

I. Purpose

The purpose of this directive is to provide guidance for suspension of U.S. Department of Education (Department) operations in the event that an emergency furlough becomes necessary due to a lapse of appropriations.

II. Policy

When an Appropriation Act or a Continuing Resolution has not been signed by the President, thereby causing a lapse of appropriations, it is the policy of the Department that all employees will be placed on emergency furlough, except for Presidential appointees (including designees and those acting in these positions), one additional essential support employee to be named by each Presidential appointee, any employees funded through permanent or multi-year appropriations in effect at the time of the lapse in appropriations, and any employees designated as "excepted employees" in accordance with applicable legal opinions by the Department of Justice and advice from the Department's General Counsel. No voluntary services of any Department employee placed on furlough can be accepted. Contract personnel are not affected by a furlough as long as the contract remains fully funded.

III. Authorization

- A. 5 CFR Part 752, Subpart D, authorizes agencies to furlough employees on an emergency basis for 30 days or less.
- B. 5 CFR Part 359, Subpart H, authorizes the furlough of career appointees in the Senior Executive Service.
- C. 5 U.S.C. 7512 and 5 U.S.C. 7513 authorize the placing of employees in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

IV. Applicability

Except for Presidential/Senate Confirmation appointees and those employees funded through a permanent or multi-year appropriation in effect at the time of the lapse in appropriations, this directive applies to all Department employees in pay and non-pay status. The Department is funded under the Labor, Health and Human Services, and Education appropriations.

V. Responsibilities

- A. Office of Planning, Evaluation, and Policy Development/Budget Service:
 - To serve as the Department's source for authoritative information on the status of appropriations.

- To notify those responsible for suspension of operations in the event of lapsed appropriations.
- B. Human Resources Services, Office of Management:
- To prepare appropriate notices regarding emergency furlough.
 - To serve as responsible source for information regarding emergency furlough.
- C. Management Services, Office of Management:
- To disseminate notices of emergency furlough under tight deadlines to all Department employees.
- D. Executive Officers:
- For each Principal Office, to serve as primary source of information and direction for managers and supervisors on matters pertaining to emergency furlough.
- E. Supervisors and Managers:
- To serve as source for information and direction regarding emergency furlough to employees under their supervision.

VI. Definitions

Furlough – Placing an employee in a temporary status without duties and pay because of a lack of work or funds or other non-disciplinary reasons. [5 U.S.C. 7511(a) (5)]

Emergency Furlough – A furlough taken under unforeseeable circumstances, such as sudden emergencies requiring immediate curtailment of activities. [5 CFR 752.404(d)(2)]

Day – For the purpose of this directive, a calendar day. (5 CFR 752.402(a))

Excepted Employees – Employees who are excepted from a furlough in cases of emergencies where there is (1) a reasonable and articulable connection between and function to be performed and the safety of human life and/or the protection of property and (2) a reasonable likelihood that the safety of human life or the protection of property would be compromised in some significant degree by delay in the performance of the function in question.

VII. Procedures and Requirements

- A. If appropriations are passed by the Congress and signed by the President before the beginning of a workday, employees should report to work as usual.

- B. On the first day on which appropriations are not passed by the Congress and signed by the President before the beginning of a workday, the following actions are required:
1. Employees will report to work as scheduled to begin phasedown activities and to await instructions on whether a furlough will be necessary. These activities should be completed during the first three hours of the workday.
 2. Employees in travel status will contact their offices for instructions regarding return. Employees in transit to a travel site will continue to their destination and contact their offices immediately on arrival.
 3. Department employees who are detailed out of the Department on Intergovernmental Personnel Act (IPA) assignments and are being paid directly from the Department should prepare to return to their Department duty stations. These employees will be notified by their Department managers or supervisors when to return, if necessary. Department employees paid by the sponsors of their IPA assignments are not affected by the lapse of appropriations.
 4. Employees in a training status on and off Department premises will prepare to return to their duty stations. Employees in training off Department premises will immediately contact their offices for instructions regarding return.
 5. Employees on approved leave (annual, sick, court, or military) at the time of a lapse of appropriations will be treated for pay purposes in the same manner as those employees not on leave.
 6. Employees designated as “excepted employees” by the Deputy Secretary will continue to perform necessary activities to ensure the protection of human life or protection of government property in the event that a delay in the performance of their assigned activities would compromise the protection of human life or property. When their work is complete, if there is still a lapse in appropriations, they will be placed on emergency furlough.
- C. If appropriations are passed by the Congress but not signed by the President before the beginning of a workday, employees should proceed as in paragraph B above.
- D. Employees will be notified of specific furloughs due to lapsed appropriations by phone or e-mail. Employees should direct questions to their immediate supervisor. A list of questions and answers, which covers some employee concerns including grievance and appeal rights in emergency furlough situations, is attached as Exhibit A.

EXHIBIT AEmployee Rights and Benefits During Lapsed Appropriations

- (1) Q. How much notice must employees receive before a furlough is implemented?
- A. Ordinarily, a minimum of 30 days notice is required. Under an emergency situation, however, this requirement can be waived.
- (2) Q. May a furloughed employee temporarily take another job?
- A. Employees remain Federal employees during a furlough. Subject to any conflict of interest prohibitions, an employee may take a job during a furlough. 5 CFR Parts 2635, 2636 and 6301. In addition, an employee may not receive pay from more than one Federal position. 5 U.S.C. 5533.
- (3) Q. Will employees on furlough or nonpay work status (e.g., those declared essential) accrue annual or sick leave?
- A. An employee accrues leave only during periods of pay status. If an employee is in pay status during part of a pay period and on furlough during the remaining part, the accrued leave will be prorated. The same applies to an employee in nonpay work status except that if an agency's appropriations are retroactive, the employee will be credited with annual and sick leave retroactively.
- (4) Q. What happens when requests for annual or sick leave have been approved before the beginning of an emergency furlough due to lapsed appropriations?
- A. Any annual or sick leave approved for a day that is subsequently designated as a furlough day will automatically be canceled. Furlough days are non-workdays and leave cannot be charged on a non-workday.
- (5) Q. What happens to an employee's retirement coverage under a furlough or under nonpay work status?
- A. Retirement coverage continues without cost to the agency or to the employee. If retroactive appropriations are received, employee contributions are withheld from the retroactive pay.
- (6) Q. What happens to regular and optional life insurance coverage for furloughed and nonpay work status employees?
- A. Regular and optional insurance coverage continues up to a total of 12 months without cost to the employee or to the agency. If retroactive appropriations are received, employee contributions are withheld from the retroactive pay.

- (7) Q. What happens to health benefits coverage of a furlough or nonpay work status employee?
- A. Health benefits coverage continues for up to 365 days. The government continues its contribution while the employee is in a non-pay status and must also advance salary if necessary to pay the employee's share. If retroactive appropriations are received, the employee contributions are withheld from the retroactive pay.
- (8) Q. What happens to an employee who is injured while on furlough or while on nonpay work status?
- A. An employee who is injured while on furlough is not covered under the Employee Compensation Act. An employee who is injured while in nonpay work status is covered under the Employee Compensation Act.
- (9) Q. Can employees appeal or grieve a furlough action?
- A. Under 5 U.S.C. 7313(d), certain employees are entitled to appeal a furlough action to the Merit Systems Protection Board (MSPB). 5 U.S.C. 7121(e)(1) permits an aggrieved employee to appeal or, where applicable, to file a grievance under the negotiated grievance procedure, but not both. You may contact your Servicing Personnel Office for procedures.
- (10) Q. Can an "excepted employee" continue to volunteer his/her services once there is no longer an immediate and compelling need for their services and there is still a lapse in appropriations?
- A. No. At the point there is no longer a need for their services to ensure the protection of life or property, the employee will be placed on emergency furlough.

Further information is available on the OPM website: <http://www.opm.gov>.