



# Furlough Due to Lapse in Appropriations

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## Answers to Frequently Asked Questions by SEC Employees

As of January 24, 2019

**Disclaimer:** This information is being provided on the SEC's website because it is the most efficient way to reach our entire employee population (including employees not subscribed to the SEC Alerts notification system).

## TABLE OF CONTENTS

<b>Section</b>	<b>Topic</b>	<b>Page</b>
<a href="#">1.0</a>	Reference	3
<a href="#">2.0</a>	Introduction	3
<a href="#">3.0</a>	General Administration	3
<a href="#">4.0</a>	Excepted vs Non Excepted	5
<a href="#">5.0</a>	Non Standard Employees	7
<a href="#">6.0</a>	SEC Shutdown Process - Day One	8
<a href="#">7.0</a>	Leave	11
<a href="#">8.0</a>	Pay	12
<a href="#">9.0</a>	Transit Benefits	13
<a href="#">10.0</a>	Benefits	13
<a href="#">11.0</a>	Travel	17
<a href="#">12.0</a>	Employee Relations	18
<a href="#">13.0</a>	Labor Management Relations Implications	19
<a href="#">14.0</a>	Training And Development	19
<a href="#">15.0</a>	Ethics	20
<a href="#">16.0</a>	Acquisitions	21
<a href="#">17.0</a>	Facilities	23
<a href="#">18.0</a>	Miscellaneous	24

The Office of the Chief Operating Officer (OCOO) has prepared guidance for SEC staff on emergency or “shutdown” furlough. A shutdown furlough occurs when there is a lapse in annual appropriations. Shutdown furloughs can occur at the beginning of a fiscal year, if no funds have been appropriated for that year, or upon expiration of a continuing resolution, if a new continuing resolution or appropriations law is not passed.

In an emergency or 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.

## 1.0 REFERENCE

Office of Personnel Management (OPM) *Guidance for Shutdown Furloughs, dated September, 2015.*

## 2.0 INTRODUCTION

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

## 3.0 GENERAL ADMINISTRATION

### 1. What is a shutdown furlough?

A shutdown (also called an emergency) furlough is the placing of an employee in a temporary non-duty, non-pay status because there is a lapse in appropriations, upon expiration of a continuing resolution, or if a new continuing resolution or appropriation law is not enacted. In a shutdown furlough, the agency no longer has the necessary funds to operate and must shut down those activities that are not “excepted” by statute and the Office of Management and Budget (OMB) standards.

### 2. Under what authority is a furlough taken?

For most employees, furloughs are covered under adverse action procedures found in Subpart D of Title 5 Code of Federal Regulations (CFR), Part 752.

### **3. Who can be furloughed?**

All employees, other than individuals appointed by the President (with or without Senate confirmation), can be put in furlough status. However, during a shutdown furlough, employees engaged in **excepted** activities continue to report for duty.

### **4. When would a furlough take effect?**

In the absence of either a Fiscal Year 2019 appropriations or a continuing resolution (CR), no further financial obligations may be incurred by the SEC, except for those related to the orderly suspension of operations or performance of excepted functions as defined by the OMB.

The SEC faced a lapse in funding effective midnight, Friday, December 21, 2018, but the SEC had sufficient funds to continue to operate until midnight on Wednesday, December 26, 2018. Accordingly, the shutdown furlough began for SEC employees on Thursday, December 27, 2018. Employees are authorized to monitor their SEC email and the agency's intranet (The Insider) for additional guidance and information on when the shutdown furlough will end.

### **5. How will I be notified of a government shutdown?**

During a government shutdown due to lack of appropriated funds, agencies may receive very limited lead time. Accordingly, it is considered an "emergency" shutdown and employees may be notified verbally, by email, or by a written notice. Promptly after receiving notice from OMB, SEC will both send an agency-wide email to all federal employees and post an announcement at [intranet.sec.gov](http://intranet.sec.gov) to notify everyone that a shutdown has occurred. All employees will receive a formal written notice as soon as administratively feasible. SEC employees should have received a Notice of Furlough or a Notice of Excepted Function During a Furlough on Thursday, December 27, 2018.

### **6. How is an employee notified of a furlough?**

The SEC provided all employees with notification of the furlough via email on Thursday, December 27, 2018. The SEC also distributed notification via the SEC Alerts system.

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

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

### **8. How is an employee notified of the end of the furlough?**

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

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

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

**4.0 EXCEPTED vs NON-EXCEPTED**

**1. Who are “excepted employees”?**

The term “excepted employee” refers to employees who are excepted from a furlough (directed to work) 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) performing other functions exempted from the furlough. Senior agency managers identify which positions meet the criteria above.

**2. Are all employees who qualify as “emergency employees” for the purpose of weather emergencies considered to be “excepted employees” for the purpose of a shutdown furlough?**

No. Excepted employee is a separate category and should not be confused with “emergency employee,” which is a designation for those employees who must report for work in emergency situations such as severe weather conditions, power failures, and other situations in which a significant number of employees are prevented from reporting to work.

**3. How does the SEC determine which employees are excepted?**

It is up to each office/division to determine which positions are exempt from the furlough. Each office reviews the job duties and/or position descriptions of each employee when making this determination.

**4. How do employees know if they are an excepted employee?**

Employees will be notified via email as to whether they are excepted or non-excepted. Excepted employees also will receive a written Notice of Excepted Function during a Furlough notification from the Office of Human Resources (OHR). Excepted employees will be notified of their status before a shutdown occurs. Each employee designated as excepted must acknowledge receipt of the notice in writing.

**5. How are employees who are not designated as excepted notified?**

Employees who are not designated as excepted are prohibited from working during a shutdown, except to perform minimal activities as necessary to execute an orderly suspension of agency operations related to non-excepted activities. These employees will be *furloughed*.

The Office of Human Resources (OHR) will provide non-excepted employees a furlough notice and Standard Form (SF) 8, “Notice to Federal Employees about Unemployment Insurance.”

Each employee designated as non-expected must acknowledge receipt of the notice in writing. Acknowledgement is not acceptance.

**6. Does an employee's categorization of expected or non-expected last throughout the entirety of any lapse in appropriations?**

Not necessarily. Divisions and offices will continually review the scope of duties necessary to support the protection of human life, the protection of property, or other expected activities. The needs of the Commission may fluctuate throughout any lapse in appropriations. At times, more support may be needed. At other times, minimal support will be needed. Therefore, whether an employee is determined to be expected may change throughout any lapse in appropriations. Managers may communicate with furloughed employees about the employee's status.

**7. Can an expected employee telework during the shutdown?**

Yes. If the expected activities can be performed remotely and if the expected employee receives prior approval from their supervisor, the employee may telework.

**8. How will contractor employees be notified during the furlough?**

Contracting Officers will work directly with the contracting companies/vendors to notify them of their status in the event of a government shutdown. It is ultimately the contractor's responsibility to notify its employees.

**9. As a non-expected employee, am I allowed to check my email and voicemail during the furlough?**

During the furlough, non-expected employees will not be permitted to serve as unpaid volunteers and must remain away from the work place. Non-expected employees should cease performing any work-related duties during the furlough. Non-expected employees should not provide information, answer questions, or offer to provide assistance to their office or their work colleagues during the furlough. This also means non-expected employees should not "telework" or otherwise perform work from home or a remote location. However, during the furlough, some non-expected SEC employees may receive emails or voice mails that indicate an imminent or ongoing threat to private or Government property. As part of the shutdown process, supervisors and managers expected from the furlough should instruct those employees - who may reasonably be considered potential candidates to receive communications regarding a potential threat to Government or private property - to check their email and voice mail once per day for any such communications. Expected supervisors and managers should also instruct employees whom they anticipate may be required to work on an expected matter to check their email once a day to see if their services are required. If there is a question whether a matter qualifies as an expected matter, OGC is available to discuss.

## 5.0 NON-STANDARD EMPLOYEES

### **1. What is the impact of a lapse in appropriations on a person who is working for the agency under an Intergovernmental Personnel Act (IPA) agreement?**

As a general rule, personnel working under an IPA agreement may continue to work if the Federal portion of the cost was obligated prior to the lapse in appropriations AND unexpended funds remain on the agreement. If the particular IPA agreement were to exhaust its SEC funding during a lapse in appropriations, then no more SEC funding could be added to the agreement unless a determination is made that the person would be performing excepted tasks. If so, then SEC funding would have to be added to the IPA agreement to allow the individual to perform these tasks. Since the terms of specific IPA agreements can vary, and the agency's financial status may change over time, personnel working under an IPA agreement should check with their employing office, and if needed, the division/office's business manager or administrative officer should seek confirmation of the financial status of the agreement with the Office of Financial Management (OFM).

### **2. Can a person working under an Interagency Agreement (IAA) with other Federal agencies be furloughed by the SEC?**

The work status of personnel under IAAs is determined by the agency to which they report and by the source of funding for their work. If the agency to whom the federal employee reports elects to stop work under the IAA, we cannot require the federal personnel to report to the office during a furlough. Also, if the SEC's funding has lapsed and the employee's pay is funded by the SEC, they may not continue work unless one of the excepted functions is applicable. If you have contractor personnel supporting your program under an IAA, please contact the Contracting Officer or Contracting Officer's Representative (COR) for guidance.

### **3. If an office employs students, can they continue to work during a lapse in appropriations?**

No. Unless a student, paid or unpaid, is designated as excepted, he or she cannot work during a furlough.

### **4. What happens to part-time and intermittent employees during a shutdown?**

For part-time employees, time spent in non-pay, non-work status will be prorated based upon the number of hours normally worked during a pay period. Intermittent employees are non-full-time employees without a regularly scheduled tour of duty. This group of employees may be called to work during a furlough only to perform excepted functions.

### **5. What happens to employees on detail during a shutdown furlough?**

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

## **6. What happens to time limited appointments that expire during a furlough?**

Furloughs do not extend the not-to-exceed (NTE) date for temporary (5 CFR 316.401(c)) and term (5 CFR 316.301(a)) appointments. Managers who have employees with temporary or term appointments that will end during furlough period should contact OHR prior to the start of the lapse in appropriations and request an extension of the time limited appointment. Additionally, the employee may be reappointed after the furlough in accordance with 5 CFR § 316.401(c) or 5 CFR § 310.320(b)(7).

## **6.0 SEC SHUTDOWN PROCESS**

### **1. If Congress does not reach a budget agreement, do employees come to work the workday after the appropriation lapses?**

SEC employees must report to work on the first workday following a lapse in appropriations. Because the SEC had carry-over funding, the SEC continued to operate for three days—through Wednesday, December 26, 2018—after the lapse in appropriations. Accordingly, the SEC began its shutdown furlough on Thursday, December 27, 2018.

The SEC has notified employees if they are deemed excepted. All excepted employees will perform their duties as required.

Non-excepted employees were instructed to report for up to a half-day (e.g., up to four hours) for the sole purpose of engaging in orderly shutdown activities on Thursday, December 27, 2018. Some employees may have performed the orderly shutdown activities remotely from their telework location.

### **2. If I am a non-excepted employee, will I be paid for the time I work on the day after the appropriation lapses?**

Non-excepted employees are guaranteed compensation for the orderly shutdown of operations. The payment will be made after Congress passes and the President signs an appropriations bill or a continuing resolution. 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. The law authorizes payment for the orderly shutdown of operations and activities excepted from the shutdown. However, even though the government can incur obligations as necessary for orderly terminations of an agency's functions, no funds may be disbursed until an appropriation is provided.



**3. What should I do if I am a non-excepted employee and on an Alternative Work Schedule (AWS) and I would not normally work on the first day of the furlough?**

You are required to participate in whatever activities are necessary to effectuate the orderly shutdown of government. Supervisors who have employees on Alternative Work Schedule (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 shutdown furlough.

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 (or perform shutdown activities while teleworking).

Excepted employees will report for work and will receive information on the excepted functions and activities they are expected to perform and whether they will remain in a full-time status or not.

**4. What do I do on the first workday of a shutdown?**

In the event of an emergency furlough, non-excepted SEC employees are required to participate in an orderly shutdown of the government. Non-excepted employees will perform only those tasks necessary to ensure orderly closure and to safeguard property, records, and information. Employees will have up to four hours to complete the required set of activities. During that time, employees will complete shutdown activities, to include:

**All employees (excepted and non-excepted (furloughed)) will:**

- Complete and verify their time and attendance in webTA for the current pay period.

**Non-excepted (furloughed) employees will:**

- Make contacts outside the agency that are necessary to communicate our status to parties with whom you are transacting business that have a need to know.
- Work with your supervisor to determine which meetings, hearings, testimony, depositions, etc., should be cancelled and make the required cancellations and/or postponements.
- Where matters should not be cancelled or postponed, work with supervisor to identify excepted employees who will handle these matters during the government shutdown and assist with transitioning the work to them.
- Documenting the status of projects so that they can be resumed, transferred or otherwise appropriately handled when SEC's ultimate funding situation is determined.

- Update your personal contact information in the SEC Alerts system. (See The Insider for more information.)
- Print out copies of the Furlough Notice and FAQs as you will not be able to access SEC systems remotely during the shutdown.
- Secure non-public files and/or sensitive material in appropriate file cabinets and lock cabinets.
- Take any personal items that you may need during the shutdown.
- It is recommended that you provide your managers/supervisors with contact information for possible notification use during the shutdown.
- Log off desktop and/or laptop PCs to ensure that critical security patches can be deployed during the shutdown; **do not power down desktops and/or PCs.**
- Before leaving the office, set out trash, turn off all lights and close office door.
- Create extended voice mail message and turn Microsoft Outlook status to “out of office” (*see below for suggested language*).

- **“Out of Office” Email Message:**

“Due to a lapse in appropriations for the federal government, the U.S. Securities and Exchange Commission is currently closed. I am currently out of the office, and will return to the office once an appropriation has been enacted. During the closure, I will not be monitoring or responding to my emails. [Insert here any additional message provided specifically by your Office/Division]. Thank you.”

- **Voice Mail Message:**

“You have reached the voice mail of [Name] at the U.S. Securities and Exchange Commission, [Division/Office]. Due to a lapse in appropriations for the federal government, the U.S. Securities and Exchange Commission is currently closed. I will not be monitoring any voice messages during the closure, but you may leave a message if you wish to do so. [Insert here any additional message provided specifically by your Office/Division]. Thank you.”

**Supervisors will:**

- Cancel annual and sick leave scheduled for furloughed employees during the funding hiatus (including leave already started). Employees with paid leave (annual, sick, credit, compensatory, etc.) scheduled and approved for days for anticipated furlough days, will not be allowed to take leave, since furloughs are considered to be non-workdays.
- Advise employees being furloughed that the agency may not accept their voluntary services during hiatus as it is prohibited by the Antideficiency Act.

- Advise employees who are furloughed they are not authorized to use Government equipment (iPhones, laptops, cell phones, etc.) as they are not in work status and cannot work voluntarily.
- Certify all properly entered worktime in webTA.
- Ensure shutdown activity has been appropriately completed.

## 7.0 LEAVE

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

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

### **2. At the end of the furlough, will I be able to take previously approved leave that may have been canceled due to the furlough?**

Yes. The SEC will honor previously approved leave once the furlough ends. In very rare circumstances, however, the SEC may need to rescind previously approved leave based upon unforeseen circumstances that would have a significant adverse effect on staffing, workload or mission requirements.

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

No. If an excepted employee is unavailable to be at work and perform the duties determined by the employing agency to be allowable activities, the employee must be furloughed. Excepted employees must either perform excepted activities or be furloughed during any absence from work. The furlough must be documented by a furlough notice. If an excepted employee refuses to report for work after being ordered to do so, he or she will be considered to be absent without leave (AWOL) and will be subject to any consequences that may follow from being AWOL.

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

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

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

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

**6. May an excepted employee be permitted to earn compensatory time off and credit hours (under flexible work schedules) during the shutdown period?**

Yes. With agency approval, excepted employees may earn compensatory time off and/or credit hours subject to requirements found in 5 U.S.C. § 5543 and §§ 6120–6133; 5 CFR §§ 550.114, 551.531, and part 610, subpart D; or other applicable authority. Each agency is responsible for approving the number of hours an excepted employee can work related to the performance of excepted activities. Employees will not be permitted to use earned compensatory time off or credit hours during the shutdown period.

**7. On January 9, 2019, OPM clarified that the furlough may serve as a basis to restore forfeited “use or lose” annual leave. Will the SEC restore “use or lose” annual leave that was forfeited because of the furlough?**

Yes, as long as an employee meets the statutory criteria in order to qualify for restoration. Specifically, an employee must have had: (1) an annual leave request approved in WebTA on or before November 24, 2018; (2) annual leave that was canceled due to the furlough; and (3) annual leave that was actually forfeited. Employees who meet these criteria may submit a request for leave restoration. Once the furlough ends, OHR will provide instructions on how employees should submit restoration requests.

## **8.0 PAY**

**1. Will excepted employees be paid for performing work during a shutdown furlough? If so, when will excepted employees receive this payment?**

The Government is obligated to pay employees retained during the furlough, but payment would take place *after* Congress passes and the President signs a new appropriation or continuing resolution.

**2. Will employees who are furloughed ultimately get paid?**

In general, Congress must determine whether furloughed employees receive pay for a furlough period. In the case of the current lapse in appropriations, on Jan. 16, 2019, the President signed into law *The Government Employee Fair Treatment Act* (S. 24) which guarantees all federal employees will be fully paid, retroactively, as soon as possible after the lapse ends.

**3. Will I be paid *during* the furlough?**

The SEC is not able to pay employees during a furlough, regardless of whether they are directed to work as excepted employees or furloughed as non-excepted.

**4. Will employees receive a paycheck for hours worked prior to a lapse in appropriations?**

Under OMB guidance issued in 1980 (below), employees will receive this paycheck. Although

the payroll for the last pay period before the lapse will be processed potentially during a period of furlough, the minimum number of payroll staff necessary for this process will be excepted from furlough for the minimum time required to issue salary payments, including for the last pay period before the lapse. This guidance can be found in OMB's August 28, 1980, [Bulletin No. 80-14, Shutdown of Agency Operations Upon Failure by the Congress to Enact Appropriations](#), paragraph 3.b.(1) (Appropriations and funds).

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

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

## 9.0 TRANSIT BENEFITS

### 1. Will employees continue to receive the transit benefits subsidy?

For transit benefits, the agency will follow the same procedures as usual. Excepted employees traveling to work (who typically receive transit benefits) should continue to use their benefits as usual.

Non-excepted employees are not eligible to use the benefit for non-work periods.

Once a non-excepted transit participant returns to duty from a furlough, they may need to adjust their subsidy amount in the DOT TRANServe system ([transerve.dot.gov](http://transerve.dot.gov)) for days there was no home-to-work commute.

## 10.0 BENEFITS

### 1. Will employees continue to be covered under the Federal Employee Health Benefits (FEHB) program during a shutdown furlough if the agency is unable to make its premium payments on time?

Yes. Employee FEHB coverage will continue even if an agency does not make the premium payments on time. Since the employee will be in a non-pay status, the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.

### 2. What happens if an employee wants to terminate Federal Employee Health Benefits (FEHB) coverage while in a non-pay status in order to avoid the expense?

Unlike other types of non-pay status, employees in a non-pay status due to a lapse of appropriations (shutdown furlough) will not have the opportunity to terminate or cancel FEHB coverage. The employee will remain covered; the enrollee share of the FEHB premium will accumulate and be withheld from pay upon return to pay status.

### 3. To what extent does a shutdown furlough affect Federal Employee Dental and Vision Insurance Plan (FEDVIP) coverage?

Up to date information is provided on the [BENEFEDS](http://BENEFEDS) website. As stated on their website:

“If you're enrolled in the Federal Employees Dental and Vision Insurance Program (FEDVIP), your coverage will continue during the government shutdown. If you pay your premiums through deductions or allotments from a pay provider or retirement system other than CSRS and FERS, they may be suspended during the shutdown. **You do not need to take action at this time.** However, depending on the length of the shutdown we (FEDVIP) may need to bill you directly for your premiums. If you receive a direct bill, you must pay it on time to ensure continuation of your coverage. When deductions and allotments resume, FEDVIP will attempt to collect any missed premiums by adjusting future deductions

or allotments from your pay. If you pay your premiums by direct bill or through automatic bank withdrawals, your payment process will not be affected.”

Visit the FEDVIP web site [benefeds.com](http://benefeds.com) for updated and more information.

#### **4. Will SEC Select benefits continue?**

For Dental/Vision, employees enrolled in the dental and vision core plans will continue. Employees enrolled in the dental and vision buy-up will continue but will receive direct billing from Long Term Care partners after 2 pay periods in a non-pay status.

For Short/Long Term Disability, Life with Accidental Death and Dismemberment, MetLaw, Auto/Home, and Critical Illness-Accident Insurance and Hospital Indemnity, the SEC plan allows for continuation of coverage in a non-pay status. If your non-pay status extends beyond two pay periods, you will be billed directly for premiums.

#### **5. What happens to an employee’s Federal Employees’ Group Life Insurance (FEGLI) Program coverage if furloughed?**

Coverage continues for 12 consecutive months in a nonpay status without cost to the employee or to the agency. Neither the employee nor the agency incurs a debt during this period of non-pay.

Exception: If an employee is receiving workers’ compensation benefits during these first 12 months, his/her continued coverage will not be free. The U.S. Department of Labor will withhold premiums from his/her workers’ compensation payments. An employee’s coverage will terminate after 12 months of nonpay status, or when the employee separates from his/her agency, if earlier. The 12 months may be continuous or broken by periods of less than four consecutive months of pay status. When the employee’s coverage terminates, s/he will have the right to convert the coverage to an individual policy or continue coverage as a compensator, if eligible

#### **6. What happens to an employee’s Flexible Spending Account (FSAFEDS) coverage if furloughed?**

Up to date information is provided on the [BENEFEDS](http://BENEFEDS) website. As stated on the BENEFEDS website: “Depending on the length of the shutdown, your Federal Flexible Spending Account Program (FSAFEDS) payroll allotments may be suspended. Once your allotments are successfully restarted, any remaining allotments will be recalculated over your remaining pay periods to match your annual election amount.

If you have questions about how the shutdown impacts your FSAFEDS enrollment or claims, please contact WageWorks, Inc. (who administers these processes for FSAFEDS). Visit [FSAFEDS.com](http://FSAFEDS.com) to learn more.”

*Health Care FSA* – claims cannot be submitted while you are in a non-pay status. When you return to a pay status you can submit claims you incurred.

*Dependent Care FSA* – claims cannot be submitted while you are in a non-pay status unless your account is fully funded.

### **7. What happens to an employee’s Federal Long Term Care (FLTCIP) Program coverage if furloughed?**

Up to date information is provided on the [FLTCIP](#) website. As stated on their website:


“If you're enrolled in the Federal Long Term Care Insurance Program (FLTCIP), your coverage will continue during the government shutdown.

If you pay your premiums through payroll deductions, or annuity/pension deductions from a retirement system other than CSRS and FERS, your deductions may be suspended. **You do not need to take any action at this time.** However, depending on the length of the shutdown we may need to bill you directly for your premiums. If you receive a direct bill, you must pay it on time to ensure continuation of your coverage. When deductions resume, we (FLTCIP) will attempt to collect any missed premiums by adjusting future deductions from your payroll or annuity/pension.

If you pay your premiums by direct bill or through automatic bank withdrawals, your payment process will not be affected.

Visit the LTC website at [lpcfeds.com](http://lpcfeds.com) for more information.

### **8. What is the effect of a shutdown furlough on Thrift Savings Plan (TSP) contributions, investments, and loans?**

On December 22, 2018, TSP posted the following on their website: The TSP will continue its normal daily operations during the federal government shutdown. Read the TSP fact sheet [Effect of Nonpay Status on Your TSP Account](#)  to get answers to questions about the shutdown’s impact on TSP contributions, loans, and withdrawals. **The fact sheet also emphasizes that your agency should not send Form TSP-41, Notification to TSP of Nonpay Status to the TSP during a federal government shutdown.** A shutdown is a rare occurrence and is typically of short duration. Form TSP-41 is intended for participants who are being placed on extended leave without pay, e.g., for illness, military furlough, maternity leave.

While in a nonpay status, you are still responsible for ensuring your loan payments are up to date. To prevent the risk of a taxable distribution you have the option to use the [Loan Payment Coupon, TSP 26](#) to make payments directly to the TSP. The TSP will notify you if you’ve missed more than 2 ½ loan payments or if you loan payments were insufficient.

Continue to monitor the Plan News and Announcements section of the [TSP website](#). You can also contact the TSP Thriftline at 1-877-968-3778 to speak to a customer service representative.



**9. What is the effect of a shutdown furlough on the SEC Supplemental Retirement Plan (SRP)?**

SEC Supplemental Retirement contributions are based on the requisite employee contributions to the Thrift Savings Plan. While in non-pay status no contributions are made to the TSP, therefore there will be no SRP agency matching contributions.

**10. What happens if I made an Open Season change to my health benefits?**

If an Open Season change for health benefits was submitted through Employee Express, this change was automatically processed prior to the shutdown furlough. Review your eOPF for the election notification.

**11. Would a lapse in appropriations alter the effective date of an FEHB Open Season election?**

No, the effective date for new or changes in elections remains January 6, 2019. The effective date for cancellations of coverage remains January 5, 2019.

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

Employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. State unemployment requirements differ.

Federal agencies are required to provide employees with an SF-8, **Notice to Federal Employee about Unemployment Insurance** form, if they will be in a non-duty status for seven or more consecutive days. For this reason, OHR distributed the SF-8 to furloughed employees as an attachment to the December 27, 2018 Notice of Furlough.

If you file for unemployment, you should be prepared to provide a copy of the SF-8. You may also be required to provide proof of wages. Employees may access their most recent earnings and leave statement by logging into [Employee Express](#). Employees may also access their most recent personnel actions (SF50s) in their electronic Official Personnel Folder (eOPF) by logging into [eOPF](#). The contractor listed on the SF-8, TALX Corporation, will continue to operate during the shutdown furlough and will respond to all requests from state unemployment offices.

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

Yes. You may obtain additional information on filing an unemployment insurance claim for a specific jurisdiction by searching for the jurisdiction at [the Unemployment Benefits Finder](#). Additional information can also be found at [OPM's Furlough/Unemployment Insurance Guide](#) and [OPM's Unemployment Insurance Q&As](#).

## 11.0 TRAVEL

### 1. Who is allowed to travel during a lapse in appropriations?

Only excepted employees may travel on government business during a lapse in appropriations, if necessary for the performance of an excepted activity. New travel authorizations will need to be coordinated with the OFM Travel Office. Travel authorizations will need to include an attestation from the traveler in the comments section that the trip is necessary for the performance of a permissible activity. Instead of following the normal approval chain, any such requests must be routed to the OFM Travel Office, with approval from the Chief Financial Officer in consultation with the Office of the General Counsel.

### 2. What do employees do if they are on travel on or about the date the appropriation lapses?

If employees are still on travel after a lapse in appropriations and are not excepted, they will be contacted by the OFM Travel Office and asked to return from their trip as soon as practicable. If employees have travel scheduled to begin after a lapse in appropriations and are not an excepted employee, those trips will be cancelled or postponed if a lapse in appropriations occurs.

If an excepted employee is already scheduled to be on travel soon after the start of a lapse in appropriations, the travel authorization will need to be amended in coordination with the OFM Travel Office, and resubmitted for approval. The original travel authorization will not be accepted for reimbursement. The amended travel authorization must include an attestation from the traveler in the comments section that the trip is necessary for the performance of an excepted activity. Instead of following the normal approval chain, any such travel authorization must be routed to the OFM Travel Office with approval from the Chief Financial Officer in consultation with the Office of the General Counsel.

### 3. Will someone from the OFM Travel Office contact me?

Those scheduled to travel on or about the date the appropriation lapses will receive more detailed guidance from the OFM Travel Office to help plan for a lapse in appropriations. The OFM Travel Office also will ask those employees scheduled to travel on or about the date the appropriation lapses to provide their best contact information so OFM can contact them in the event of a lapse in appropriations.

### 4. Prior to the lapse in appropriations, can employees request new travel which would start after the date the appropriation lapses?

All travelers should continue to process new travel authorizations in the E2Solutions system as normal, in anticipation of a budget or continuing resolution being passed by Congress. However, if a lapse in appropriations occurs and the traveler is not an excepted employee, the trip will need to be cancelled or postponed.

**5. What happens to travel if the government does not shut down?**

All SEC travel will continue without interruption.

**6. Do I have to pay my January credit card bill?**

In general, under the SEC's travel card program, employees remain responsible for paying their credit card bills. However, given the possibility that employees are facing financial difficulties during the shutdown, we have confirmed with the travel card vendor, US Bank, that employees can take an extra 60 days from the due date to pay their bill without incurring interest or penalties. After those 60 days, the credit card would be suspended. To give a concrete example, if a payment is due January 15, 2019, an employee would be able to wait until mid-March to pay the bill without incurring interest or penalties. On March 17, 2019, the card would become suspended.

**7. If I don't immediately pay my credit card on the designated due date, will my credit be affected?**

No. An employee's credit would not be impacted by not paying the statement on the indicated due date or January 15, 2019, and waiting until March 2019, using the example above.

**8. During the shutdown, if an employee does not pay their bill on the initial due date (January 2019 per the example above), will they be exempt from any disciplinary action from the SEC?**

Yes.

**9. Can I file for travel reimbursement if I have not done so yet?**

No, since this is not an excepted activity, employees should submit new travel vouchers when they return to work after the shutdown.

## **12.0 EMPLOYEE RELATIONS**

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

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

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

- Where applicable, an affected bargaining unit employee may elect to grieve under a negotiated grievance procedure (NGP) or appeal to the Merit Systems Protection Board, but not both.

## 13.0 LABOR MANAGEMENT RELATIONS IMPLICATIONS

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

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

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

The decision to furlough employees is a management right protected from collective bargaining by 5 U.S.C. § 7106(a)(2)(A). Further, during an emergency furlough, the agency may “take whatever actions may be necessary to carry out the agency mission during emergencies (5 U.S.C. § 7106(a)(2)(D)). However, the agency must provide an opportunity to bargain over the procedures for implementing its decision and appropriate arrangements for employees adversely affected by the furlough, unless the matter of furloughs is already **“covered by”** a collective bargaining agreement. Notwithstanding the above agency obligations, given the nature of an emergency furlough, there may be little to no advance notice possible with the absolute requirement to furlough employees. Consequently, a shortened period to complete bargaining or post implementation bargaining may be required. Managers and employees should refer to Article 50, Furlough in the SEC’s Collective Bargaining Agreement for additional information on labor/management requirements.

## 14.0 TRAINING AND DEVELOPMENT

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

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

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

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

## 15.0 ETHICS

### 1. Will the Ethics Office have coverage during a shutdown?

Yes, an Ethics Official will be excepted from the furlough and will be available to assist you.

### 2. Do the Supplemental Regulations regarding pre-clearance of transactions in securities still apply during a shutdown?

Yes.

### 3. How will I pre-clear my transactions if I cannot get into the SEC building?

You can access the Personal Trading and Compliance System (PTCS) to preclear a transaction by logging into the SEC network or calling the Ethics Office at (202) 551-5170.:

### 4. What if I cannot access PTCS?

Then you will be required to call the Ethics Office to have the on duty Ethics Official enter the proposed transactions on your behalf in PTCS. You will still be required to await receipt of pre-clearance approval before making any transactions.

### 5. Will I still be required to confirm transactions I have made as well?

Yes, using the same methods above.

### 6. If I need advice about seeking employment during the shutdown, what do I do?

Call the Ethics Official on duty and they will assist.

### 7. Am I allowed to engage in outside employment while I am furloughed?

Yes, subject to the restrictions contained in the SEC's supplemental ethics regulations.

### 8. Will I be required to seek prior approval before taking outside employment?

Yes. You will need to seek approval via the Outside Employment Module, unless the outside employment falls under the agency's blanket approval.

### 9. I am a Senior Officer. Does the Chairman's Directive requiring me to receive ethics counseling prior to starting a job search still apply?

Yes. An Ethics Official will be available to assist you during the shutdown.

### 10. I may end my employment with the Commission during the shutdown. Am I still required to receive an ethics exit briefing?

Yes. An Ethics Official will be available to assist you during the shutdown.

**11. May I accept discounts or other assistance offered generally to federal government workers by a commercial entity during the shutdown, including a financial institution with respect to options for loan repayment and late fees?**

Generally, yes, if the offer is available to all Federal employees regardless of position or agency. However, you may not use your official title, position, or the authority of your office in a manner intended to induce or coerce a special benefit.

**12. How should I contact the Ethics Office during the shutdown?**

If you need advice on a specific question or circumstance, you can reach the Ethics Office at 202-551-5170.

## **16.0 ACQUISITIONS**

**1. Can contractors continue to work?**

The answer to this question depends on multiple factors. The Office of Acquisitions works with Divisions and Offices to provide guidance on specific contracts. The Office of Acquisitions contacted COR's and companies providing specific direction. Such direction may be adjusted depending on changing circumstances. If you have contract personnel supporting your program, please contact the Contracting Officer or Contracting Officer's Representative (COR) for guidance.

**2. What happens if a contractor works at an SEC facility, but that facility is closed?**

Because the SEC will close its facilities except for a very limited set of excepted staff, some contract work at an SEC office may have to be suspended. The Contracting Officer's Representative (COR) should work with the contractor and the Contracting Officer regarding how such work will be handled.

**3. Has any specific guidance been issued from the Office of Management and Budget regarding how to handle the contractor workforce?**

Yes. Some guidance on contracting has come out and has been incorporated in the SEC's FAQ's on contracting. OA provided specific guidance to CORs and contractors.

**4. When an appropriation has lapsed, may an agency incur a new obligation – by signing a new contract, or by extending a contract, or by exercising a renewal option – when the funding source for that obligation would be the lapsed appropriation? What about use of the Government Purchase Card?**

No – except in very limited circumstances. Agency staff should work with agency counsel and the Office of Financial Management to establish if such an exception may be appropriately invoked. The same is true for use of the Government Purchase Card.

**5. Will the SEC issue stop work orders to all or some of its contractors, or simply provide general guidance to its contractors and Contracting Officer's Representatives (CORs)?**

The SEC will provide general guidance to its contractors and CORs, although coordination with the Contracting Officer's Representative (COR) and the Contracting Officer for the specific contract in question is your best approach. The Office of Acquisition may have to adjust guidance to specific contractors as circumstances dictate. If your COR is not available, contact the Office of Acquisitions.

**6. Can a contract option be exercised during a shutdown?**

This is similar to awarding a new contract. The Office of Acquisition will seek input by agency counsel and the Office of Financial Management.

**7. What happens if we have ordered supplies that are due to be delivered during the period of government shutdown?**

Suppliers will continue to conform to contract requirements with respect to delivery of supplies unless they are told otherwise. In most cases, delivery will be delayed, though appropriate excepted government personnel may be able to accept delivery of supplies. The Office of Acquisitions can provide specific guidance based on the circumstances.

**8. Can a Government Purchase Card holder use his/her government purchase card during a shutdown?**

No. The card holder should contact the Office of Financial Management or Office of Acquisitions for guidance.

**9. Can non-excepted employees use their government purchase card?**

No. Authorized, appropriate purchases would need to be handled by an excepted employee who is a government purchase cardholder or a cardholder from the Office of Acquisitions.

**10. Can the supervisor of a non-excepted employee use that employee's card in his/her absence?**

No -- and NEVER -- under any circumstances. Regardless of the type of employee you are, only authorized purchase cardholders can use the card provided to them to buy goods or services. At no time shall any person other than an authorized purchase card holder use the purchase card in his/her absence.

## **17.0 FACILITIES**

**1. Will employees be able to access the building?**

The security guards at Station Place will permit entry to the facilities only for authorized excepted personnel; day care workers and parents/guardians/children; preapproved visitors who have been

entered into the EZ-Lobby system but only when escorted by excepted personnel and only as necessary for the purpose of their visit; building management staff and workers necessary to perform facility management work.

Points of entry to the building will be limited. Non-excepted personnel will not be allowed to access and enter the building. Please ensure that you take home any personal or perishable items that you might routinely leave at the office (for example, gym clothes, eyeglasses, personal electronics, plants, or food items that could spoil).

Regional Office staff should follow guidance issued by the Regional Director's office.

**2. Will mail and deliveries continue during the shutdown?**

Guards will respond to calls for delivery at the loading dock at Station Place and will coordinate with excepted facilities staff to accept delivery.

Shipments from US Postal Service, FedEx, UPS and other carriers will be accepted on week days. Guards will be present to operate X-ray equipment. Mail room staff will accept shipments and distribute mail/packages to respective mail rooms. Items for which signatures are required but cannot be obtained will be stored in the mail center.

**3. Will health units remain open during the furlough?**

The health unit at Station Place and Federal Occupational Health (FOH) Units in the regions will be closed during the shutdown. The Employee Assistance Program (EAP) will, however, continue to operate. Employees can reach EAP by calling 1-800-222-0364.

**4. Will the Harbor at Station Place (Bright Horizon Child Care Center in Station Place) be open during a furlough?**

The Harbor at Station Place will remain open and continue normal operations during the government shutdown period.

**5. Will the Station Place - Station Express remain open during the furlough?**

No.

## **18.0 MISCELLANEOUS**

**1. What about time frames for Equal Employment Opportunity Commission (EEOC), MSPB, grievances, etc. These run X days from the day the action was affected. Will a period of furlough extend the time frames or not?**

For EEOC proceedings, timely requests should be made to extend time limits in situations where the adjudicator has the authority to extend them. Decisions will likely be made on a case-by-case basis.



The MSPB has announced that it will suspend the processing of appeals during the shutdown. The MSPB's e-Appeal Online system will also not be available. Therefore, all MSPB filing and processing deadlines will be extended by the number of calendar days MSPB is shut down. This extension applies to all deadlines before the MSPB, including those at the initial appeal and petition for review levels. Because the extension is automatic, parties are not required to show good cause and should not request an extension.

The SEC has also agreed to extend all grievance deadlines by the number of calendar days the SEC is closed due to the lapse in appropriations.

**2. Will Backup Child Care services be available to employees?**

Backup Child Care is designed to allow employees to continue to work when their normal care giving options are unavailable. Therefore, Backup Child Care services will only be available to those declared "excepted employee."

**3. Will employees continue to receive a daycare subsidy through the Federal government during a shutdown?**

Yes. The daycare subsidy will continue.

**4. Will the Employee Assistance Program and WorkLife4You services be available to employees?**

Yes. All employees (both excepted and non-excepted employees) will continue to have access to these services via 1-800-222-0364.

Note: No EAP counselor will be available on site at Station Place during the furlough.

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

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

**6. Is there other assistance available to help me through financial hardships caused by the furlough?**

Yes, there are several resources we are able to offer to employees:

***Employee Assistance Program (EAP)***

The SEC's Employee Assistance Program (EAP) offers employees and their household family members resources to cope with work and family pressures, legal and financial problems, and

personal and emotional concerns. Specialized EAP consultants are available to provide assistance, free of cost, by calling 1-800-222-0364 (TTY 1-888-262-7874); or for additional information visit the website: [www.FOH4You.com](http://www.FOH4You.com).

#### ***Banks and other Financial Institutions***

Some financial institutions, like banks and credit unions, are offering assistance to customers and members (and potential members) to help lessen financial burdens during the furlough period. You may want to contact your financial institution to structure a course of action that could financially sustain you and your family. Please also see Section 15, Ethics, above.

#### ***Assistance with Creditors***

For employees who need to have discussions with their creditors about missing or extending payments, [OPM has made sample creditor letters available](#) that may be of assistance to you in working with creditors. While there is no guarantee that creditors will provide flexibility or extend payment schedules, we understand that a number of creditors have indicated they will work with federal employees who are affected by the shutdown. Please also see Section 15, Ethics, above.

#### ***Unemployment Compensation***

Employees may be eligible for unemployment compensation, especially if they are on consecutive furlough days. See Section 10.12 and 10.13 of the SEC's FAQ document. To assist employees who wish to file a claim for benefits, OHR provided furloughed employees with an SF-8 (Notice to Federal Employee about Unemployment Insurance) with their Notification of Furlough on Dec. 27. Please be aware that state unemployment benefit requirements differ, and that most states require repayment of benefits if beneficiaries later receive a retroactive payment from their employer for the same time period. Several helpful [U.S. Department of Labor guidance documents](#) are also available on the OPM.gov website.

#### ***Employment Verification***

The SEC utilizes an automated national employment verification service, THE WORK NUMBER. SEC employees can use this service to provide employment verification, to secure a loan, or to rent an apartment. This service provides employment and salary verification information through a touch-tone phone to credit and reference verifiers upon request.

A verifier is a bank, lender, landlord, or other person or organization that has a need to verify your employment information.

Those requesting employment or salary verification may access THE WORK NUMBER online at <https://www.theworknumber.com/verifiers/> using the SEC's code: 10732. You may also contact the service directly via phone at: 1-800-367-5690.