



Defense Civilian Personnel Advisory Service

SHUTDOWN FURLOUGH

Frequently Asked Questions (FAQs)
Updated January 2024

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1.0 REFERENCES

- a. Office of Personnel Management (OPM) Guidance for Shutdown Furloughs, *December 2021*, <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf>
- b. Contingency Plan Guidance for Continuation of Essential Operations in the Absence of Available Appropriations, *August 2023*
<https://media.defense.gov/2023/Sep/12/2003299418/-1/-1/1/GUIDANCE-FOR-CONTINUATION-OF-OPERATIONS-DURING-A-LAPSE-IN-APPROPRIATIONS.PDF>
- c. OPM Addendum to OPM Guidance for Shutdown Furloughs, *September 29, 2023*, <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/addendum-to-opm-guidance-for-shutdown-furloughs.pdf>

2.0 INTRODUCTION

Formal guidance is provided in the OPM Guidance for Shutdown Furloughs, which can be found at the links within References a. and c., above. These FAQs respond to commonly asked questions. They are not intended to replace the OPM Guidance for Shutdown Furloughs, but rather to help human resources professionals in their furlough contingency planning.

3.0 GENERAL ADMINISTRATION

1. What is a shutdown furlough?

A shutdown furlough is the placing of an employee in a temporary non-duty, non-pay status when there is a lapse in appropriations.

2. Under what authority is a furlough taken?

For most employees, furloughs are covered under adverse action procedures found in subpart D of part 752 of title 5, Code of Federal Regulations (C.F.R.). Furloughs for Senior Executive Service members are covered in subpart H of part 359 of title 5, C.F.R. Refer to the OPM guidance website for additional information.

3. My activity wants to have a contingency plan for those times when we may have a lapse in appropriations. What should we do?

Components may develop general planning documents in preparation for a lapse in appropriations. In doing so, Components should ensure that they update their contingency plans to conform to the most recent OPM and comptroller guidance, as provided in section 1.0 References.

4. How is an employee notified of a furlough?

Orderly shutdown activities should be conducted remotely to the greatest extent practicable. Supervisors may permit non-excepted employees who are scheduled to telework on their next scheduled work day to perform necessary shutdown activities from their telework locations, if an existing telework agreement is in place. As locally determined, agencies are encouraged to allow other employees to conduct necessary shutdown activities from a remote location, even without an existing telework agreement, if the nature of the employees' shutdown activities are *de minimis* (i.e., can be completed in approximately 15 minutes). Electronic furlough notices must be delivered electronically through agency email. However, some employees may be directed to report to work to receive their Notice of

Furlough in person and complete the orderly shutdown of operations.

The employee's name, address, and/or e-mail address should be included on the decision notice so that it is clear the employee is receiving personal notification. The email notification must include instructions for the employee to acknowledge receipt. Acknowledgment of the notice may include a return e-mail from the employee acknowledging receipt; a copy of the notice returned with either a scanned copy of the personally signed document; or an electronic signature, if this feature is available. If agency email access is not available or a receipt of an email notice is not received, the notice must be mailed to the employee's home address of record by registered mail with return receipt requested.

Activities that use electronic signatures will have to be prepared to establish the foundation for the authenticity of such signatures. Auto pens can be used as long as the Deciding Official can personally testify that he or she has personally made the decision in the case and has directed use of the auto pen. The person actually operating the auto pen must be able to testify that he or she acted at the specific direction of the Deciding Official.

5. 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 ultimately must receive a written notice of decision to furlough, it is not required that such written notice be given prior to effecting the emergency furlough or in person. Advance written notice (including through e-mail) is preferable, but when prior written notice is not feasible, then any reasonable notice (e.g., telephonic, oral, personal e-mail, or by mail promptly after the furlough) is permissible.

6. What procedures should be followed for orderly shutdown?

Non-excepted employees will be informed where they are expected to report to work on their next scheduled work day following the lapse in appropriations to carry out orderly shutdown activities. These shutdown activities may include receiving and acknowledging furlough notices, completing any required time and attendance, setting email/voicemail out-of-office notifications, securing files, and other activities necessary to preserve the employee's work. Supervisors must ensure shutdown activities are completed in the most expeditious manner possible; generally such activities may not exceed three to four hours.

Supervisors may permit non-excepted employees who are scheduled to telework on their next scheduled work day to perform necessary shutdown activities from their telework location, if an existing telework agreement is in place. To the greatest extent practical, and as locally determined, agencies may allow other employees to conduct necessary shutdown activities from a remote location, even without an existing telework agreement, if the nature of the employees' shutdown activities are *de minimis* (i.e., can be completed in approximately 15 minutes). For example, such activities would include receiving and acknowledging receipt of an electronic furlough notice and adjusting voicemail and email to reflect current work status.

7. How is an employee notified of the end of the furlough?

Furloughed employees should monitor media outlets for notification that a continuing resolution or appropriation for DoD has been signed by the President. The OPM website (www.opm.gov) will also provide information. If the notification occurs during duty hours, supervisors should apply a rule of reason in requiring employees to return to work as soon as possible, taking into account the disruption in the lives and routines of furloughed employees that a shutdown causes. In general, employees with telework agreements should resume work promptly during that day. If notification occurs during off-duty hours, employees are expected to resume work on the next scheduled duty day. Employees should

contact their supervisor and let them know their status.

8. How may an employee be recalled during the furlough to perform excepted activities?

There is no legal requirement to provide written notification amending the original notice of decision to furlough. Therefore, once a determination is made by the appropriate official that an employee should be recalled for all, or a portion of the remaining furlough period, the supervisor/manager can inform the employee by any reasonable method (e.g., telephonic or personal email).

If it is later determined that a recalled employee's services are no longer necessary to engage in an excepted function, the supervisor/manager can inform the employee by any reasonable method (e.g., telephonic, oral, or personal email) and is not required to issue a new notice of decision to furlough, provided such determination is made during the time period indicated in the original notice of decision to furlough.

Supervisors/managers should document changes in status from non-excepted to excepted, or vice versa in order to provide source documentation to effect any resulting personnel actions. Such documentation may be by: memorandum for record, e-mail communications, spreadsheet, or similar means.

9. What are the excepted activities employees may perform during a furlough?

Excepted activities are addressed in the "Guidance for Continuation of Operations During a Lapse in Appropriations" issued by the Deputy Secretary of Defense at the time of the shutdown.

<https://media.defense.gov/2023/Sep/12/2003299418/-1/-1/1/GUIDANCE-FOR-CONTINUATION-OF-OPERATIONS-DURING-A-LAPSE-IN-APPROPRIATIONS.PDF>

10. What effect will a furlough have on the calculation of an employee's creditable service?

Time spent in a non-pay status (including furlough) is credited as follows:

- **Career tenure:** The first 30 calendar days of each non-pay period is creditable service. (5 C.F.R. § 315.201(b)(3)(ii)(A))
- **Probationary period:** An aggregate of 22 workdays in a non-pay status is creditable service. (5 C.F.R. § 315.802(c))
- **Qualification standards:** There is no requirement to extend qualifying periods by the amount of non-pay status. However, agencies may require such extensions in order to meet training requirements or ability to perform.
- **Time-in-Grade:** Non-pay status is creditable service. (5 C.F.R. § 300.605(a))
- **Service computation date for leave purposes:** Up to six months in non-pay status is creditable. (5 U.S.C. § 6303(a)) See: <https://www.opm.gov/policy-data-oversight/pay-leave/leave-administration/fact-sheets/effect-of-extended-leave-without-pay-lwop-or-other-nonpay-status-on-federal-benefits-and-programs/>
- **Service creditable for within-grade-increases:** The time in a non-pay status that is creditable is determined by the employee's current step (See 5 C.F.R. § 531.406(b) for General Schedule employees & 532.417(c)(2) for Federal Wage Schedule employees)

11. What effect does a furlough have on time limited appointments or promotions?

Furloughs do not extend the not-to-exceed date of time limited appointments or promotions. Agencies have the option to separate temporary employees rather than include them in the furlough.

12. What happens to time limited appointments that expire during a furlough?

Furloughs do not extend the time limits for temporary and term appointments. An agency may extend

the time limited appointment prior to the furlough, or the individual may be reappointed after the furlough in accordance with 5 C.F.R. § 316.302(b)(7) or 5 C.F.R. § 316.401(c).

13. 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.)

14. Will furloughed DoD employees have continued access to Employee Assistance Programs services during a shutdown?

Yes. Emergency counseling and crisis intervention intake screening and referral services will continue to be available through the Department's Employee Assistance Programs.

4.0 EMPLOYEE COVERAGE

1. Who are “excepted” employees?

Excepted employees are those employees whose work is funded through annual appropriations but who are not furloughed because they are performing tasks that, by law, are allowed to continue during a lapse in appropriations.

2. Who are non-excepted employees?

Employees whose work is financed through annual appropriations but which is not classified as excepted work are prohibited from working during a shutdown, except for carrying out minimal actions required to orderly suspend agency operations connected to non-exempted activity. These employees will be placed on furlough.

3. Who are “exempt” employees?

Employees are considered “exempt” from furlough if they are not affected by a lapse in appropriations. This includes employees whose functions are not funded by annually appropriated funds. Employees performing these functions will generally continue to be governed by the normal pay, leave, and other civil service rules.

5.0 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?

During a shutdown, a furloughed employee may not use previously approved paid leave (such as annual leave, sick leave, paid parental leave, or disabled veteran leave). All previously scheduled leave is canceled.

2. What if an employee who is excepted and not furloughed during a shutdown furlough needs time away from work?

An excepted employee may seek approval to be excused from duty during a shutdown furlough. If approved, the employee is placed in a furlough status.

3. 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.

4. How will employees on home leave be affected?

Employees on home leave will be placed in a furlough status. Home leave may be extended at the discretion of senior management officials.

5. If an employee has properly scheduled “use-or-lose” annual leave before the start of the third biweekly pay period prior to the end of the leave year, but is unable to use some or all of the scheduled leave because of the furlough, does the furlough constitute an “exigency of the public business” that would permit a Component to restore the leave after the beginning of the new leave year?

Yes. Employees in this situation should make every effort to reschedule “use-or-lose” annual leave for use before the end of the current leave year. However, OPM and the Office of Management and Budget have determined that a lapse in appropriations qualifies as an exigency of the public business for purposes of annual leave restoration. Therefore, any annual leave that was forfeited because of the lapse in appropriations must be restored—regardless of whether the affected employees were furloughed or excepted from the furlough.

6. Can administrative leave be granted to employees who are not able to return to work on the next workday immediately following the end of a shutdown or who cannot immediately return to work once recalled to perform excepted activities?

Components are encouraged to be as flexible as possible for employees returning to work following the end of a shutdown or returning to perform excepted activities. Some employees may face extenuating circumstances or personal challenges that impact their ability to return to work on their next workday immediately following the end of a lapse in appropriations. Accordingly, OPM encourages managers to take these individual challenges into consideration, and to the extent possible, provide appropriate flexibility to employees who are facing difficulties that may delay their return to work. Components have the flexibility to grant limited amounts of excused absence (administrative leave) for nonwork periods after the lapse is over if deemed necessary based on extenuating personal circumstances that delay the employee’s return to duty.

7. 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.

8. What happens to leave under FMLA that is scheduled to be taken during a shutdown furlough period?

Any previously scheduled FMLA leave that occurs during a lapse in appropriations is canceled. Any LWOP that was previously scheduled to be used under FMLA during a period when there is a lapse in appropriations will remain as LWOP, but not FMLA-LWOP. If an employee had previously scheduled to substitute qualifying paid leave (such as annual leave, sick leave, PPL, etc.) for unpaid FMLA during a period covered by a lapse, the paid leave must be canceled and converted to a furlough period. The canceled FMLA unpaid leave periods (converted to regular LWOP) and the canceled periods of paid leave substitution (converted to furlough time) will not be considered FMLA leave and will not count against the

FMLA leave 12-week limit. (See Reference c. for more information.)

9. How does a shutdown furlough affect an employee who is scheduled to take approved paid parental leave (PPL) in substitution for unpaid FMLA leave? Does PPL that is scheduled to be taken during a shutdown furlough period count toward the employee's limited entitlement to 12 weeks of FMLA leave and 12 weeks of PPL in an applicable 12-month period?

PPL is a form of paid leave provided via substitution for FMLA unpaid leave. Any previously scheduled paid leave (including PPL substituted for FMLA LWOP) during the furlough period must be canceled. For any hours during the lapse in appropriations for which the employee was scheduled to be in paid leave status by substituting PPL for FMLA LWOP, the employee will be provided retroactive pay and will not be charged paid leave, consistent with the treatment of other employees who had previously scheduled paid leave that was canceled due to the lapse in appropriations. The canceled periods of paid leave substitution (converted to furlough time) will not count against the 12-week PPL entitlement or the FMLA leave 12-week limit in a 12-month period.

10. Does a shutdown furlough extend an employee's 12-month eligibility period to use PPL or disabled veteran leave (DVL)?

No. There is no statutory authority to extend the 12-month eligibility period associated with PPL or the 12-month eligibility period associated with DVL.

11. An employee who has substituted PPL for unpaid FMLA leave is required to complete a 12 week work obligation after the day on which use of PPL concludes. Does time spent in furlough status count towards the required 12 weeks of work?

No. By definition, a furlough period is a period on non-duty status. It does not count as a period of work meeting the 12-week work obligation.

6.0 PAY

1. Will employees receive retroactive pay after a shutdown furlough?

Yes. 31 U.S.C. § 1341(c)(2) provides retroactive pay for Federal employees affected by a lapse in appropriations. Retroactive pay will be paid at the employee's "standard rate of pay." The pay must be provided on the earliest day possible after the lapse ends, regardless of scheduled pay dates. An employee affected by a lapse in appropriations is **not** entitled to retroactive pay for the time the employee had been previously (before the lapse) scheduled to be in a non-pay status.

2. If an employee performs National Guard or Reserve duty while furloughed, is it a dual compensation situation?

No. It is not a dual compensation situation because furloughed employees are not in a pay status. They will be compensated by the military and continue to be carried in an "Absent-US" status.

3. Will employees going overseas with advanced pay be able to get advanced pay or recoup their expenses?

No. Employees will not be able to get advanced pay as long as there is no appropriation in place to pay them. Once appropriations are in place, the employee can file a claim for reimbursement. Exceptions would include employees paid from "trust" or the Defense Business Operations Fund, if funds are available.

4. What about travel pay for those employees on renewal agreement travel, or student travel?

With no appropriation, there is no money to pay renewal agreement travel, or student travel; however, reimbursement claims can be filed once the appropriations are in place.

5. Will employees in Temporary Duty (TDY) status during the furlough period be paid? How are employees in TDY status informed and advised in the event of a furlough?

Please see the Contingency Plan Guidance issued by the Deputy Secretary of Defense.

<https://media.defense.gov/2023/Sep/12/2003299418/-1/-1/1/GUIDANCE-FOR-CONTINUATION-OF-OPERATIONS-DURING-A-LAPSE-IN-APPROPRIATIONS.PDF>

6. How will permanent change of station (PCS) moves and allowances tied to PCS such as temporary quarters subsistence expense (TQSE) be affected?

Please see the Contingency Plan Guidance issued by the Deputy Secretary of Defense.

<https://media.defense.gov/2023/Sep/12/2003299418/-1/-1/1/GUIDANCE-FOR-CONTINUATION-OF-OPERATIONS-DURING-A-LAPSE-IN-APPROPRIATIONS.PDF>

7. What happens to overseas allowances during furlough?

The Department of State Standardized Regulations states that allowances continue during a lapse in appropriations. However, only exempt employees would be paid, as their positions have funding available. Furloughed employees and excepted employees will receive retroactive pay for allowances once the lapse in appropriations has ended.

7.0 MASS TRANSIT SUBSIDY

Will the furlough impact mass transit subsidy/benefits?

Furlough does not change the maximum monthly limit (currently \$315 per month for calendar year 2024) for mass transit subsidy/benefits. Since participants may claim only the days for which mass transit was used, furloughed participants--commuting fewer days in a month--will claim fewer days.

8.0 BENEFITS

8.1 Federal Employees Health Benefits (FEHB)

To what extent does a shutdown furlough affect Federal Employee Health Benefits (FEHB) coverage?

The employee's 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.

8.2 Are employees permitted to make Federal Employees Health Benefits election or changes during a furlough?

Employees furloughed due a lapse in appropriations are considered to be in a pay status for the purposes of enrolling or changing enrollment in the FEHB Program.

8.3 Federal Employees Group Life Insurance (FEGLI)

To what extent does a shutdown furlough affect FEGLI coverage?

FEGLI coverage continues for 12 consecutive months while in a non-pay status without cost to the employee or the agency.

8.4 Thrift Savings Plan (TSP)

1. What is the effect of a shutdown furlough on TSP contributions, investments, and loans?

Agencies and employees should refer to the TSP website or contact their agency representative for information. The web address is <https://www.tsp.gov/index.html>.

2. Can I take a TSP loan while I'm furloughed?

Agencies and employees should refer to the TSP website or contact their agency representative for information. The web address is <https://www.tsp.gov/index.html>.

3. Are agencies required to send in a Form TSP-41, "NOTIFICATION TO TSP OF NON-PAY STATUS (AGENCY USE)," notifying the TSP when employees have been furloughed?

No.

8.5 Flexible Spending Account (FSAFEDS)

To what extent does a shutdown furlough affect FSAFEDS coverage?

Health Care Expenses: Payroll deductions will cease for any employee who does not receive pay. The employee remains enrolled in FSAFEDS, but eligible health care claims incurred during a non-pay status will not be reimbursed until the employee returns to a pay status and allotments are successfully restarted. The remaining allotments are recalculated over the remaining pay periods to match the participant's election amount.

Dependent Care Expenses: Eligible dependent care expenses incurred during a non-pay status may be reimbursed up to whatever balance is in the employee's dependent care account--as long as the expense incurred during the non-pay status allows the employee (or spouse if married) to work, look for work or attend school full-time.

8.6 Long Term Care (LTC)

To what extent does a shutdown furlough affect LTC coverage?

LTC Coverage may not be cancelled as a result of nonpayment of premiums or other periodic charges due to a shutdown furlough. Payroll deductions will cease for any employee who does not receive pay. Federal Long Term Care Insurance Program (FLTCIP) premiums will be paid from back pay or may be paid back from another source for FLTCIP enrollees who elected to make payments directly to the Carrier. Visit the LTC website, <https://www.ltcfeds.com> for more information.

8.7 Federal Employees Dental and Vision Insurance Plan (FEDVIP)

To what extent does a shutdown furlough affect FEDVIP coverage?

FEDVIP Coverage may not be cancelled as a result of nonpayment of premiums or other periodic charges due to a shutdown furlough. FEDVIP premiums will be paid from back pay or may be paid back from another source for FEDVIP enrollees who elected to make payments directly to the Carrier.

Employees can mail direct bill premiums to:

BENEFEDS-FEDVIP
P.O. Box 414095
Boston, MA 02241-4095

Visit the FEDVIP website, <https://www.benefeds.com> for more information.

8.8 Retirement

To what extent will a furlough affect my retirement annuity benefits?

Generally there will be no effect on the high-3 average pay unless the furlough causes the employee to be in a non-pay status for more than 6 months during the calendar year. For information about the impact of the furlough on retirement, see OPM's *Guidance for Shutdown Furloughs*, references a. and c.

8.9 Unemployment Compensation

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

It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. (See the Department of Labor website "Unemployment Compensation for Federal Employees," at: <https://oui.doleta.gov/unemploy/unemcomp.asp> Agencies or employees should submit questions to the appropriate state (or District of Columbia) office. The Department of Labor's website provides links to individual state offices at: <https://www.careeronestop.org/LocalHelp/UnEmploymentBenefits/unemployment-benefits.aspx>.

2. Are Human Resources Offices required to provide furloughed Federal employees with an SF-8, "Notice to Federal Employee about Unemployment Insurance?"

Yes, Federal agencies are required to provide a Form SF-8 to employees in addition to the furlough notice. For furlough purposes, a completed SF-8 for each component is located on the Defense Civilian Personnel Advisory Service (DCPAS) external website. <https://www.dcpas.osd.mil/policy/benefits/unemploymentcompensation>

3. What address should the Human Resource Office (HRO) provide on the SF-8, Notice to Federal Employee about Unemployment Insurance? What is the Federal Identification Code (FIC)?

Normally, the address on the Form SF-8 should be the address for the servicing Civilian Personnel Office (CPO) or HRO. However, during a shutdown furlough, the Component Headquarters CPO or HRO addresses are used. The pre-filled Form SF-8 for each component/agency is located via a link on the DCPAS website: <https://www.dcpas.osd.mil/policy/benefits/unemploymentcompensation>

It is important to submit the correct Form SF-8 annotating the Headquarters CPO or HRO address and FIC to your state Employment Security Agency (SESA). The FIC code lets the SESA know the appropriate component/agency to be billed. The Department of Defense FIC's are as follows:

DoD Agencies (other than below)	421
Department of the Army	422
Department of the Navy	423

Department of the Air Force	424
Army National Guard	420
Air National Guard	428

4. Is the Unemployment Compensation claim based on the state where the employee lives, or where the employee works?

Unemployment Compensation claims are based on the state in which the work was performed.

8.10 Injury Compensation See: <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf>

Are employees who are injured while on furlough or LWOP eligible to receive workers' compensation?

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

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

9.0 PRIORITY PLACEMENT PROGRAM (PPP)

1. Are furloughed employees eligible to register in the PPP?

Employees are not eligible to register in the PPP on the basis of furlough alone unless the furlough period is six months or longer. However, if they are eligible based on some other qualifying event such as reduction-in-force, declination of transfer of function, completion of an overseas tour, etc., they may register in accordance with the timelines of that event.

2. What will happen to PPP registrations and requisitions submitted on the last business day when employees are furloughed due to a government shutdown?

The Automated Stopper and Referral System will process those transactions, and they will take effect on the first business day after the shutdown furlough.

3. What happens if a PPP registrant is selected before the furlough and has an established entrance on duty (EOD) date that now falls within the furlough period?

The registering and gaining activities must re-negotiate the EOD date before the furlough begins, making every reasonable effort to avoid a service break for the registrant.

4. If a registering activity is unable to reach a registrant to extend a job offer before the shutdown furlough begins, when does the job offer response time begin (i.e., two days for CONUS registrants and three days for OCONUS registrants)?

As always, the response period does not begin until the registering activity establishes contact with the registrant and actually extends the job offer. Call the appropriate Civilian Assistance and Re-employment Program Coordinator for guidance in problem cases.

5. Activities will be unable to retrieve matches for active requisitions during a shutdown furlough. Will the matches remain in the system until the furlough ends?

Yes. Adjustments will be made for necessary actions to ensure the data is available at the end of the furlough period.

10.0 LABOR RELATIONS

1. Is there an obligation to bargain when there is a lapse in appropriations that requires a shutdown furlough?

The decision whether to furlough employees and which activities are excepted from a furlough are management rights that are not subject to bargaining. See 5 U.S.C. § 7106(a). However, when an agency determines that a shutdown furlough is necessary, agencies have a duty to notify their exclusive representatives and, upon request, bargain over any negotiable impact and implementation proposals the union may submit, unless the matter of furloughs is already “covered by” a collective bargaining agreement.

Information regarding the obligation to bargain may be found on OPM’s Furlough Guidance at: <https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/guidance-for-shutdown-furloughs.pdf>

2. A union has proposed that management rotate the designation of “excepted from the furlough” among employees who are equally qualified. This creates an equitable distribution of the work by not requiring a specific individual or group of individuals to bear the burden of working the entire furlough. Is this negotiable?

Yes. Management retains the right to assign work, to determine which duties and responsibilities must be performed during the furlough, and which employees are qualified to perform such duties and responsibilities. How these employees are selected from among those who are equally qualified, however, is subject to negotiation. While the excepted designation is not negotiable, once it has been determined which positions are excepted, the process of determining which employee(s) should be designated excepted, including a rotational schedule, is negotiable.

3. If rotation of the excepted designation is negotiable, do the parties have to agree?

No. The parties must deal in good faith with each other. They are not required to reach agreement. Where agreement cannot be reached, the services of a neutral third party may be used. If the parties have not reached agreement before the furlough, then management has no choice but to proceed by implementing its last offer. Management should, to the maximum extent possible, continue to negotiate with the union during implementation. If the parties reach impasse and the matter goes to the Federal Service Impasses Panel, management must be prepared to show that the requirement to rotate employees would impose an undue burden on the agency.