

# EMPLOYEE Q&A'S FOR SHUTDOWN

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## **Furlough Under Adverse Action Procedures (General)**

There are two types of furloughs--a "shutdown" or "emergency" furlough and a "save money" furlough. In a "shutdown" furlough, the agency no longer has the necessary funds to operate and must shut down those activities which are not "excepted" by Office of Management and Budget (OMB) standards. In many cases, the agency will have very little lead time to plan for the furlough, making it an "emergency" furlough.

A "save money" 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 event which requires the agency to save money. A "save money" furlough is typically a "non-emergency" furlough in that the agency has sufficient time to reduce spending and therefore give adequate notification of its specific furlough plan and how many furlough days will be required.

Based on the current Federal fiscal situation, this potential furlough would be defined as a "shutdown" or "emergency" furlough. The following Q & A's are related to a "shutdown" furlough, and are intended to answer basic questions. Additional information regarding furlough can be obtained from the Office of Personnel Management's website at <http://www.opm.gov/furlough/furlough.asp>.

### **1. Q: 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 non disciplinary reasons. For most employees, there are two basic categories of furloughs, each involving different procedures. A furlough of 30 calendar days or less is covered under 5 CFR Part 752, adverse action procedures. A furlough of more than 30 calendar days is covered under 5 CFR Part 351, reduction in force procedures. All furloughs for Senior Executive Service members are covered under 5 CFR Part 359, Subpart H.

### **2. Q: Who can be furloughed?**

**A:** All employees, other than individuals appointed by the President (with or without senate confirmation) can be put in furlough status. This includes non-career SES and schedule C political appointees.

*Note: Currently USDA has only 17 individuals appointed by the president.*

### **3. Q: What is an *excepted* employee?**

**A:** The term "excepted employee" refers to employees who are excepted from a furlough by law because they are (1) performing emergency work involving the safety of human life or protection of property, (2) involved in the orderly suspension of agency operations, or (3)

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performing other functions exempted from the furlough. Each agency identifies which positions meet the criteria above.

**4. Q: Do I need to come into the office on my next scheduled workday if there is a furlough?**

**A:** Yes, unless otherwise instructed. Non-excepted employees should report to work on the next scheduled workday for the sole purpose of engaging in orderly shutdown activities. Supervisors will provide employees with instructions to shutdown their activities and secure property in their offices, leave out of office phone and email messages, complete timesheets, etc.

Excepted employees should be instructed to report for work and to perform their excepted activities as required.

For those teleworking, “report” may be done by telephone.

Supervisors who have employees on AWS may make prior arrangements with them for completion of shut down activities or make the determination to change the employees work schedule, requiring the employee to report for duty on the first day of the workweek.

Supervisors who have employees on scheduled leave should make prior arrangements with them for completion of shut down activities or make the determination to cancel the employee’s leave, requiring the employee to report for duty.

**5. Q: If I am required to come into the office during the furlough, either for orderly suspension of operations or as an “excepted” employee, will I be paid?**

**A:** Yes, after appropriations or a continuing resolution is passed.

Under the authority of the Antideficiency Act (31 U.S.C. 1341 et seq.), Federal officers may incur no obligations that cannot lawfully be funded from prior appropriations, unless such obligations are otherwise authorized by law. Orderly shutdown of operations, and activities excepted from the shutdown are authorized by law. However, even though the government can incur obligations as necessary for orderly terminations of an agency’s functions, no funds may be disbursed.

**6. Q: Will a furlough personnel action “look bad” in my Official Personnel Folder?**

**A:** No. A furlough is recognized as a temporary, nonpay status brought about by lack of work or funds, or other nondisciplinary reasons. This action in no way negatively reflects upon your individual performance or conduct.

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**7. Q: May employees take other jobs while on furlough?**

**A:** USDA employees are required to comply with the ethics regulations governing engaging in outside employment or activities (5 C.F.R. Parts 2635 and 8301). During the furlough, the requirement for employees to seek advance approval of any outside employment or activity has been waived. It is important to note that the ethics rules still apply to all employees during a furlough period, so any outside activity or employment must not present a conflict of interest with your USDA position and duties. Employees are referred to the Office of Ethics website to review the applicable ethics rules governing outside employment at: [www.usda.gov/ethics](http://www.usda.gov/ethics).

**8. Q: May an employee volunteer to do his or her job on a nonpay basis during a furlough period?**

**A:** No. Unless otherwise authorized by law, an agency may not accept the voluntary services of an individual (31 U.S.C. 1342). Furthermore, the Antideficiency Act prohibits agencies from accepting voluntary labor for services that are not essential; vital to the protection of life and property, during a shutdown. Federal officials or employees who violate rules can be fined up to \$5,000 or sent to prison for two years. In other words, it is illegal for employees to work and for agencies to allow work to be done. This would also prohibit use of electronic systems during a shutdown.

**9. Q: May an employee work on a furlough day in exchange for taking a day off at another time for religious observances?**

**A:** No. The statute that permits employees to take compensatory time off for religious observances (5 U.S.C. 5550(a)) does not authorize an agency to accept the voluntary services of any individual on a furlough day. Periods of time worked in exchange for taking time off for religious observances must be scheduled on non-furlough days.

**10. Q: What happens to time limited appointments that expire during a furlough?**

**A:** Furloughs do not extend the time limits for temporary (5 CFR 316.401(c)) and term (5 CFR 316.301(a)) appointments. If your Human Resources office intends to extend the time limited appointment, it may be extended prior to the furlough or, the individual may be reappointed after the furlough in accordance with 5 CFR 316.401(c) or 5 CFR 316.302(b) (7).

**11. Q: In the past, I have been sent home by my agency because an appropriations bill had not been signed by the President. However, when I returned to work, I was paid retroactively for the time I was sent home. Isn't it likely that the same thing will happen this time?**

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**A:** Not necessarily. In past years when this has occurred, the Congress has provided, in law, that Federal employees be paid for the brief time periods they were released without pay. Congress would again need to provide for payment in law.

**12. Q: Are employees entitled to unemployment compensation while on furlough?**

**A:** It is possible that employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment compensation requirements differ. Agencies or employees should submit their questions to the appropriate State office. The servicing human resources office will provide employees with a claim form (Unemployment Compensation for Federal Employees (UCFE) Program, SF-8) for filing.

*Note: If you receive unemployment compensation and are subsequently paid retroactively for furlough time, any unemployment compensation received must be repaid.*

**13. Q: When an employee's pay is insufficient to permit all deductions to be made, what is the order precedence for withholdings?**

**A:** This Order of Precedence for civilian Federal employees applies **only** when gross pay is not sufficient to permit all deductions; it will be used to determine the order in which authorized deductions from an employee's pay will be processed. More detailed information can be found at: [OPM Letter PPM-2008-01; Order Of Precedence When Gross Pay Is Not Sufficient To Permit All Deductions.](#)

1. Retirement
2. Social Security (OASDI) Tax
3. Medicare Tax
4. Federal Income Tax
5. Basic Health Insurance Premium
6. Basic Life Insurance Premium
7. State Income Tax
8. Local Income Tax
9. Collection of Debts Owed to the U.S. Government
  - a) Continuous Levy under the Federal Payment Levy Program (tax debt)
  - b) Salary Offsets
10. Court-Ordered Collection/Debt
  - a) Child Support
  - b) Alimony
  - c) Bankruptcy
  - d) Commercial Garnishments
11. Optional Benefits
  - a) Health Care/Limited-Expense Health Care Flexible Spending Accounts
  - b) Dental
  - c) Vision

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- d) Health Savings Account
  - e) Optional Life Insurance Premiums
  - f) Long-Term Care Insurance Premiums
  - g) Dependent-Care Flexible Spending Accounts
  - h) Thrift Savings Plan (TSP)
    - 1. Loan Payments
    - 2. Basic Contributions
    - 3. Catch-up Contributions
  - i) Other Optional Benefits
12. Other Voluntary Deductions/Allotments
- a) Military Service Deposits
  - b) Professional Associations
  - c) Union Dues
  - d) Charities
  - e) Bonds
  - f) Personal Account Allotments
  - g) Additional Voluntary Deductions
13. IRS Paper Levies

**14. Q: To what extent does nonpay status affect civil service benefits and programs?**

**A:** Nonpay status (which includes furlough, leave without pay, absence without leave, and suspension) is credited as follows:

- **Federal Employee Health Benefits (FEHB):**

Enrollment continues for no more than 365 days in a nonpay status. The nonpay status may be continuous or broken by periods of less than four consecutive months in a pay status (5 CFR 890.303(e)). The Government contribution continues while employees are in a nonpay status. The employee will incur a debt for their premium and will be required to pay it upon return to duty. Visit <http://www.opm.gov/insure> for more information.
- **Federal Employee Dental and Vision Insurance Plan (FEDVIP):**

Deductions cease when in the employee is placed in a non-pay status and there are insufficient funds to cover the premium(s). **In order for employees to continue FEDVIP coverage, the employee must make payments while in a non-pay status.** Visit the FEDVIP website, <http://www.benefeds.com> for more information.
- **Flexible Spending Account (FSA):**

Deductions will cease for periods of non-pay status where there is insufficient funds to cover the Flexible Spending Account (FSA) premium(s). If the employee is in a non-pay status and has not pre-paid the FSA allotment, their FSA account will be frozen and the employee will not be eligible for reimbursement of any health care expenses incurred during that period until he/she returns to a pay

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status and allotments are successfully restarted. However, if the employee has a Dependent Care Flexible Spending Account (DCFSA), dependent care expenses incurred during the period in a non-pay status which meet IRS guidelines for eligible expenses (i.e., the employee must incur the expenses in order to allow the employee and his/her spouse to work or attend school) may be reimbursed up to the FSA account balance. When the employee returns to a pay status, allotments will be recalculated based on the number of pay dates remaining in the Benefit Period. Visit the TSP website, [www.fsafeds.com](http://www.fsafeds.com) for more information.

- **Federal Employees Group Life Insurance (FEGLI):**  
Coverage continues for 12 consecutive months in a nonpay status without cost to the employees (5 CFR 870.401(c)) or to the agency (5 CFR 870.401(d)). The nonpay status may be continuous or it may be broken by a return to duty for periods of less than four consecutive months. Visit <http://www.opm.gov/insure> for more information.
- **Federal Long Term Care Insurance Program (FLTCIP):**  
FLTCIP Partners are working with the Office of Personnel Management (OPM) to put a process in place to handle premium collection. However, this is a unique situation and no hard decisions have been made. Once a process has been put in place information will be available at: [www.LTCFEDS.com](http://www.LTCFEDS.com)
- **Annual Leave and Sick Leave:**  
When a full-time employee accumulates 80 hours of leave without pay, the amount of annual and sick leave that may be accrued in that pay period is reduced by the amount of leave the employee would normally earn during the pay period (5 CFR 630.208). When a part-time employee is in a nonpay status, he or she will accrue less annual leave and sick leave, since part-time employees earn leave on a pro-rata basis--i.e., based on hours in a pay status (5 CFR 630.303 and 630.406). For purposes of computing accrual rates for annual leave, creditable service for time in a nonpay status is limited to an aggregate of 6 months in a calendar year (5 U.S.C. 6303(a) and 8332(f)).
- **Within-Grade Increases:**  
An aggregate of 2 workweeks of nonpay status in a waiting period is creditable service for advancement to steps 2, 3, and 4 of the General Schedule; four workweeks for advancement to steps 5, 6, and 7; and six workweeks for advancement to steps 8, 9, and 10 (5 CFR 531.406(b)). For prevailing rate employees (WG, WL, and WS schedules), an aggregate of one workweek nonpay status is creditable service for advancement to step 2, three weeks for advancement to step 3, and four weeks for advancement to steps 4 and 5 (5 CFR 532.417(b)).
- **Retirement:**

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An aggregate nonpay status of 6 months in any calendar year is creditable service. Coverage continues at no cost to the employees while in a nonpay status. When employees are in a nonpay status for only a portion of a pay period, their contributions are adjusted in proportion to their basic pay (5 U.S.C. 8332 and 8411). The exception would be an employee who had substantial time in a nonpay status earlier in the year if the furlough causes him or her to have more than six months time in a nonpay status during the calendar year.

- **Thrift Savings Plan (TSP):**

While you are in a non pay status you will not be able to contribute to the TSP because you employee contributions must be made through payroll deductions. FERS employees will not receive agency matching contributions (which are based on your employee contributions). FERS employees will not receive Agency Automatic (1%) Contributions, which are calculated on basic pay earned each pay period. All employees can continue to manage their TSP account with interfund transfers. You can also make contribution allocation changes that will take effect when you are once again in pay status, or when you make future loan payments to your account. You can transfer or roll over funds into you TSP account from traditional IRAs, SIMPLE IRAs, and eligible employer plans. You can request financial hardship or age-based service withdrawals if you are eligible. You are not eligible to request a new TSP loan. **If you already have a TSP loan when you are placed in a non-pay status**, a period without pay may result in a missed payment because TSP loan payments are made through payroll deductions (unless you make payments directly from your own funds). If you go into an approved nonpay status, the Internal Revenue Code (IRC) allows you to suspend TSP loan payment for up to one year of the nonpay period. **A suspension of loan payments is not automatic.** To suspend your payments, you (or your agency or service) **must** provide the TSP with proper documentation of your nonpay status.

For more information, refer to the TSP Fact Sheet – Effect of Non-pay Status on TSP Participation. The fact sheet can be found at

<https://www.tsp.gov/PDF/formspubs/oc95-4.pdf>

- **Career Tenure:**

The first 30 calendar days of each nonpay period are creditable service.

- **Probationary Period:**

An aggregate of 22 workdays in a nonpay status is creditable service.

- **Qualification Standards:**

There is no requirement to extend qualifying periods by the amount of nonpay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.

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- **Time-In-Grade requirements:**  
Nonpay status is creditable service.
- **Reduction-In-Force:**  
An aggregate of 6 months nonpay status in a year is creditable service.
- **Severance Pay:**  
Nonpay status time is fully creditable for the 12-month continuous employment period required by 5 U.S.C. 5595(b)(1) and 5 CFR 550.705. However, for purposes of determining service creditable towards the *computation* of an employee's severance pay fund under 5 U.S.C. 5595(c)(1) and 5 CFR 550.707-708, no more than 6 months of nonpay status time per calendar year is creditable service.
- **Military Duty or Workers' Compensation:**  
Nonpay status for employees who are performing military duty or being paid workers' compensation counts as a continuation of Federal employment for all purposes upon the employee's return to duty.

**15. Q: What happens if employees cancel Federal Employee Health Benefits (FEHB) coverage while in a non-pay status in order to avoid the expense?**

**A:** Employees who cancel FEHB coverage to avoid payment of premiums while in a nonpay or reduced-pay status do not have to wait for an FEHB open season to re-enroll. Cancellation of FEHB coverage will not affect an employee's right to carry such coverage into retirement or while in receipt of workers' compensation.

**16. Q: If employees are receiving Continuation of Pay (COP) due to job-related injuries, can the COP be terminated or interrupted by furlough?**

**A:** No. According to the Department of Labor, employees are maintained on COP status during periods of furlough.

**17. Q: What will happen to employees who would have retired while their agencies were shut down?**

**A:** For employees who, on or before the requested retirement date, submitted some notice of their desire to retire, agencies should, when the lapse in appropriations ends, make the retirement effective as of the date requested. The retirement request may be informal (such as a letter requesting retirement), and can be either mailed or personally submitted to the agency (even if put under the door). Any additional required paper work such as the formal retirement application form may be completed when the agency reopens. No time spent by



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the retiree in such actions after the effective date of the retirement may be considered as duty time, since the individual would no longer be an employee of the agency.

Some employees may request retirement retroactive to a date prior to submission of the request. The Comptroller General (CG) has issued guidance permitting retroactive personnel actions (including retirements) only under limited enumerated circumstances. It will be up to the employing agency to determine in each case whether the OPM's requirements and the CG's guidance have been met.

At 58 Comp. Gen. 51, at 53 (1978), the Comptroller General stated:

As a general rule a personnel action may not be made retroactive so as to increase the rights of an employee to compensation. We have made exceptions to this rule where administrative or clerical error (1) prevented a personnel action from being effected as originally intended, (2) resulted in nondiscretionary administrative regulations or policies not being carried out, or (3) has deprived the employee of a right granted by statute or regulation.

18. **Q:**  
**Part A. If employees request paid leave--i.e., annual, sick, court, military leave, or leave for bone marrow or organ donation--after receiving a furlough notice, can the requests be denied for those days that coincide with the dates of furlough?**

**Part B. If an agency has already approved requests for these categories of paid leave before issuance of the proposed furlough notice, can the approval be rescinded and the employees furloughed on the days that coincide with the dates of furlough?**

**A:** The answer to both questions is yes.

In a "shut-down" or "emergency" furlough, all paid leave during a furlough is canceled because the necessity to furlough supersedes leave rights. The Antideficiency Act (31 U.S.C. 1341 et seq.) does not allow authorization of any expenditure or obligation before an appropriation is made, unless authorized by law. Paid leave creates a debt to the Government that is not authorized by the Act. Therefore, agencies are instructed that during a lapse in appropriations, all paid leave during a furlough must be canceled and employees must either (1) be at work performing excepted activities or (2) be furloughed.

Employees that have preapproved leave that extends beyond the end of the furlough must discuss and confirm the status of the leave with their supervisor.

19. **Q: May *excepted* employees take previously approved paid leave during a furlough caused by a lapse in appropriations--i.e., a "shut-down" or "emergency" furlough? May *excepted* employees be granted new requests for paid leave during the lapse in appropriations?**

**A:** No. When an employee is not at work and performing the duties determined by the employing agency to be allowable activities in compliance with the Antideficiency Act, he or

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she cannot be in a paid leave status. Therefore, agencies must take one of the following actions: (1) cancel any approved paid leave during the furlough and/or deny any new requests for paid leave; or (2) furlough the employee for the period of the employee's absence from duty. An agency may subsequently terminate the furlough whenever the employee's services are required for excepted activities.

If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered absent without leave (AWOL) and may be subject to administrative action including disciplinary and/or adverse action.

Employees who are fully funded through non-appropriated funds or from an appropriation that continues to remain available are not impacted by the furlough and should follow normal leave procedures.

**20. Q: If an employee who would be furloughed is on approved leave without pay (LWOP) must the LWOP be terminated and the employee furloughed?**

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

**21. Q: If an employee is on leave under the Family and Medical Leave Act of 1993 (FMLA) during the furlough, does the leave count towards the 12-week entitlement to FMLA leave?**

**A:** An employee who is on approved Leave Without Pay (LWOP) under the FMLA on days that coincide with the period of furlough will continue to be charged LWOP. Consistent with law and regulations, the LWOP taken under the FMLA is part of the 12-week entitlement. However, an employee who was scheduled during the furlough to take *paid* leave under the FMLA (i.e., an employee chooses to substitute annual leave or sick leave, as appropriate, for unpaid leave under the FMLA) must be placed on furlough instead. (See Q. 46) Since the paid leave was canceled, the period of absence may not be used to reduce the 12-week entitlement to FMLA leave.

**22. Q: May employees be furloughed on a holiday?**

**A:** Employees may be furloughed for periods of time that include holidays. However, the selection of the furlough period in question should be justified 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. (Comptroller General opinion B-224619, August 17, 1987.) Neither would it be proper to furlough an employee solely on a holiday. (Comptroller General opinion B-222836, May 8, 1986.)

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**23. Q: If employees are furloughed 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.

**24. Q: If employees are furloughed 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. (Comptroller General opinion B-224619, August 17, 1987.)

**25. Q: Can excepted employees be required to perform work on a holiday that occurs during a furlough?**

**A:** Yes. Each agency is responsible for determining which excepted activities must be performed on a holiday in order to carry out functions related to national security, protection of life or property, or the orderly suspension of agency operations. If an excepted employee refuses to report for work on a holiday after being ordered to do so, he or she can be considered absent without leave (AWOL) and may be charged with insubordination.

**26. Q: What pay entitlements will accrue to an excepted employee who performs work on a holiday?**

**A:** The Government will be obligated to pay an excepted employee who performs work on a holiday according to the normal rules governing pay for work on a holiday. Under these rules, an excepted employee would receive his or her rate of basic pay, plus holiday premium pay at a rate equal to the employee's rate of basic pay. In addition, if such an employee performs officially ordered or approved overtime work on a holiday (i.e., work in excess of his or her basic non-overtime work requirement for that day), the employee would receive overtime pay (or compensatory time off) for that work. Of course, an employee cannot be paid for working on a holiday until an appropriations act or a continuing resolution is enacted.

**27. Q: If agency performance management plans require the payment of performance awards to employees, can the payment be delayed until after the furlough?**

**A:** Yes. Neither law nor regulation requires agencies to pay performance awards (5 U.S.C. Chapters 43 and 45 and 5 CFR 451.104(a)(3)). If agency performance management plans

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require the payment of performance awards, agencies may delay payment until after the furlough when funds are available.

**28. Q: Are agencies required to pay performance awards to Senior Executive Service (SES) employees?**

**A:** No. Neither law (5 U.S.C. 5384) nor regulation (5 CFR 534.403) requires agencies to pay performance awards.

**29. Q: Can employees on furlough receive travel allowances?**

**A:** Although employees on furlough are in a nonpay status, they are entitled to transportation and per diem/actual subsistence allowances to return to their official duty station.

**30. Q: How is a furlough recorded on the Time and Attendance sheet?**

**A:** Transaction code 74 is used to record furlough.

**31. Q: What is the difference between a “covered” employee and one that is “not covered”?**

**A:** Employees “covered” under 5CFR 752 have certain procedural/appeal rights in the event of a furlough. A description of “covered” and “non-covered” employees is outlined below.

“**Covered employees**” are entitled to the procedural rights of 5 C.FR. §752.404(c) and include the following:

- A *competitive service* career or career conditional employee who is not serving a probationary or trial period.
- A *competitive service* employee who has completed one year of current continuous service not on a temporary appointment limited to one year or less. (An employee on a term appointment for more than one year, such as Post Doctorial Scientists in ARS is covered.)
- An *excepted service* “preference eligible” veteran who has completed one year of current continuous service in the same or similar position.
- An *excepted service* “non-preference eligible” who has completed two years of current continuous service in the same or similar position under other than a temporary appointment limited to two years. (A Student Career Employment Program (SCEP) employee appointed under Schedule B with a term of more than one year (and not temporary) is covered.)
- An employee *with competitive status* who occupies a position in Schedule B of part 213 of Title 5 Chapter 1. (An employee who has served at least 90 days in a Schedule B position for which they competed and who applies and

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reassigned to a position in the SES Candidate Development Program (excepted service position under Schedule B appointing authority) is covered.)

- An employee who *was in the competitive service* at the time his or her position was first listed under Schedule A, B, or C of the excepted service and who still occupies that position;

Employees “**not covered**” are not entitled to the procedural rights listed in 5 CFR 752.404(d) and include the following:

- An employee whose appointment is made by and with the advice and consent of the Senate.
- An employee whose position is *excepted* from competitive service (by the President, OPM, or the head of the agency) and the position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by the President. (An employee in a Schedule C position or who is a political appointee is not a covered employee.)
- A Presidential appointee.
- A reemployed annuitant.
- A Foreign Service member as described in section 103 of the Foreign Service Act of 1980.
- An alien or noncitizen occupying a position outside the United States.
- A non-preference eligible employee serving a probationary or trial period under an initial appointment in the excepted service pending conversion to the competitive service, unless the employee meets the requirements of 5 CFR 752.401(c) (5). (An employee (including an individual with a disability) hired under Schedule A who has not been converted to a competitive service appointment is not a covered employee).
- An employee whose position has been excluded from the appointing provisions of title 5, United States Code, by separate statutory authority in the absence of any provision to place the employee within the coverage of chapter 75 of title 5, United States Code.
- An employee in the competitive service serving a probationary or trial period, unless he or she meets the requirements of 5 CFR 752.401(c) (2).

**32. Q: As a covered employee, can I file a grievance or appeal on a furlough action?**

**A:** A covered employee has the right to file a grievance under an applicable negotiated grievance procedure or file an appeal with the MSPB. See 5 U.S.C. 7513(d), 5 C.F.R. 752.404(d) (2), 5 C.F.R. 752.405. As a furlough is a matter appealable to the MSPB, it is *excluded* from coverage from the USDA’s administrative grievance system. If a furlough is covered by an applicable negotiated grievance procedure, a grievant may elect to file a grievance under that procedure OR an appeal to the MSPB, both not both. As provided at 5 U.S.C. 7121(e)(1), if a matter covered by this subpart falls within the coverage of an

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applicable negotiated grievance procedure, an employee may elect to file a grievance under that procedure or appeal to the MSPB under 7701, but not both.

- 33. Q: I understand that employees on travel will be directed back to their duty station, and no further travel approved during the hiatus. What impact does a hiatus have on an employee who is in temporary quarters due to an approved relocation?**

**A:** The relocation agreement between the employer and the employee is considered a contract and therefore at the time that the contract is executed the funds are considered obligated. Additionally, the employee's new duty station is considered their duty station of record, and as such could not "return" to anywhere.

- 34. Q: What happens if the time allocated for temporary quarters has expired and the employee needs an extension?**

**A:** Any request for extension of temporary quarters should be requested and approved in advance of the hiatus. No additional funds may be obligated during a hiatus, and without an approval for an extension the employee could be in jeopardy of not being reimbursed those expenses.

- 35. Q: How will employees know when appropriations are passed ending the furlough, so they are to return to duty?**

**A:** Employees are to monitor the news on television, radio, and/or OPM's website [http://www.opm.gov/Operating\\_Status\\_Schedules](http://www.opm.gov/Operating_Status_Schedules). These are the same methods employees are updated via regarding effects of inclement weather on the government's operating status.

- 36. Q: If employee funded through appropriations that have lapsed are on temporary duty assignments away from their normal duty stations at the time of an appropriations lapse, can they make arrangements to return home sooner than planned?**

**A:** They are encouraged to do so wherever reasonable and practicable. However, agencies should make a determination of reasonableness and practicality based on the length of the assignment and the time required for return travel, compared to the anticipated length of the lapse, so as to minimize the burdens of doing so.

- 37. Q: Can a supervisor direct an employee to report for duty on Monday, April 11, 2011 to conduct an orderly shutdown of their work if Monday is their flexible work day and they are not scheduled to come in?**

## EMPLOYEE Q&A'S FOR SHUTDOWN

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A: Yes. Employees are required to report for duty on Monday to conduct an orderly shutdown of their work even if Monday is their flexible work day and they were not scheduled to come to report for duty.

**38. Q: Should persons who have travel scheduled to begin on Sunday for work on Monday be cancelled by noon on Friday if we have no notification of government funding beyond April 8?**

A: Yes.

**39. Q: Can we in process new employees who are scheduled to enter on duty on Sunday, April 11, 2011?**

A: Current Federal employees transferring to USDA with a continuation of government employment should be in-processed following normal entrance on duty procedures to include the transfer of any benefits. The employee should then be either placed in a furlough status, or excepted from furlough following your shutdown plan. New Federal government employees must have their entrance on duty placed on hold until such time appropriations are available to effect the appointment.

**40. Q: How do we treat employees on detail?**

A: Employees on detail to Federal agencies from non-Federal organizations that do not pay or share the costs of the detail are subject to furlough in the same manner as other employees. The manager of record will be responsible for communicating all furlough related guidance to an employee on detail.

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