first to Option B, then Option A, then Option C). If the employee does not respond to the election notice in a timely manner, the employing agency will terminate coverage in the order stated above to the extent required due to insufficient pay. Terminated coverage is subject to a free 31-day extension of coverage and the employee has a right to convert.

As provided for in 5 CFR 870.603, when group coverage terminates for any reason other than voluntary cancellation, an employee may apply to convert all or any part of his or her Basic and Optional insurance to an individual policy. An employee who elects to make premium payments directly and whose coverage is cancelled for nonpayment is not entitled to a 31-day extension of coverage and is not entitled to convert to an individual policy. For more information regarding conversion of insurance, please see 5 CFR 870.603.

5. If an employee's FEGLI coverage is terminated for insufficient pay during a furlough because the employee initially declined to elect direct premium payments, can the employee reinstate the FEGLI coverage when the furlough ends or pay becomes sufficient?

A. Yes the employee may reinstate any FEGLI coverage terminated for insufficient pay, back to the original elections, upon return to sufficient pay.

6. Will an employee incur a debt to the agency if the agency underwithholds FEGLI premium as a result of insufficient pay during a furlough?

A. Yes, the agency may consider underwithholding to be a debt. In such cases, agencies must follow their regular processes (including any applicable processes set forth by statute) regarding the collection of these debts.

Sample Notice 1**Furlough Proposal Due to Planned Reduction In Agency Expenditures (5 CFR Part 752)**

[Note: This is the advance written notice required by 5 U.S.C. 7513, when an agency effects an administrative furlough in order to absorb reductions in funding over a period of time. This sample has been written for the scenario where an agency chooses to furlough on discontinuous days. Agencies who choose to furlough on a continuous-day basis should amend the sample accordingly.]

This memorandum notifies you that [agency name] proposes to furlough you no earlier than 30 days from receipt of this notice. The furlough is being proposed under the authority of 5 CFR part 752, subpart D [briefly explain reason for furlough, e.g., because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding and the present rate of spending when annualized will result in an expenditure in excess of our authorized budget]. This furlough is proposed to promote the efficiency of the service by avoiding a deficit of funds in FY [year].

If other employees in your competitive level (i.e., generally, positions at the same grade level and classification series, the duties of which are generally interchangeable – see 5 CFR 351.403(a)) are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous (intermittent) days, beginning [date], through approximately [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time off will be prorated, based on your work schedule.

[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]

2. Due to the uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, if the decision is made to furlough, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.
4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

At this time, we do not reasonably anticipate the need for furlough beyond 22 workdays. However, should additional furlough days be necessary, employees will be given another notice. We recognize the difficult personal financial implications of any furlough, no matter how limited its length. We will make every effort to keep you informed as additional information regarding the agency funding level becomes available. If you have questions, contact [contact name, phone number, and email address].

You will be allowed seven calendar days from receipt of this letter to respond orally and/or in writing, to review the supporting material, and to furnish any affidavits or other supporting documentary evidence in your answer. You have the right to be represented in this matter by an attorney or other person you may choose. If you are in active duty status, you and/or your representative, if an agency employee, will be allowed up to four hours of official time to review the supporting material, seek assistance, prepare your reply, secure affidavits and statements, consider appropriate courses of action, and make a response. Contact your supervisor to arrange for official time. The deciding official has designated representatives to hear oral replies in his/her behalf. To arrange for an oral reply or review the supporting materials, please contact the appropriate individuals listed below:

[contact names, phone numbers, and email addresses.]

Your written reply should be mailed to the deciding official, Mr./Ms.[name and title],[address] or may be delivered to [address/room number].

A final written decision, including an explanation of the specific reasons for the action taken, will be given to you as soon as possible after the seven days allowed for your reply.

No decision to furlough you has been made or will be made until full consideration is given to your reply.

Proposing Official Date

I acknowledge receipt of this notice.

Employee's signature Date

Sample Notice 2
Notice of Decision to Furlough (5 CFR Part 752)

By written notice of [date], you were notified of a proposal to furlough you pursuant to the authority in 5 CFR part 752, subpart D.

All written and oral replies received in response to that notice have been reviewed and carefully considered. I have determined that all of the reasons for the proposed furlough, as stated in the notice of the proposal, remain valid. The procedures and conditions related to the furlough as proposed have been determined to be the most equitable means of implementing the furlough. Therefore, you will be required to be on a discontinuous furlough during the period beginning [date] through [date].

In accordance with the procedures and conditions outlined in the notice of proposal, dated [insert date], if you are a full-time employee, you will be furloughed for no more than [number] hours in each of the pay periods or parts thereof, between [date] and [date]. The maximum furlough time for full-time employees will be no more than 22 workdays, or 176 hours. For full-time employees, this maximum is based on a regular work schedule of 80 hours per pay period. If you are a part-time employee, the number of hours required for furlough will be prorated according to your specific work schedule.

Your supervisor will inform you of the amount of furlough time off required prior to each pay period. To schedule your furlough time off, contact your supervisor.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during any furlough period, you will not be permitted to serve as an unpaid volunteer, but must remain away from your workplace.

If you have completed a probationary or trial period or one year of current continuous employment in the competitive service under other than a temporary appointment you may appeal this action to the Merit Systems Protection Board (MSPB). If you are a preference eligible employee in an excepted service appointment you may appeal to the MSPB if you have completed one year of current continuous service in the same position or positions similar to the one you 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 positions in an Executive agency under other than a temporary appointment limited to two years or less. You have the right to be represented in this matter by an attorney or other person you may choose.

If you have the right of appeal and wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB

website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [*identify appropriate regional office*]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [*contact information including the official's mailing address, email address, telephone and fax number.*]

If you are a bargaining unit employee, you may grieve this action in accordance with the applicable negotiated agreement [*negotiated agreement citation*] or you may appeal to the MSPB in accordance with the procedures outlined above, but not both. Your election to proceed under one process will be considered made when you timely file a grievance in writing, or timely file a notice of appeal, whichever event occurs first. To obtain information on filing a grievance under the negotiated grievance procedure, contact [*name of exclusive union representative*].

[Under the Board's October 2012 regulations, notices must also include:

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

- (1) Whether the election of any applicable grievance procedure will result in waiver of the employee's right to file an appeal with the Board;*
- (2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;*
- (3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and*
- (4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]*

Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

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

Deciding Official _____
Date

I acknowledge receipt of this decision.

Employee's signature _____
Date

Sample Notice 3 Notice of Career SES Furlough (5 CFR Part 359)

This is a sample of the 30 day advance written notice of furlough required for career SES appointees by 5 CFR part 359, subpart H. It should be used only as an illustration in preparing an agency's own notice, which must be based on specific circumstances in the agency. This sample communicates the agency's decision to implement an administrative furlough on discontinuous days (i.e., 22 workdays or less). Agencies choosing to furlough on a continuous-day basis (i.e., 30 calendar days or less) should amend the sample accordingly.

This memorandum notifies you that [agency name] intends to furlough you no earlier than 30 calendar days from receipt of this notice. This furlough is being taken pursuant to the authority in 5 CFR part 359, subpart H [briefly explain the reason for furlough, e.g., "because the agency has received a 20 percent reduction in salaries and expenses (S&E) funding, and the present rate of spending, when annualized, will result in an expenditure in excess of our authorized budget"]. Although many actions are being taken within the agency to curtail spending, this furlough is being taken to avoid a deficit of funds in FY [year].

If other employees in your organization are not being furloughed or are being furloughed for a different number of days, it is because they (1) are currently in a nonpay status, (2) are under an Intergovernmental Personnel Act mobility assignment, (3) are on an assignment not otherwise causing an expenditure of funds to the agency, or (4) are in a position whose duties have been determined to be of crucial importance to this agency's mission and responsibilities, and cannot be curtailed. *[Note: These are the most common reasons for excluding employees from furlough. If there are other reasons that arise, the agency must include them in this listing.]*

We plan to apply the following procedures and conditions related to the furlough:

1. The furlough will be on discontinuous [intermittent] days, beginning [date], through [date]. Full time employees will be furloughed no more than 22 workdays or 176 hours. If you are a part-time employee, your furlough time will be prorated, based on your work schedule.

[Note: The agency determines the maximum number of pay periods over which 22 furlough days would suffice to meet agency spending levels. For example, if an agency's spending limits require 5 furlough days per pay period, employees would reach the 22-day limit in approximately 10 weeks.]

2. Due to uncertain and potential fluctuating amount of funding which may be available to this agency, the number of hours per pay period required for the furlough may vary. Accordingly, you will be advised in advance of each pay period of the number of furlough hours required to allow this agency to meet its financial obligations. In any case, however, you will not be furloughed for more than [number] hours for each pay period between [date] and [date].

3. You may request a specific schedule for furlough time off subject to management approval based upon mission and workload considerations.

4. Annual, sick, court, or military leave which has been approved for a day which is later designated as a furlough day will be recorded as a furlough and you will be placed in a nonpay status for the day. However, when you receive the notice of your furlough dates, you may request that the furlough time off be rescheduled, as provided in paragraph 3 above, if you wish to use leave as approved.

When you are on furlough, you will be in a nonpay, nonduty status. Also, during the furlough, you will not be permitted to serve as an unpaid volunteer but must remain away from your workplace. At this time, we do not reasonably anticipate the need for furlough of more than 22 workdays; however, should additional days be necessary to meet this agency's financial obligations, affected appointees will be given another notice consistent with the provisions of 5 CFR part 359 subpart H.

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

If you wish to appeal this action to the MSPB, you must file the appeal within 30 days after the effective date of your first furlough day, or 30 days after the date of your receipt of this decision, whichever is later. If you do not submit an appeal within this timeframe, the MSPB will dismiss it as untimely filed unless a good reason for delay is shown. You may obtain a copy of the appeals form and a copy of the Board's regulations from the MSPB website at <http://www.mspb.gov>.

Your appeal must be filed with the MSPB regional or field office serving the area of your duty station when the action was taken. Based upon your duty station, the appropriate field office is [identify appropriate regional office]. MSPB also offers the option of electronic filing at <https://e-appeal.mspb.gov/>.

The Board will send an Acknowledgment Order and copy of your appeal to [contact information including the official's mailing address, email address, telephone and fax number.] You also have the right to be represented in this matter by an attorney or other person you may choose.

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

Issuing Official

I acknowledge receipt of this notice.

Employee's signature

Date

[Note: For a probationary SES employee, an agency should advise that, as provided in 5 CFR 317.503(d)(2): 1) time in a nonpay status (e.g., LWOP and furlough) while in an SES position is credited up to a total of 30 calendar days (or 22 workdays) toward completion of the SES probationary period; and 2) after 30 calendar days, the probationary period is extended by adding time to it equal to that served in a nonpay status.]

Sample Notice 4
Furlough Due to Planned Reduction in Agency Expenditures (5 CFR Part 351)
More Than 22 Discontinuous Workdays

[Note: This is a sample written notice for a furlough of more than 22 discontinuous days under the reduction in force procedures of 5 CFR 351 (implementing 5 U.S.C. 3502(d)) when an agency effects an administrative furlough to absorb funding reductions. Agencies choosing to furlough on a continuous basis for more than 90 calendar days may have to conduct full reduction in force procedures (, such as round I competition to remain in the competitive level and round II to determine assignment rights to another position).]

SUBJECT: Specific Notice of Furlough under Reduction in Force Procedures

I regret to inform you that [agency name] will furlough you for 25 discontinuous workdays between [date] and [date]. You will be placed in a non-duty and non-pay status on your designated furlough days. You will continue in your position of record on your non-furlough days.

[Insert the reason for furlough, e.g., The [agency name] has received a 20 percent reduction in salaries and expenses funding. At the present rate of spending, this reduction will result in an expenditure in excess of our authorized budget. Although we have taken other cost-cutting measures, furlough is required to avoid a deficit of funds in FY [year]. You are included in the furlough because you occupy a position that is directly affected by the funding reduction.]

This action is taken in accordance with the reduction in force (RIF) regulations in title 5, Code of Federal Regulations, part 351. Importantly though, while this action is taken in accordance with RIF regulations, a furlough is a temporary action, not a permanent separation from service. We have determined that assigning you to a different position for [number of days] per pay period would result in an undue interruption to required work. Therefore, under 5 CFR 351.607, you do not have a right to another position in your competitive level or within your competitive area.

Your retention standing as of the first furlough date is as follows:

- Competitive area:
- Service [*i.e., competitive or excepted*]:
- Position title, series, and grade:
- Competitive level:
- Tenure and subgroup:
- Service computation date (SCD):
- Three most recent performance rating with years credited:
- Adjusted SCD (SCD-RIF):

Your furlough will be on discontinuous (intermittent) days, beginning [date] through [date]. As a full-time employee, you will be furloughed 25 workdays or 200 work hours. You may request a specific schedule for your discontinuous furlough days or switch your designated furlough day(s)

within a pay period through a written request to your supervisor. We will consider all change requests with approvals based on position function, workload considerations, and employee retention standing.

[If part-time: As a part-time employee with a work schedule of [xx] hours per pay period, your prorated furlough is XX work hours to be served within your designated work schedule.]

Annual, sick, court, or military leave which was approved for a designated furlough day is hereby cancelled. However, you may request that the furlough day be rescheduled if you wish to use leave as approved.

Attachment 1 has general information about leave and benefits during a furlough. Attachment 2 has information on *[State]* unemployment insurance program.

At this time, we do not reasonably anticipate the need for furlough beyond 25 workdays. However, should additional furlough days be necessary, you will be issued another notice.

You may review the information related to your furlough action. Copies of retention registers, RIF regulations, and related records are available in the Human Resources Office. You may make an appointment to review this material by contacting *[HRO name and contact information]*.

You may appeal this action to the Merit Systems Protection Board (MSPB). You may file an appeal within 30 calendar days after the effective date of your first furlough day. If you do not file an appeal within this 30-day time limit, the MSPB may dismiss it unless you can show good cause for the delay. A copy of the appeal form and the MSPB's regulations are available on the Board's website at www.mspb.gov. You should send your appeal to the MSPB office at *[appropriate office address]*. The Board will send an Acknowledgment Order and copy of your appeal to *[contact information including the official's mailing address, email address, telephone and fax number.]* *[Note: MSPB appeal rights for furloughs apply to non-bargaining unit employees or bargaining unit employees where the negotiated grievance procedure excludes furloughs from coverage.]*

[If the employee is a bargaining unit employee and furloughs are covered under the negotiated grievance procedure: You may grieve this action in accordance with the applicable negotiated agreement [negotiated agreement citation] in accordance with the procedures outlined in the agreement. To obtain information on filing a grievance under the negotiated grievance procedure, contact [name of exclusive union representative].

[Under the Board's October 2012 regulations, notices must also include:

Notice of any right the employee has to file a grievance or seek corrective action under subchapters II and III of 5 U.S.C. chapter 12, including:

(1) Whether the election of any applicable grievance procedure will result in

waiver of the employee's right to file an appeal with the Board;

(2) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board;

(3) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.155 of this part; and

(4) The effect of any election under 5 U.S.C. 7121(g), including the effect that seeking corrective action under subchapters II and III of 5 U.S.C. chapter 12 will have on the employee's appeal rights before the Board.]

Notice of any right the employee has to file a complaint with the Equal Employment Opportunity Commission or to grieve allegations of unlawful discrimination, consistent with the provisions of 5 U.S.C. 7121(d) and 29 CFR 1614.301 and 1614.302.]

This furlough under the RIF regulations does not reflect on your service, performance, or conduct. It is taken solely for the reason stated in this notice.

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

Agency Official Signature

Date

Attachments

I acknowledge receipt of this notice.

Printed name

Employee signature

Date

Table of Recent Changes to Guidance for Administrative Furloughs

Date	Question	Change	Description
June 10, 2013	Note	New	Added a note regarding the applicability of the guidance (located before Section A)
	P.2.	New	Effect of scheduling official travel during designated furlough hours
	P.3.	New	Treatment of official travel hours during previously designated furlough hours
	P.4.	New	Treatment of official travel hours outside the basic workweek that are compensable hours of work
	P.5.	New	Treatment of official travel hours outside the basic workweek that are credited as compensatory time off for travel
	P.6.	New	Inability to earn compensatory time off for travel for travel hours during previously designated furlough hours
	P.7.	New	Inability to use compensatory time off during furlough hours
May 23, 2013	G.3.	Revised	Directs readers to new Section T (Federal Employees' Group Life Insurance Program)
	T.1.	New	Impact of employee receiving sufficient pay in pay period to cover employee's share of premium
	T.2.	New	Impact of employee receiving no pay for at least 1 pay period but less than 12 months
	T.3.	New	Impact of employee receiving no pay for more than 12 months
	T.4.	New	Impact of employee's pay in pay period being insufficient to cover premium for all FEGLI options
	T.5.	New	Reinstatement of FEGLI coverage after coverage is terminated because of insufficient pay and employee declines to make direct premium payments
	T.6.	New	Employee's debt to agency if agency underwithholds FEGLI premium as a result of insufficient pay
April 25, 2013	A.4.	New	Explanation of what it means to be in a furlough status
	A.5.	New	Clarification that furlough does not affect an employee's status as full-time or part-time
	C.3.	Revised	Added a link to a relevant Office of Government Ethics legal advisory
	C.6.	New	Effect of an agency ordering an employee to work during his or her scheduled furlough hours
	E.5.	New	Retroactive substitution of annual leave for furlough hours taken in certain limited circumstances
	E.6.	New	Retroactive substitution of excused absence for furlough hours taken in certain limited circumstances

	L.2.	Revised	Added language about identifying specific furlough hours for employees on a flexible work schedule
	M.4a.	New	Appropriate supporting documentation for an administrative furlough action
	M.4b.	New	Procedural rights applicable to veterans for an administrative furlough of 30 calendar days or less
	M.6a.	New	Procedural rights for a probationer who completes his or her probationary period before fulfilling the agency's furlough time off requirement
	M.11.	New	Obligation to provide Merit Systems Protection Board (MSPB) appeal information in adverse action furlough decision notices
	N.21.	Revised	Clarified the previous language about the appropriate procedures to use if an agency determines an additional furlough is necessary
April 2, 2013	G.1.	Revised	Directs readers to new Section S (Federal Employees Health Benefits Program)
	Section K Title	Revised	Changed title of Section K from "Injury While on Furlough" to "Benefits under the Federal Employees' Compensation Act (FECA)"
	K.1.	Revised	Minor edits to guidance involving workers' compensation benefits under the FECA
	K.2.–K.5.	New	Department of Labor guidance on workers' compensation benefits during an administrative furlough
	Section K Note	New	Note regarding additional information on Federal workers' compensation benefits
	M.2.	Revised	Directs readers to OPM's SF-50 processing guidance in its entirety for a fuller understanding of the requirements
	S.1.	New	Continuation of FEHB coverage
	S.2.	New	Ability to afford FEHB coverage
	S.3.	New	Continuing FEHB coverage if pay is insufficient to cover premium
	S.4.	New	Termination of FEHB coverage for insufficient pay
	S.5.	New	Re-enrollment following termination of FEHB coverage
	S.6.	New	Impact of terminating FEHB coverage on 5-year participation requirement for purposes of continuing coverage after retirement
	S.7.	New	Cancellation of FEHB coverage for employees participating in premium conversion
	S.8.	New	Options available to employees not participating in FEHB premium conversion
	S.9.	New	Impact of cancelling FEHB coverage
	S.10.	New	FEHB enrollment changes

	S.11.	New	Government share of FEHB premiums
	S.12.	New	Government share of FEHB premiums for part-time employees
	Section S Note	New	Note regarding additional information on FEHB Program
March 25, 2013	A.3.	Revised	Added language generally describing shutdown furloughs
	Q.1.	New	Living Quarters Allowance and Post Cost of Living Allowance
	Q.2.	New	Danger Pay, Post Hardship Differential, and differential eligibility for TDY employees
	Q.3.	New	Difficult-To-Staff Incentive Differential
	Q.4.	New	Subsistence Expense Allowance
	Q.5.	New	Home Service Transfer Allowance
	Q.6.	New	Foreign Transfer Allowance
	Q.7.	New	Separate Maintenance Allowance
	R.1.	Moved	VERA/VSIP guidance formerly posted as Question H.1. of OPM's "Supplemental Guidance for Sequestration and Administrative Furloughs," which was removed from the OPM website on March 25, 2013
March 8, 2013	B.1.	Revised	Factors used in determining coverage of furlough
	B.6.	Revised	Treatment of detailees
	B.8.	New	Volunteering for leave without pay
	H.2.	Revised	Resources for Thrift Savings Plan guidance
	H.3.	New	Resources for Thrift Savings Plan guidance
	L.3.	Revised	Scheduling furlough time off for employees with part-time or uncommon tours of duty
	M.10.	New	Providing electronic notice of a furlough action
March 5, 2013	B.5.	New	Treatment of detailees
	B.6.	New	Treatment of detailees
	B.7.	New	Treatment of detailees
	E.2.	Revised	Treatment of employees on approved leave without pay
	E.3.	Revised	Taking leave without pay under the Family and Medical Leave Act (FMLA)
	H.1.	Revised	Resources for unemployment compensation guidance
	O.1.	Revised	Collective bargaining obligations
	O.1a.	New	Satisfying collective bargaining obligations before issuing furlough notices
February 27, 2013	P.1.	New	Travel expenses during a furlough
February 26, 2013	E.4.	New	Accrual of annual and sick leave
	G.6.	New	Retirement annuity benefits
February 20, 2013	D.4.	New	Assigning work hours outside the basic workweek
	D.5.	New	Compensating employees who work hours outside the basic workweek

DLA Administrative Record for FY 2013 Furlough Appeals

	D.6.	New	Earning credit hours
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JUN 07 2013

MEMORANDUM FOR DLA EXECUTIVE BOARD

SUBJECT: Defense Logistics Agency (DLA) Guidance for Overtime/Compensatory Time During Administrative Furlough

This memorandum establishes DLA policy guidance for authorizing overtime/compensatory time per DLA Updated Administrative Furlough Execution Policy Guidance, dated May 18, 2013, during an Administrative Furlough. In accordance with the guidance issued by the Secretary of Defense dated May 14, 2013, the budget reductions mandated by sequestration have necessitated unpaid furloughs for most Department of Defense civilian employees. These furloughs are for the purpose of reducing expenses and contributing to immediate savings needed by the Department.

As a result of the implementation of this administrative furlough, DLA will operate with reduced civilian labor for the duration of the furlough period while continuing to execute core, mission-essential activities, to include direct support to the warfighter. It is incumbent upon DLA Senior Leaders at the Primary Level Field Activities (PLFA) and J code level to only allocate these limited resources to the highest priority work and mission-essential activities needed to continue supporting the warfighter. This will require taking active steps and making conscious choices in applying available resources and curtailing or deferring lower priority activities.

The following policy guidance applies effective July 8, 2013:

- For the duration of the furlough period, DLA organizations may not authorize overtime or compensatory time except in rare instances where mission failure (not just diminished mission accomplishment) would result in the absence of authorized overtime or compensatory time.
- Under no circumstances is overtime or compensatory time to be authorized to make up for lost productivity caused by the furlough or to make up for employees' lost compensation resulting from furlough.
- Under no circumstances will contractor work hours be increased or additional contractors hired in order to offset lost productivity resulting from the furlough.
- PLFA Commander/J code Director level (or Deputy), the DLA Chief of Staff for the D code organizations, and the DLA General Counsel (or Deputy) for DLA Office of General Counsel, have the sole and exclusive authority to approve overtime or compensatory time during the furlough period and must ensure sufficient oversight of subordinate activities. The approval level for the rare exceptions is not subject to redelegation to lower organizational levels.

- Mitigating measures, including cancelling or rescheduling preapproved leave (unless it is for an emergency situation or in situations where employees have documentation that there is a financial investment which is non-refundable), rescheduling or canceling training, and/or reprioritizing workload and labor resources must be considered prior to authorizing overtime or compensatory time during the furlough period. Any leave cancellations must comply with the negotiated provisions of Article 24 of the Master Labor Agreement and/or other applicable locally negotiated agreements for bargaining unit employees.
- Authorizing officials may approve overtime/compensatory time only after consideration of a *documented* justification that:
 - Describes the specific number of premium hours, when they would be worked, and the duration of the requirement.
 - Describes actions taken to mitigate the need for overtime or compensatory time (including reprioritizing workload, reallocating resources, cancelling approved leave/training, etc.)
 - Demonstrates/describes how mission failure will occur without the approval of overtime or compensatory time.
- In the rare instance that overtime/compensatory time is authorized, DLA activities must do so in accordance with applicable collective bargaining agreements.
- For the duration of the furlough, J8 will closely monitor Overtime/Compensatory time rates and provide regular reports to ensure compliance with the business rules.



EDWARD J. CASE
Vice Director



COMPTROLLER

UNDER SECRETARY OF DEFENSE
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WASHINGTON, DC 20301-1100

MAY 23 2013

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Additional Guidance for Handling Budgetary Uncertainty in Fiscal Year 2013

- References:
- (a) Deputy Secretary of Defense's memorandum on "Handling Budgetary Uncertainty in Fiscal Year 2013," dated January 10, 2013.
 - (b) USD(C) Memorandum "Additional Guidance on Handling Budget Uncertainty in Fiscal Year 2013," March 5, 2013 - **Rescinded**
 - (c) DoD Directive 4515.12, DoD Support for Travel of Members and Employees of Congress
 - (d) Title 10, United States Code § 1051, "Bilateral or regional cooperation programs: payment of personnel expenses"
 - (e) DoD Instruction 1015.15, Establishment, Management and Control of Non-appropriated Fund Instrumentalities and Financial Management of Supporting Resources
 - (f) Title 10, United States Code § 1491, "Funeral honors functions at funerals for veterans"
 - (g) Title 31 United States Code § 1353, "Acceptance of Travel and Related Expenses from Non-Federal Sources"

The purpose of this memorandum is to provide additional guidance to reference (a) to ensure consistency in the treatment of issues across the Department of Defense (DoD) as the Department implements sequestration and the funding provided in the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113-6). All DoD Components need to ensure that funding for wartime operations is protected and critical priority requirements for national security are funded within the limited resources and flexibilities provided. Effective immediately, the guidance in this memorandum supersedes the guidance provided in reference (b), and subsequent clarifications, which are hereby rescinded.

Congressional Travel Support

The Department will strictly enforce DoD's policies in its support of travel by congressional delegations (CODELs) and congressional staff delegations (STAFFDELS). It is DoD policy that support for approved travel of members and employees of Congress shall be provided on an economical basis upon request from Congress, pursuant to law or where necessary to carry out DoD duties and responsibilities. Organizations shall ensure that travel of members and employees of Congress is sponsored by the DoD *only* where the purpose of the travel is of primary interest to and bears a substantial relationship to programs or activities of DoD and is not solely for the purpose of engendering goodwill or obtaining possible future benefits. Specific guidance is included in reference (c). Some specific policies worth highlighting include:

- Military airlift will not be used for CODELs if commercial airlift is reasonably available.
 - Within the Continental United States (CONUS), no CODELs may use military airlift as commercial airlift is readily available.
 - Military airlift may be authorized for CODELs Outside the CONUS if commercial airlift is limited or unsafe; every effort must be made to minimize costs.
 - Spouses may accompany members if there is an official function as long as they pay their own expenses and do not increase the number or size of aircraft required.
- Minimum number of congressional members for military airlift originating in CONUS.
 - No less than five members for large aircraft.
 - No less than three members for small aircraft.
- Tickets purchased by DoD for CODELs, STAFFDELS, and liaison escorts.
 - Must be economy class; individuals may upgrade at their own expense.
 - DoD does not pay for a member's personal staff traveling to his/her home State/District; this includes travel, lodging, meals, or escorts.
- All itineraries for CODELs/STAFFDELS must be approved by the escorting Service's 2-star Legislative Affairs Director to ensure that the itinerary is an efficient use of taxpayer funds.

Tuition Assistance

The Services are to restore funding for tuition assistance to the budgeted level for the remainder of Fiscal Year 2013, without reduction for sequestration. In addition, the Services will not implement any management controls/restrictions that did not exist prior to the tuition assistance stoppage. This will meet, and exceed, the requirement in section 8129 (Requirement to Continue Provision of Tuition Assistance for Members of the Armed Forces) of division C of Public Law 113-6 (Department of Defense Appropriations Act, 2013).

Discretionary Monetary Awards for Civilians

In the Office of Management and Budget (OMB) Bulletin #M-13-11, Ongoing Implementation of the Joint Committee Sequestration, dated April 4, 2013, the Controller provides the following guidance with regard to discretionary monetary awards:

“OMB Memorandum 13-05 [Agency Responsibilities for Implementation of Potential Joint Committee Sequestration] directs that discretionary monetary awards should not be issued while sequestration is in place, unless issuance of such awards is legally required. Discretionary monetary awards include annual performance awards, group awards, and special act cash awards, which comprise a sizeable majority of awards and incentives provided by the Federal Government to employees. Until further notice, agencies should not issue such monetary awards from sequestered accounts unless agency counsel determines

the awards are legally required. Legal requirements include compliance with provisions in collective bargaining agreements governing awards.¹

Consistent with past guidance, certain types of incentives are not considered discretionary monetary awards for the purposes of this policy. These include quality step increases (QSIs); travel incentives recognizing employee savings on official travel; foreign language awards for mission-critical language needs; recruitment, retention, and relocation incentives (3Rs); student loan repayments; and time-off awards. While these items are permitted, in light of current budgetary constraints, they should be used only on a highly limited basis and in circumstances where they are necessary and critical to maintaining the agency's mission. In addition, consistent with the policy set forth in the Guidance on Awards for Fiscal Years 2011 and 2012, jointly issued by the Office of Personnel Management (OPM) and OMB on June 10, 2011, spending for QSIs and 3Rs should not exceed the level of spending on such incentives for fiscal year 2010.

With respect to Federal political appointees, agencies should continue to follow the policy set forth in the August 3, 2010 Presidential Memorandum, Freeze on Discretionary Awards, Bonuses, and Similar Payments for Federal Political Appointees. OPM previously issued guidance on implementation of this memorandum.”

The Office of the Under Secretary of Defense for Personnel and Readiness will be issuing supplemental guidance on award limitations for DoD civilians.

Participation in International Events

The Department should limit its participation in international events except in those instances where individuals are supporting Foreign Military Sales and the funds supporting these efforts are not being sequestered because the accounts are exempt from sequestration.

Components may continue to participate in military exercises and to conduct military-to-military engagement activities, including participation by DoD personnel in bilateral or regional conferences, seminars, or similar meetings if the appropriate conference approval authority determines that the attendance of such personnel at such conference, seminar, or similar meeting is in the national security interests of the United States. In addition, Components may continue to use - in accordance with established guidance and approval procedures - the authority provided by reference (d) to pay travel and subsistence costs for defense personnel from developing countries in order for them to attend conferences, seminars, or similar meetings considered in the interest of U.S. national security. In this period of sequestered budgets, however, Component Heads should take particular care to ensure that any military-to-military engagement activities, including conferences, seminars, or similar meetings, are mission critical and that the goals of the

¹ Consistent with legal requirements, agencies may consider engaging in discussions with employees' exclusive representatives to explore revisions to such provisions in existing collective bargaining agreements, in recognition of this guidance.

activity cannot be deferred or met through other means. We also ask that you take into account factors that could result in special scrutiny of an event, including size, cost, and location. Utilization of military musical units or ceremonial units in military-to-military engagement activities will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

Demonstration Flying

All aerial demonstrations, including flyovers, jump team demonstrations, and participation in civilian air shows and military open houses were to cease as of April 1, 2013, consistent with previous direction. Flyovers in support of military funerals will be given special consideration. To ensure consistency across the Department all exceptions and waivers for demonstration flying will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval.

Support to Non-DoD Organizations and Special Events

All military support to non-DoD organizations and special events for outreach purposes beyond a military installation's local area is prohibited. Military support to outreach activities in the local area is permitted so long as the support is provided using only local assets and personnel, and is at no cost to the Department. This includes, but is not limited to, military equipment displays at civilian air shows, military open houses, Fleet and Service weeks, and CONUS-based ship homeport visits, and in parades and civic events. The use of non-appropriated funds (NAF) to host military installation open houses in support of authorized NAF programs is permitted in accordance with reference (e). To ensure consistency across the Department, all exceptions and waivers for support to non-DoD organizations and special events will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval. This section does not apply to DoD Component Recruiting Marketing activities using Recruiting assets, National Guard outreach activities funded solely by State funds, and attendance by DoD personnel at a non-DoD hosted conference.

Military Musical Unit (and Ceremonial Unit) Travel

As a matter of policy, military musical and ceremonial units will not be permitted to travel beyond their respective duty station's local area for any purpose, including support to another military installation, even if such travel could be conducted at no cost to DoD. Units may continue to perform locally both on and off military installations, including for the purpose of producing and distributing audio and video recordings, as long as those performances, productions and distributions are at no cost to the Department. To ensure consistency across the Department, all exceptions and waivers will require the concurrence of the Office of the Assistant to the Secretary of Defense for Public Affairs before approval. Presidential Wreath-Laying Ceremonies are exempt from this restriction. In addition, Military Funeral Honors Details are exempt from this restriction and will continue to be executed in accordance with Service Department policies and reference (f).

Official Speeches and Related Travel Expenses for DoD Personnel

Department of Defense personnel may not travel beyond the local area at DoD cost, including to deliver official speeches, unless the activity is deemed mission critical. Each organization in the Office of the Secretary of Defense (OSD), Service Component or Combatant Command (COCOM) is responsible for making this "mission critical" determination. Expenditure of DoD travel funds to support a mission critical official speech must be approved by the member's respective OSD organization, Service Component or COCOM leadership. The Department may continue to accept unsolicited travel benefits from non-Federal sources in accordance with reference (g). However, all expenses for non-mission critical travel must be covered by the non-Federal source, including per diem, lodging, meals, transportation and all other travel-related expenses.

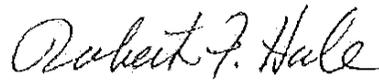
Conference Attendance

As you know, the Deputy Secretary of Defense has issued guidance requiring that all conferences be mission critical. There are also certain individuals who must approve conferences, depending on their nature and size. If you have questions about this guidance, it is available for review at: <http://dcmo.defense.gov/products-and-services/conference-policies-controls/index.html>.

Even under sequestration, we do not want to prohibit conferences, including hosting of or attendance at DoD-hosted conferences or attendance at conferences hosted by non-DoD entities. However, in this period of sequestered budgets, we ask that commanders and managers take particular care to be certain that conferences are indeed mission critical and that the goals of the conference cannot be met through other means. We also ask that you take into account factors that could result in special scrutiny of conferences including size, cost, and locations that are remote from the workplace of most participants. Particular care should be exercised in assessing the need for conferences held overseas or in other locations likely to attract special attention.

If, after weighing the above considerations, travel approving officials determine that attendance at conferences hosted by non-Federal sources during sequestration is still appropriate, if asked, the host may be informed of DoD's authority to accept payments for travel, subsistence, and related expenses pursuant to reference (g). Payments for travel expenses under reference (g) may not be solicited. Apart from this statute, we do not have authority to accept reimbursements from non-Federal entities in a manner that can be used to offset DoD's costs of participation in a non-Federal source's conference. All DoD travel approving officials should ensure that DoD employees attend only those conferences that satisfy the criteria set forth in the preceding paragraph and that, wherever appropriate, all travel, subsistence and related expenses incurred by DoD are reimbursed in accordance with reference (g).

We will continue to provide additional guidance as issues surface that require a DoD-wide policy. Thank you for your assistance during this difficult fiscal climate.



Robert F. Hale

cc:
Director of National Intelligence

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May 18, 2013

MEMORANDUM FOR DEFENSE LOGISTICS AGENCY (DLA) EXECUTIVE BOARD

Subject: DLA Updated Administrative Furlough Execution Policy Guidance

This memorandum establishes policy for execution of fiscal year (FY) 2013 administrative furloughs of up to 11 discontinuous workdays, consistent with guidance from the Secretary of Defense, and updates the policy stated in my March 17, 2013 memorandum. The Secretary has determined that the furlough be implemented in as consistent a manner as possible across the Department. As you are aware, DLA negotiated furlough procedures with its labor representatives and has come to agreement with the unions that represent the vast majority of our workforce. Deviations from the specifics of the applicable union Memorandums of Agreement (MOA) are not authorized. The following are the basics of the DLA furlough implementation plan that apply to bargaining and non-bargaining employees:

- The furlough period will begin no earlier than July 8 and last through the end of FY 13.
- The furlough applies to all DLA civilian employees unless they are specifically identified in one of the DoD established exception categories. Those exceptions include deployed civilians (for the period of the actual deployment and including a defined period immediately before and after deployment), positions directly engaged in protecting life and property (certain police and firefighter positions), non-appropriated fund employees and foreign national employees. DLA Human Resources has identified the specific positions and employees included in these exceptions, with approval by the DLA Director.
- DLA civilian employees will serve furloughs of equal length up to 11 discontinuous days. (One furlough day per week for 11 consecutive weeks.)
- For the duration of the furlough period, all affected DLA employees will be placed on one of the three approved work schedules, consisting of five day work weeks with eight hour workdays. Most employees will have flexible start and stop times with the resultant ability to earn and use credit hours. The change to employee work schedules will be implemented at the beginning of the pay period in which the first furlough day will be scheduled and served. Work schedule changes will be implemented the pay period beginning June 30, 2013.
- Furlough days will be discontinuous and will be scheduled for the first or last day of the administrative workweek (Mondays or Fridays for most employees). Employees who currently work an alternate work schedule with a scheduled regular day off of other than the first or last day of the administrative workweek will have the option of retaining their

existing day off as their weekly furlough day. Employees currently working on Sundays as part of their basic work schedule **will not be required** to be furloughed on Sunday.

- Supervisors/managers will determine sufficient staffing levels on designated furlough days in light of mission requirements, but may not “close” DLA activities. Employees will submit their preference of first or last day to their immediate supervisor. In instances where there is conflict with multiple employees requesting the same furlough day and all requests cannot be accommodated within established parameters, supervisors and employees may work together to reach an accommodation, but ties will be broken by applying appropriate service computation date (SCD) dates in accordance with the applicable MOA.
- Supervisors will be provided with an employee roster identifying all employees in their immediate chain. The roster is to assist them in scheduling furlough days and to ensure that all employees are issued the requisite furlough notices and decision letters. Once the furlough day has been set for each employee, it cannot be changed for the duration of the furlough period.
- Supervisors may not assign work to employees to be performed on a designated furlough day, nor may the employee be permitted to volunteer to work on those designated days.
- During the furlough period, when a Federal holiday falls on an employee’s designated furlough day, the employee will serve their furlough day on the next scheduled work day.
- Employees will be notified as soon as practicable if/when the furlough period is cancelled because of a change to the Department’s budget posture. They will be returned to their former work schedule.
- Supervisors will be provided with detailed instructions for completing and issuing the furlough proposal notices to their subordinate employees previously identified.
- Furlough notice letters will be distributed by the supervisor in person or by email on May 29, 2013. The notices will be signed by both the supervisor and employee to document receipt. Explicit instructions will be provided to supervisors covering this process as well as the alternatives for instances where the employee is not available to directly receive their letter in person.
- The actual notice letter provides the employee with notice that they are to be furloughed and specific information about the impact of such a furlough. It identifies the earliest possible effective date; and if applicable, provides them with a right to reply orally and/or in writing, provides a reply period, and identifies the individual to whom the reply should be directed.
- At the conclusion of the reply period, employees will be issued a decision letter that finalizes the specifics of the furlough, notifies them of their various rights to appeal and specifies the effective date. Deciding officials will be provided detailed information for the issuance of decision letters to employees.

Finally, to clarify the guidance with respect to the use of overtime and/or compensatory time, DLA organizations may not use overtime or compensatory time except in rare instances where failure to make use of that option would result in not just diminished mission accomplishment, but mission failure. Overtime or compensatory time may not be used to make up for the lost productivity or compensation resulting from the furlough days. The approval level for any instances of authorized overtime or compensatory time remains at the PLFA Commander/J-Code Director level (or Deputy) or the DLA Chief of Staff for D staff organizations.

Questions pertaining to the agency's furlough policy may be directed to your DLA Human Resources Services Customer Account Manager.



BRAD BUNN
Director
DLA Human Resources